この特許法の翻訳は、平成十七年法律第七十五号までの改正（平成１７年１１月１日施行）について、「法令用語日英標準対訳辞書」（平成１８年３月版）に準拠して作成したものです。
なお、この法令の翻訳は公定訳ではありません。法的効力を有するのは日本語の法令自体であり、翻訳はあくまでその理解を助けるための参考資料です。この翻訳の利用に伴って発生した問題について、一切の責任を負いかねますので、法律上の問題に関しては、官報に掲載された日本語の法令を参照してください。
This English translation of the Patent Act has been translated (through the revisions of Act No. 75 of 2005(Effective November 1, 2005)) in compliance with the Standard Bilingual Dictionary (March 2006 edition).
This is an unofficial translation. Only the original Japanese texts of laws and regulations have legal effect, and the translations are to be used solely as reference material to aid in the understanding of Japanese laws and regulations.
The Government of Japan shall not be responsible for the accuracy, reliability or currency of the legislative material provided in this Website, or for any consequence resulting from use of the information in this Website. For all purposes of interpreting and applying law to any legal issue or dispute, users should consult the original Japanese texts published in the Official Gazette.

Patent Act (Act No. 121 of 1959)

Chapter I General Provisions

Article 1 (Purpose)

The purpose of this Act is through promoting the protection and the utilization of inventions, to encourage inventions, and thereby to contribute to the development of industry.

Article 2 (Definitions)

(1) "Invention" in this Act means the highly advanced creation of technical ideas utilizing the laws of nature.

(2) "Patented invention" in this Act means an invention for which a patent has been granted.

(3) "Working" of an invention in this Act means the following acts:

(i) in the case of an invention of a product (including a computer program, etc., the same shall apply hereinafter), producing, using, assigning, etc. (assigning and leasing and, in the case where the product is a computer program, etc., including providing through an electric telecommunication line, the same shall apply hereinafter), importing or offering for assignment, etc. (including displaying for the purpose of assignment, etc., the same shall apply hereinafter) thereof;

(ii) in the case of an invention of a process, the use thereof; and

(iii) in the case of an invention of a process for producing a product, in addition to the action as provided in the preceding item, acts of using, assigning, etc., importing or offering for assignment, etc. the product produsedby the process.

(4) A "computer program, etc." in this Act means a computer program (a set of instructions given to an electronic computer which are combined in order to produce a specific result, hereinafter the same shall apply in this paragraph) and any other information that is to be processed by an electronic computer equivalent to a computer program.

Article 3 (Calculation of time periods)

(1) The calculation of time periods under this Act or any order issued under this Act shall be made in accordance with the following provisions.

(i) The first day of the period shall not be included in the calculation; provided, however, that this shall not apply where the period of time commences at 00:00 hours.

(ii) Where the period is indicated by months or years, such months or years shall refer to calendar months or calendar years. Where the period is not calculated from the beginning of a month or a year, the period shall expire on the preceding day of the day corresponding to the first day of the calculation in the last month or year; provided, however, that where there is no corresponding day in the last month, the period shall expire on the last day of the last month.

(2) Where the last day of the prescribed period for any procedures relating to a patent (hereinafter referred to as "procedures") including filing a patent application and a request, is any of the days provided for in Article 1(1) of the Act on Holidays of Administrative Organs (Act No. 91 of 1988), the day following such day shall be the last day of the period.

Article 4 (Extension of time limits , etc.)

The Commissioner of the Patent Office may, upon request or ex officio, extend the period provided for in Articles 46-2(1)(iii), 108(1), 121(1) and 173(1), for a person in a remote area or an area with transportation difficulty.

Article 5

(1) Where the Commissioner of the Patent Office, the chief trial examiner, or the examiner has designated a time limit by which procedures are to be undertaken under this Act, said official may, upon request or ex officio, extend the time limit.

(2) Where the chief trial examiner has designated a specific date under this Act, said official may, upon request or ex officio, change such date.

Article 6 (Capacity of associations, etc. which are not juridical persons to undertake procedures)

(1) An association or foundation which is not a juridical person but for which a representative or an administrator has been designated may, in its name:

(i) file a request for examination of an application;
(ii) file a request for a trial for patent invalidation or a trial for invalidation of the registration of extension of duration; and
(iii) file a request for a retrial in accordance with Article 171(1), against a final and binding decision in a trial for patent invalidation or a trial for invalidation of the registration of extension of duration.

(2) An association or foundation which is not a juridical person but for which a representative or an administrator has been designated may be named as a demandee in a request filed for a retrial against a final and binding decision in a trial for patent invalidation or a trial for invalidation of the registration of extension of duration.

Article 7 (Capacity of minors or adult wards etc. to undertake procedures)

(1) Minors or adult wards may not undertake procedures except through their statutory representatives; provided, however, that this shall not apply where a minor is capable of independently performing a juristic act.

(2) Where a person under curatorship undertakes procedures, the consent of a curator is required.

(3) Where a statutory representative undertakes procedures, the consent of a supervisor of the guardian, if any, is required.

(4) Where an adverse party files a request for a trial or retrial involving a person under curatorship or a statutory representative, the preceding two paragraphs shall not apply.

Article 8 (Patent administrators for overseas residents)

(1) Unless otherwise provided for by Cabinet Order, no person domiciled or resident (or, in the case of a juridical person, with a business office) outside Japan (hereinafter referred to as an "overseas resident") may undertake procedures or institute action against measures taken by a relevant administrative agency in accordance with the provisions of this Act or an order issued under this Act, except through a representative domiciled or resident in Japan, who is acting for such person in handling matters related to the person's patent (hereinafter referred to as a "patent administrator").

(2) The patent administrator shall represent the principal in all procedures and litigation against measures taken by any relevant administrative agency in accordance with the provisions of this Act or an order issued under this Act; provided, however, that this shall not apply where the overseas resident limits the scope of authority of representation of the patent administrator.

Article 9 (Scope of authority of representation)

An agent of a person domiciled or resident in Japan (or, in the case of a juridical person, with a business office) and who is proceeding before the Patent Office shall not, unless expressly so empowered, convert, waive or withdraw a patent application, withdraw an application for registration of extention of the duration of a patent right, withdraw a request, application or motion, make or withdraw a priority claim under Article 41(1), file a patent application based on a registration of a utility model in accordance with Article 46-2(1), file a request for laying open of an application, file a request for a trial against an examiner's decision of refusal, waive a patent right or appoint a subagent.

Article 10 Deleted

Article 11 (No extinction of authority of representation)

The authority of representaion of an authorized agent acting for a person undertaking procedures shall not be extinct upon the death of the principal, or in the case of a juridical person, merger of the principal, termination of trust duties of a trustee who is the principal, the death of a legal representative, or change or extinction of the statutory representative's authority of representation.

Article 12 (Independent representation by representatives)

Where there are two or more representatives acting for a person who undertakes procedures, each representative may represent the principal before the Patent Office.

Article 13 (Replacement of representatives, etc.)

(1) When the Commissioner of the Patent Office or the chief trial examiner finds that a person undertaking procedures is not competent or suitable for undertaking such procedures, the official may order the person to undertake the procedures through a representative.

(2) When the Commissioner of the Patent Office or the chief trial examiner finds that a representative acting for a person undertaking procedures is not competent or suitable for undertaking such procedures, the official may order that the representative be replaced.

(3) In the case of the preceding two paragraphs, the Commissioner of the Patent Office or the chief trial examiner may order that a patent attorney be the representative.

(4) The Commissioner of the Patent Office or the chief trial examiner may, after the issuance of an order under paragraph (1) or (2), dismiss the procedures before the Patent Office undertaken by the person undertaking procedures under paragraph (1) or the representative under paragraph (2).

Article 14 (Mutual representation of multiple parties in the case)

Where two or more persons are jointly proceeding before the Patent Office, each of them shall represent the other or others with respect to procedures other than the conversion, waiver and withdrawal of a patent application, the withdrawal of an application for registration of extention of the duration of a patent right, the withdrawal of a request, application, or motion, the making and withdrawal of a priority claim under Article 41(1), the request for laying open of an application, and the request for a trial against an examiner's decision of refusal; provided, however, that this shall not apply where the said persons have appointed a representative for both/all of them and have notified the Patent Office accordingly.

Article 15 (Jurisdiction over overseas residents)

Regarding a patent right or other right relating to the patent of a overseas resident, the location of the property under Article 5(iv) of the Code of Civil Procedure (Act No. 109 of 1996) shall be the domicile or residence of the overseas resident's patent administrator, or if there is no such patent administrator, the address of the patent Office.

Article 16 (Ratification of acts of persons lacking legal capacity)

(1) Any procedures undertaken by a minor (excluding one who has a legal capacity to juristic act independently) or an adult ward may be ratified by the person's statutory representative (or by the said adult ward, if the person later acquires a legal capacity to undertake the procedures).

(2) Any procedures undertaken by a person with no authority of representation may be ratified by the principal holding legal capacity to undertake the procedures or the principal's statutory representative.

(3) Any procedures undertaken by a person under curatorship without the consent of his curator may be ratified if the person under curatorship obtains the approval of his curator.

(4) Any procedures undertaken by a statutory representative without the consent of a supervisor of a guardian may be ratified by the statutory representative if the approval of the supervisor of the guardian is obtained, or by the principal if the principal acquires a legal capacity to undertake the procedures.

Article 17 (Amendment of proceedings)

(1) A person undertaking a procedure before the Patent Office may make amendments only while the case is pending; provided, however, that the person may not amend the description, scope of claims, drawing(s) or the abstract attached to the application, or the corrected description, scope of claims or drawings attached to the written request for correction or a trial for correction

under Article 134-2(1), unless an amendment may be made pursuant to the provisions the following Article to Article 17-4 inclusive.

(2) Notwithstanding the main clause of the preceding paragraph, an applicant of a written application in foreign language as provided in Article 36-2(2) may not amend the document and abstract in foreign language as provided in Article 36-2 (1).

(3) The Commissioner of the Patent Office may require an applicant to amend a procedure, designating an adequate time limit, in the following cases:

(i) where the procedures do not comply with Articles 7(1) to (3) or Article 9;

(ii) where the procedures do not comply with the formal requirements prescribed by this Act or an order thereunder; and

(iii) where the fees relating to the procedures payable under Articles 195(1) to (3) are not paid.

(4) For any amendment of procedures (except in the case of the payment of fees), written amendment shall be submitted in writing, except for cases provided by Article 17-2(2).

Article 17-2 (Amendment of Description, Claim or Drawing attached to the application)

(1) An applicant for a patent may amend the description, scope of claims, or drawings attached to the application, before the service of the certified copy of the examiner's decision notifying that a patent is to be granted; provided, however, that following the receipt of a notice provided under Article 50, an amendment may only be made in the following cases:

(i) where the applicant has received the first notice (hereinafter referred to in this Article as the "notice of reasons for refusal") under Article 50 [including the cases where it is applied mutatis mutandis pursuant to Article 159(2) (including the cases where it is applied mutatis mutandis pursuant to Article 174(1))and Article 163(2), hereinafter the same shall apply in this paragraph] and said amendment is made within the designated time limit under Article 50;]

(ii) where, following the receipt of the notice of reasons for refusal, the applicant has received a notice under Article 48-7 and the said amendment is made within the designated time limit under the said Article;

(iii) where, following the receipt of the notice of reasons for refusal, the applicant has received a further notice of reasons for refusal and the said amendment is made within the designated time limit under Article 50 with regard to the final notice of reasons for refusal; and

(iv) where the applicant files a request for a trial against an examiner's decision of refusal and said amendment is made within 30 days from said request for said trial.

(2) Where an applicant of a written application in foreign language as provided in Article 36-2(2) amends the description, scope of claims or drawings under the preceding paragraph for the purpose of correcting an incorrect translation, the applicant shall submit the statement of correction of the incorrect translation, stating the grounds thereof.

(3) Except in the case where the said amendment is made through the submission of a statement of correction of an incorrect translation, any amendment of the description, scope of claims or drawings under paragraph (1) shall be made within the scope of the matters described in the description, scope of claims or drawings originally attached to the application〔in the case of a written application in foreign language under Article 36-2(2), the translation of the document in foreign language as provided in Article 36-2(2) that is deemed to be the description, scope of claims and drawings under Article 36-2(4) (in the case where the amendment to the description, scope of claims or drawings has been made through the submission of the statement of correction of an incorrect translation, the said translation or the amended description, scope of claims or drawings)〕.

(4) In addition to the requirements provided in the preceding paragraph, in the cases of items (iii) and (iv) of paragraph (1), the amendment of the scope of claims shall be limited to those for the following purposes:

(i) the deletion of a claim or claims as provided in Article 36(5);

(ii) restriction of the scope of claims (limited to the cases where the restriction is to restrict matters required to identify the invention stated in a claim or claims under Article 36(5), and the industrial applicability and the problem to be solved of the invention stated in the said claim or claims prior to the amendment are identical with those after the amendment.);

(iii) the correction of errors; and

(iv) the clarification of an ambiguous statement (limited to the matters stated in the reasons for refusal in the notice of reasons for refusal).

(5) Article 126(5) shall apply mutatis mutandis to cases under item(ii) of the preceding paragraph.

Article 17-3 (Amendment of abstract)

An applicant for a patent may amend the abstract attached to the application within one year and three months (excluding the period after a request for laying open of application is filed) from the filing date of the patent application (or in the case of a patent application containing a priority claim under Article 41(1), the filing date of the earlier application provided for in the saidparagraph, in the case of a patent application containing a priority claim under Article 43(1), 43-2(1) or 43-2 (2), the filing date of the earliest application, a patent application that is deemed to be the earliest application under Article 4.C(4) of the Paris Convention (refers to

the Paris Convention for the Protection of Industrial Property of March 20, 1883, as revised at Brussels on December 14, 1900, at Washington on June 2, 1911, at Hague on November 6, 1925, at London on June 2, 1934, at Lisbon on October 31, 1958, and at Stockholm on July 14, 1967, the same shall apply hereinafter) or a patent application that is recognized as the earliest application under Article 4.A(2) of the Paris Convention, and in the case of a patent application containing two or more priority claims under Article 41(1), 43(1), 43-2(1) or 43-2(2), the earliest day of the filing dates on which the said priority claims are based, the same shall apply to Article 64(1)).

Article 17-4 (Amendment of corrected description, scope of claims or drawings)

(1) The demandee of a trial for patent invalidation may amend the corrected description, scope of claims or drawings attached to the written request for correction under Article 134-2(1) only within the time limit designated under Article 134(1), 134(2), 134-2(3), 134-3(1), 134-3(2) or 153(2).

(2) The demandant of a trial for correction may amend the corrected description, scope of claims or drawings attached to the written request for a trial for correction, only prior to notice under Article 156(1) (in the case where the proceedings has been reopened under Article 156(2), prior to further notice under Article 156(1)).

Article 18 (Dismissal of procedures)

(1) The Commissioner of the Patent Office may dismiss the procedures where a person ordered to make an amendment to the procedures under Article 17(3) fails to make such amendment within the designated time limit under the said provision, or where a person obtaining the registration establishing a patent right fails to pay patent fees within the designated time limit under Article 108(1).

(2) The Commissioner of The Patent Office may dismiss a patent application where the applicant ordered under Article 17(3) to pay patent fees provided for in Article 195(3) fails to pay such patent fees within the designated time limit under Article 17(3).

Article 18-2 (Dismissal of inadequate procedure)

(1) The Commissioner of the Patent Office shall dismiss a procedure where the procedure is inadequate and not amendable.

(2) Where the Commissioner of the Patent Office intends to dismiss a procedure under the preceding paragraph, he/she shall notify the person who undertook the procedures of the reasons therefor and give the said person an opportunity to submit a document stating an explanation (hereinafter referred to as a "statement of explanation "), designating an adequate time limit.

Article 19 (Effective time of submission of application)

An application, a document or any other item submitted by mail to the Patent Office under this Act, or any order rendered under this Act, that is subject to a time limit, shall be deemed to have arrived at the Office at the date and time when such application or item is presented to the post office if such date and time are proven by the receipt of the mail, at the date and time of the date stamp on the mail if such date and time are clearly legible, or at noon of the day of the date stamp on the mail if only the day, but not the time, of the date stamp is clearly legible.

Article 20 (Succession of effects of procedures)

The effects of the procedures relating to a patent right or any right relating to a patent shall extend to a successor in title.

Article 21 (Continuation of procedures)

Where a patent right or any right relating to a patent is transferred while a case is pending before the patent Office, the Commissioner of the patent Office or the chief trial examiner may proceed with the procedures relating to the case to which the successor in title shall be the party.

Article 22 (Suspension or termination of procedures)

(1) Where a motion for the resumption of procedures suspended after a certified copy of a ruling, an examiner's decision or a trial decision has been served is filed, the Commissioner of the Patent Office or the trial examiner shall render a ruling on whether the resumption shall be accepted.

(2) The ruling under the preceding paragraph shall be made in writing and state the grounds therefor.

Article 23

(1) Where a procedure for an examination, trial or retrial has been suspended and the person responsible for resuming the procedure fails to do so, the Commissioner of the Patent Office or the trial examiner shall, upon a motion or ex officio, order the said person to resume the procedure and designate an adequate time limit for this purpose.

(2) Where the resumption does not occur within the time limit designated under the preceding paragraph, the resumption may be deemed by the Commissioner of the Patent Office or the trial examiner to have commenced on the date the time limit lapsed.

(3) When the resumption is deemed to have commenced under the preceding paragraph, the Commissioner of the Patent Office or the chief trial examiner shall notify the parties in the case thereof.

Article 24

The Code of Civil Procedure, Articles 124 (excluding paragraph (1)(vi)), 126 to 127, 128(1), 130, 131 and 132(2) (suspension or termination of court proceedings) shall apply mutatis mutandis to a procedure for an examination, a trial or retrial. In this case, the term "counsel" in Article 124(2) of the said Code shall be deemed to be replaced with "agent entrusted with the examination, trial or retrial", the term "court" in Article 127 of the said Code shall be deemed to be repleced with "Commissioner of the Patent Office or the chief trial examiner", the term "court" in Articles 128(1) and 131 of the said Code shall be deemed to be replaced with "Commissioner of the Patent Office or the trial examiner", and the term "court" in Article 130 of the said Code shall be deemed to be replaced with "Patent Office".

Article 25 (Enjoyment of rights by foreign nationals)

A foreign national not domiciled or resident (or, in the case of a juridical person, with a business office) in Japan may not enjoy a patent right or other rights relating to a patent, except in the following cases:

(i) where the country of the foreign national allows Japanese nationals to enjoy a patent right or other rights relating to a patent under the same conditions as for its own nationals;

(ii) where the country of the foreign national allows Japanese nationals to enjoy a patent right or other rights relating to a patent under the same conditions as for its own nationals in the case where Japan allows nationals of that country to enjoy a patent right or others right relating to a patent; and

(iii) where specifically provided by treaty .

Article 26 (Effect of treaties)

Where specific provisions relating to a patent are provided by treaty, such provisions shall prevail.

Article 27 (Registration in the patent registry)

(1) The following matters shall be registered in the patent registry maintained in the Patent Office:

(i) the establishment, extension of the duration, transfer, lapse, restoration or restriction on disposition, of a patent right;

(ii) the establishment, maintenance, transfer, modification, lapse or restriction on disposal, of an exclusive or non-exclusive license; and

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

(2) The patent registry may be prepared, in whole or in part, in the form of

magnetic tapes (including other storage media using a similar method that may record and reliably store certain matters, the same shall apply hereinafter).

(3) In addition to those prescribed in this Act, matters relating to registration shall be prescribed by Cabinet Order.

Article 28 (Issuance of certificate of patent)

(1) The Commissioner of the Patent Office shall issue the certificate of patent to the patentee when the establishment of a patent right has been registered, or when a trial decision to the effect that the description, scope of claims or drawings attached to the application are to be corrected has become final and binding and the said trial decision has been registered.

(2) Re-issuance of the certificate of patent shall be prescribed by Ordinance of the Ministry of Economy, Trade and Industry.

Chapter II Patents and Patent Applications

Article 29 (Conditions for Patentability)

(1) An inventor of an invention that is industrially applicable may be entitled to obtain a patent for the said invention, except for the following:

(i) inventions that were publicly known in Japan or a foreign country, prior to the filing of the patent application;

(ii) inventions that were publicly worked in Japan or a foreign country, prior to the filing of the patent application; or

(iii) inventions that were described in a distributed publication, or inventions that were made publicly available through an electric telecommunication line in Japan or a foreign country, prior to the filing of the patent application.

(2) Where, prior to the filing of the patent application, a person ordinarily skilled in the art of the invention would have been able to easily make the invention based on an invention prescribed in any of the items of the preceding paragraph, a patent shall not be granted for such an invention notwithstanding the preceding paragraph.

Article 29-2

Where an invention claimed in a patent application is identical with an invention or device (excluding an invention or device made by the inventor of the invention claimed in the said patent application) disclosed in the description, scope of claims or drawings (in the case of the written application in foreign language under Article 36-2(2), the document in foreign language as provided in Article 36-2(1)) originally attached to the written application of another application for a patent or for a registration of a utility model which has been filed prior to the date of filing of the

said patent application and published after the filing of the said patent application in the patent bulletin under Article 66(3) of the patent Act (hereinafter referred to as "patent bulletin") or in the utility model bulletin under Article 14(3) of the utility model Act (Act No. 123 of 1959) (hereinafter referred to as "utility model bulletin") describing matters provided for in each of the paragraphs of the respective Article or for which the publication of the patent application has been effected, a patent shall not be granted for such an invention notwithstanding Article 29(1); provided, however, that this shall not apply where, at the time of the filing of the said patent application, the applicant of the said patent application and the applicant of the other application for a patent or for registration of a utility model are the same person.

Article 30 (Exception to lack of novelty of invention)

(1) In the case of an invention which has fallen under any of the items of Article 29 (1) by reason of the fact that the person having the right to obtain a patent has conducted a test, has made a presentation in a printed publication, has made a presentation through electric telecommunication lines, or has made a presentation in writing at a study meeting held by an academic group designated by the Commissioner of the patent Office, such invention shall be deemed not have fallen under any of the items of Article 29(1) for the purposes of Article 29(1) and (2) for the invention claimed in a patent application which has been filed by the said person within six months from the date on which the invention first fell under any of thoseitems.

(2) In the case of an invention which has fallen under any of the items of Article 29 (1) against the will of the person having the right to obtain a patent, the preceding paragraph shall also apply for the purposes of Article 29(1) and (2) to the invention claimed in the patent application which has been filed by the said person within six months from the date on which the invention first fell under any of those paragraphs.

(3) In the case of an invention which has fallen under any of the items of Article 29 (1) by reason of the fact that the person having the right to obtain a patent has exhibited the invention at an exhibition held by the Government or a local public entity (hereinafter referred to as "Government, etc."), an exhibition held by those who are not the Government, etc. where such exhibition has been designated by the Commissioner of the patent Office, an international exhibition held in the territory of a country of the Union of the Paris Convention or a member of the World Trade Organization by its Government, etc. or those who are authorized thereby to hold such an exhibition, or an international exhibition held in the territory of a state which is neither of a country of the Union of the Paris Convention nor a member of the World Trade Organization by its Government, etc.

or those who are authorized thereby where such exhibition has been designated by the Commissioner of the patent Office, paragraph (1) shall also apply for the purposes of Article 29(1) and (2) to the invention claimed in the patent application which has been filed by the said person within six months from the date on which the invention first fell under any of those items.

(4) Any person seeking the application of paragraph (1) or (3) shall submit to the Commissioner of the Patent Office, at the time of filing of the patent application, a document stating thereof and, within thirty days from the date of filing of the patent application, a document proving the fact that the invention which has otherwise fallen under any of the items of Article 29(1) is an invention to which paragraph (1) or (3) of this Article may be applicable.

Article 31 Deleted

Article 32 (Unpatentable inventions)

Notwithstanding Article 29, any invention that is liable to injure public order, morality or public health shall not be patented.

Article 33 (Right to obtain patent)

(1) The right to obtain a patent may be transferred.

(2) The right to obtain a patent may not be the subject of a pledge.

(3) Where the right to obtain a patent is jointly owned, no joint owner may assign his respective share without the consent of all the other joint owners.

Article 34

(1) The succession of the right to obtain a patent prior to the filing of the patent application shall have no effect on any third party unless the successor in title files the patent application.

(2) Where two or more patent applications are filed on the same date based on the right to obtain the same patent based on succession from the same person, any succession(s) by a person(s) other than those selected by consultations between the applicants shall have no effect on any third party.

(3) The preceding paragraph shall apply where applications for a patent and a utility model registration are filed on the same date based on the right to obtain a patent and the right to obtain a utility model registration for the same invention and device based on succession from the same person.

(4) Any succession to the right to obtain a patent after the filing of the patent application shall have no effect, except in the case of general successions including inheritance, without notification to the Commissioner of the patent Office.

(5) Where a general succession to the right to obtain a patent including inheritance

thereof occurs, the successor in title shall notify the Commissioner of the patent Office thereof without delay.

(6) Where two or more notifications are submitted on the same date regarding successions to the right to obtain the same patent based on succession from the same person, any notification(s) by a person(s) other than the person selected by consultations between the persons submitting the notifications shall have no effect.

(7) Articles 39(7) and 39(8) shall apply mutatis mutandis to the cases prescribed in paragraphs (2), (3) and (6).

Articel 35 (Inventions by Employees)

(1) An employer, a juridical person or a national or local government (hereinafter referred to as "employer, etc."), where an employee, an officer of the juridical person, or a national or local government employee (hereinafter referred to as "employee, etc.") has obtained a patent for an invention which, by the nature of the said invention, falls within the scope of the business of the said employer, etc. and was achieved by an act(s) categorized as a present or past duty of the said employee, etc. performed for the employer, etc. (hereinafter referred to as "employee invention") or where a successor to the right to obtain a patent for the employee invention has obtained a patent therefor, shall have a non-exclusive license on the said patent right.

(2) In the case of an invention by an employee, etc., any provision in any agreement, employment regulation or any other stipulation providing in advance that the right to obtain a patent or that the patent rights for any invention made by an employee, etc. shall vest in the employer, etc., or that an exclusive license for the said invention shall be granted to the employer, etc., shall be null and void unless the said invention is an employee invention.

(3) Where the employee, etc., in accordance with any agreement, employment regulation or any other stipulation, vests the right to obtain a patent or the patent right for an employee invention in the employer, etc., or grants an exclusive license therefor to the employer, etc., the said employee, etc. shall have the right to receive reasonable value.

(4) Where an agreement, employment regulation or any other stipulation provides for the value provided in the preceding paragraph, the payment of value in accordance with the said provision(s) shall not be considered unreasonable in light of circumstances where a negotiation between the employer, etc. and the employee, etc. had taken place in order to set standards for the determination of the saidvalue, the set standards had been disclosed, the opinions of the employee, etc. on the calculation of the amount of the value had been received and any other relevant circumstances.

(5) Where no provision setting forth the value as provided in the preceding

paragraph exists, or where it is recognized under the preceding paragraph that the amount of the value to be paid in accordance with the relevant provision(s) is unreasonable, the amount of the value under paragraph (3) shall be determined by taking into consideration the amount of profit to be received by the employer, etc. from the invention, the employer, etc.'s burden, contribution, and treatment of the employee, etc. and any other circumstances relating to the invention.

Article 36 (Patent applications)

(1) A person requesting the grant of a patent shall submit an application to the Commissioner of the patent Office stating the following:
  (i) the name and domicile or residence of the applicant(s) for the patent; and
  (ii) the name and domicile or residence of the inventor(s).

(2) The description, scope of claims, drawings (where required), and abstract shall be attached to theapplication.

(3) The description as provided in the preceding paragraph shall state the following:
  (i) the title of the invention;
  (ii) a brief explanation of the drawing(s); and
  (iii) a detailed explanation of the invention.

(4) The statement of the detailed explanation of the invention as provided in item (iii) of the preceding Paragraph shall comply with each of the following items:
  (i) in accordance with the relevant Ordinance of the Ministry of Economy, Trade and Industry, the statement shall be clear and sufficient as to enable any person ordinarily skilled in the art to which the invention pertains to work the invention; and
  (ii) where the person requesting the grant of a patent has knowledge of any invention(s) (inventions as provided in Article 29(1)(iii), hereinafter the same shall apply in this item) related to the said invention, that has been known to the public through publication at the time of filing of the patent application, the statement shall provide the source of the information concerning the invention (s) known to the public through publication such as the name of the publication and others.

(5) The scope of claims as provided in paragraph (2) shall state a claim or claims and state for each claim all matters necessary to specify the invention for which the applicant requests the grant of a patent. In such case, an invention specified by a statement in one claim may be the same invention specified by a statement in another claim.

(6) The statement of the scope of claims as provided in paragraph (2) shall comply with each of the following items:
  (i) the invention for which a patent is sought is stated in the detailed explanation of the invention.

(ii) the invention for which a patent is sought is clear;
(iii) the statement for each claim is concise; and
(iv) the statement is composed in accordance with the relevant Ordinance of the Ministry of Economy, Trade and Industry.

(7) The abstract as provided in paragraph (2) shall state a summary of the invention disclosed in the description, scope of claims or drawings, and any other matters as provided by a relevant Ordinance of the Ministry of Economy, Trade and Industry.

Article 36-2

(1) A person requesting the grant of a patent may, in lieu of the description, scope of claims, drawings (where required) and abstract as provided in paragraph (2) of the preceding Article, attach to the application a document in a foreign language as provided by a relevant Ordinance of the Ministry of Economy, Trade and Industry, stating matters required to be stated in the description or the scope claims under paragraphs (3) to (6) of the said Article, and drawing(s) (where required) which contain any descriptive text in the said foreign language (hereinafter referred to as "document in foreign language"), and a document in the said foreign language stating matters required to be stated in the abstract under paragraph (7) of the said Article (hereinafter referred to as "abstract in foreign language ").

(2) The applicant for a patent application in which a document and an abstract in foreign language are attached to the application under the preceding paragraph (hereinafter referred to as " written application in foreign language ") shall submit to the Commissioner of the Patent Office Japanese translations of the document and the abstract in foreign language within two months from the date of filing of the patent application.

(3) Where the translation of the document in foreign language (excluding drawings) as provided in the preceding paragraph is not submitted within the time limit as provided in the preceding paragraph, the patent application shall be deemed to have been withdrawn.

(4) The translation of the document in foreign language as provided in paragraph (2) shall be deemed to be the description, scope of claims and drawings submitted with the application under paragraph (2) of the preceding Article and the translation of the abstract in foreign language as provided in paragraph (2) shall be deemed to be the abstract submitted with the application under paragraph (2) of the preceding Article.

Article 37

Two or more inventions may be the subject of a single patent application in the same application provided that, these inventions are of a group of inventions

recognized as fulfilling the requirements of unity of invention based on their technical relationship designated in the relevant Ordinance of the Ministry of Economy, Trade and Industry,.

Article 38 (Joint applications)

Where the right to obtain a patent is jointly owned, a patent application may only be filed by all the joint owners.

Article 39 (Prior application)

(1) Where two or more patent applications claiming identical inventions have been filed on different dates, only the applicant who filed the patent application on the earliest date shall be entitled to obtain a patent for the invention claimed.

(2) Where two or more patent applications claiming identical inventions have been filed on the same date, only one applicant, who was selected by consultations between the applicants who filed the said applications, shall be entitled to obtain a patent for the invention claimed. Where no agreement is reached by consultations or consultations are unable to be held, none of the applicants shall be entitled to obtain a patent for the invention claimed.

(3) Where an invention and a device claimed in applications for a patent and a utility model registration are identical and the applications for a patent and a utility model registration are filed on different dates, the applicant for a patent may obtain a patent for the invention claimed therein, only if the application for a patent is filed prior to the application for a utility model registration.

(4) Where an invention and a device claimed in applications for a patent and a utility model registration are identical (excluding the case where an invention claimed in a patent application based on a utility model registration under Article 46-2(1) (including a patent application that is deemed to have been filed at the time of filing of the said patent application under Article 44(2) (including its mutatis mutandis application under Article 46(5)) and a device relating to the said utility model registration are identical) and the applications for a patent and a utility model registration are filed on the same date, only one of the applicants, selected by consultations between the applicants, shall be entitled to obtain a patent or a utility model registration. Where no agreement is reached by consultations or no consultations are able to be held, the applicant for a patent shall not be entitled to obtain a patent for the invention claimed therein.

(5) Where an application for a patent or a utility model registration has been waived, withdrawn or dismissed, or where the examiner's decision or trial decision to the effect that a patent application is to be refused has become final and binding, the application for a patent or a utility model registration shall, for the purpose of paragraphs (1) to (4), be deemed never to have been filed; provided, however, that

this shall not apply to the case where the examiner's decision or trial decision to the effect that the patent application is to be refused has become final and binding on the basis that the latter sentence of paragraph (2) or (4) is applicable to the said patent application.

(6) An application for a patent or a utility model registration filed by a person who is neither the inventor nor designer nor the successor in title to the right to obtain a patent or a utility model registration shall, for the purpose of application of paragraphs (1) to (4), be deemed to be neither an application for a patent nor an application for a utility model registration.

(7) The Commissioner of the Patent Office shall, in the case of paragraph (2) or (4), order the applicant to hold consultations as specified under paragraph (2) or (4) and to report the result thereof, designating an adequate time limit.

(8) Where no report under the preceding paragraph is submitted within the time limited designated under the said paragraph, the Commissioner of the Patent Office may deem that no agreement under paragraph (2) or (4) has been reached.

Article 40 Deleted

Article 41 (Priority claim based on patent application, etc.)

(1) A person requesting the grant of a patent may make a priority claim for an invention claimed in the patent application, based on an invention disclosed in the description or scope of claims for a patent or utility model registration, or drawings (in the case where the earlier application was a written application in foreign language, the document in foreign language) originally attached to the application of an earlier application filed for a patent or utility model registration which the said person has the right to obtain (hereinafter referred to as "earlier application"), except in the following cases:

(i) where the said patent application is not filed within one year from the date of the filing of the earlier application;

(ii) where the earlier application is a new divisional patent application extracted from a patent application under Article 44(1), a patent application converted from a patent application under Article 46(1) or 46(2) or a patent application based on a utility model registration under Article 46-2(1), or a new divisional utility model registration application extracted from a utility model registration application under Article 44(1) of the Patent Act as applied mutatis mutandis under Article 11(1) of the Utility Model Act or a utility model registration application converted from a utility model registration application under Article 10(1) or 10(2) of the Utility Model Act;

(iii) where at the time of the filing of the said patent application, the earlier application had been waived, withdrawn or dismissed;

(iv) where, at the time of the filing of the said patent application, the examiner's decision or the trial decision on the earlier application had become final and binding; and

(v) where, at the time of the filing of the said patent application, the registration establishing a utility model right under Article 14(2) of the utility model Act with respect to the earlier application had been effected.

(2) For inventions among those claimed in a patent application containing a priority claim under paragraph (1), for those that are stated in the description, scope of claims for a patent or utility model registration or drawings (in the case where the earlier application was a written application in foreign language, the document in foreign language) originally attached to the application of the earlier application on which the priority claim is based [in the case where the earlier application contains a priority claim under that paragraphor Article 8(1) of the Utility Model Act, or Article 43(1) or 43-2(1) or (2) of the Patent Act (including its mutatis mutandis Application under Article 11(1) of the Utility Model Act), excluding any inventions disclosed in any documents (limited to those equivalent to the description, scope of claims for a patent or utility model registration or drawings) submitted at the time of the filing of the application on which the priority claim in the earlier application is based], the said patent application shall be deemed to have been filed at the time when the earlier application was filed, in the case of the application of Article 29, the main clause of Article 29-2, Articles 30(1) to (3), 39(1) to (4), 69(2)(ii), 72, 79, 81, 82(1), 104 [including its mutatis mutandis application under Article 65(5) (including its mutatis mutandis application under Article 184-10(2))] and 126(5) (including its mutatis mutandis application under Articles 17-2(5) and 134-2(5)) of the Patent Act, Articles 7(3) and 17 of the Utility Model Act, Articles 26, 31(2) and 32(2) of the Design Act (Act No. 125 of 1959), and Article 29, 33-2(1) and 33-3(1) (including its mutatis mutandis application under Article 68(3) of the Trademark Act) of the Trademark Act (Act No. 127 of 1959).

(3) Among inventions disclosed in the description, scope of claims or drawings (in the case of a written application in foreign language, the document in foreign language) originally attached to the application in a patent application containing a priority claim under paragraph (1), for those that are stated in the description, scope of claims for a patent or utility model registration or drawings (in the case where the earlier application was a written application in foreign language, the document in foreign language) originally attached to the application of the earlier application on which the priority claim is based [in the case where the earlier application contains a priority claim under the said paragraphor Article 8(1) of the Utility Model Act, or Article 43(1) or 43-2(1) or (2) of the patent Act (including its mutatis mutandis application under Article 11(1) of the Utility

Model Act), excluding any inventions disclosed in any documents (limited to those equivalent to the description, scope of claim for a patent or utility model registration or drawing) submitted at the time of the filing of the application on which the priority claim in the earlier application is based], the laying open of application or the bulletin containing the Utility Model pertaining to the earlier application shall be deemed to have been effected or issued at the time when the patent bulletin containing patent or the laying open of application pertaining to the said patent application was issued or effected, and the main clause of Article 29-2 of the patent Act or Article 3-2 of the Utility Model Act shall apply.

(4) A person requesting to make a priority claim under paragraph (1) shall submit to the Commissioner of the Patent Office a document stating thereof and the indication of the earlier application along with the patent application.

Article 42 (Withdrawal, etc. of earlier application)

(1) The earlier application on which a priority claim is based under Article 41(1) shall be deemed to have been withdrawn when one year and three months has lapsed from the filing date of the earlier application; provided, however, that this shall not apply to the case where the earlier application has been waived, withdrawn or dismissed, where the examiner's decision or trial decision on the earlier application has become final and binding, where the registration establishing a utility model right under Article 14(2) of the utility model Act with respect to the earlier application has been effected or where all priority claims based on the earlier application have been withdrawn.

(2) The applicant of a patent application containing a priority claim under Article 41 (1) may not withdraw the priority claim after the period of one year and three months has passed from the filing date of the earlier application.

(3) Where the patent application containing a priority claim under Article 41(1) is withdrawn within one year and three months from the filing date of the earlier application, the said priority claim shall be deemed withdrawn simultaneously.

Article 43 (Procedures for a priority claim under the Paris Convention)

(1) A person desiring to take advantage of the priority under Article 4.D(1) of the Paris Convention regarding a patent application shall, along with the patent application, submit to the Commissioner of the Patent Office a document stating thereof, and specify the country of the Union of the Paris Convention in which the application was first filed, deemed to have been first filed under C(4) of the said Article, or recognized to have been first filed under A(2) of the said Article, and the date of filing of the said application.

(2) A person who has made a declaration of priority under the preceding paragraph shall submit to the Commissioner of the Patent Office a certificate showing the

date of filing from the country of the Union of the Paris Convention in which the application was first made, or deemed to have been first made under Article 4.C(4) of the Paris Convention, or recognized to have been first made under A(2) of the said Article, as well as certified copies of those equivalent to the description, scope of claims for patent or utility model registration and drawings submitted at the time of the filing of the application, or any bulletin or certificate equivalent thereto issued by the government of the said country, within one year and four months from the earliest of the following dates:

(i) the date of filing which was first made, deemed to have been first made under Article 4.C(4) of the Paris Convention, or recognized to have been first made under A(2) of the said Article;

(ii) where such patent application contains a priority claim under Article 41(1), the date of filing of the application on which the said priority claim is based; or

(iii) where such patent application contains other priority claims under 43(1) or 43-2 (1) or (2) , the date of filing of the application on which the said priority claim is based.

(3) A person who has made a declaration of priority under paragraph (1) shall, in addition to the documents as provided in the preceding paragraph, submit to the Commissioner of the Patent Office a document specifying the filing number of the application which was first filed, deemed to have been first filed under Article 4.C (4) of the Paris Convention, or recognized to have been first filed under A(2) of the said Article;provided, however, that where such filing number is not available to the person prior to the submission of the documents as provided in the said paragraph, in lieu of the said document, a document specifying the reason thereof shall be submitted and the document specifying such filing number shall be submitted without delay when such number becomes available to the said person.

(4) Where a person who has made a declaration of priority under paragraph (1) fails to submit the documents specified in paragraph (2) within the time limit provided therein, the said priority claim shall lose its effect.

(5) In relation to the application of the preceding two paragraphs, where a person, having made a declaration of priority under paragraph (1) based on an application filed in a country designated in an Ordinance of the Ministry of Economy, Trade and Industry in which a conversion of matters stated in the documents as provided in paragraph (2) through an electromagnetic devices (devices that are not perceivable by senses including electronic and magnetic devices) by identifying such matters by its filing number is allowed, submits to the Commissioner of the Patent Office the document stating the said filing number of the application within the designated time limit under paragraph (2), the documents as provided in paragraph (2) shall be deemed to have been submitted.

Article 43-2 (Priority claims recognized under the Paris Convention)

(1) A priority claim may be declared in a patent application under Article 4 of the Paris Convention, where the priority claim is based on an application filed by a person specified in the left-hand column of the following table in a country specified in the corresponding right-hand column.

Japanese nationals or nationals of a country of the Union of the Paris Convention (including nationals deemed to be the nationals of the country of the Union in accordance with Article 3 of the Paris Convention - hereinafter the same shall apply in paragraph (2)).	Member of the World Trade Organization
Nationals of a Member of the World Trade Organization (meaning the nationals of Members provided for in paragraph (3) of Article 1 of the Annex 1C to the Marrakesh Agreement Establishing the World Trade Organization - hereinafter the same shall apply in paragraph (2)).	Country of the Union of the Paris Convention or Member of the World Trade Organization

(2) A national of a country that is neither a country of the Union of the Paris Convention nor a member of the World Trade Organization (limited to the country that allows Japanese nationals to declare a priority under the same conditions as in Japan, hereinafter referred to as a "specified country" in this paragraph), a Japanese national, a national of a country of the Union of the Paris Convention or a national of a member of the World Trade Organization may declare a priority claim in the patent application based on the application filed in the specified country under Article 4 of the Paris Convention.

(3) Article 43 shall apply mutatis mutandis to the case where a priority claim is declared under paragraph (1) or (2).

Article 44 (Division of patent applications)

(1) An applicant for a patent may extract one or more new patent applications out of a patent application containing two or more inventions only within the allowable time limit for amendments of the description, scope of claims or drawings attached to the application.

(2) In the case referred to in the preceding paragraph, the new patent application shall be deemed to have been filed at the time of filing of the original patent application; provided, however, that this shall not apply for the purposes of applications of: Article 29-2 of the Patent Act where the new patent application

falls under another patent application in the said Article; Article 3-2 of the Utility Model Act where the new patent application falls under a patent application in the said Article; and Articles 30(4), 36-2(2), 41(4) and 43(1) of the Patent Act (including its mutatis mutandis application under paragraph (3) of the preceding Article).

(3) For the purpose of application of Article 43(2) (including its mutatis mutandis application under paragraph (3) of the preceding Article) where a new patent application is filed under paragraph (1), "within one year and four months from the earliest of the following dates" in Article 43(2) shall read "within one year and four months from the earliest of the following dates or three months from the date of filing of the new patent application, whichever is later."

(4) Where a new patent application is filed under paragraph (1), any statements or documents which have been submitted in relation to the original patent application and are required to be submitted in relation to the new patent application under Article 30(4), 41(4), or Articles 43(1) and 43(2) (including its mutatis mutandis application under paragraph (3) of the preceding Article) shall be deemed to have been submitted to the Commissioner of the Patent Office along with the new patent application.

Article 45 Deleted

Article 46 (Conversion of application)

(1) An applicant of a utility model registration may convert the application into a patent application;provided, however, that this shall not apply after the expiration of 3 years from the date of filing of the utility model registration application.

(2) An applicant of a design registration may convert the application into a patent application; provided, however, that this shall not apply after the expiration of 30 days from the date the certified copy of the examiner's initial decision to the effect that the application for a design registration is to be refused has been served or after the expiration of 3 years from the date of filing of the design registration application (excluding the period of a maximum of 30 days after the date the certified copy of the examiner's initial decision to the effect that the application for a design registration is to be refused has been served).

(3) Where the period as provided in Article 46(1) of the Design Act is extended under Article 4 of the Patent Act as applied mutatis mutandis under Article 68(1) of the Design Act, the 30-day period as provided in the proviso to the preceding paragraph shall be deemed to have been extended only for that period as extended.

(4) Where an application is converted under paragraph (1) or (2), the original application shall be deemed to have been withdrawn.

(5) Articles 44(2) to 44(4) shall apply mutatis mutandis to the case of conversion

of an application under paragraph (1) or (2).

Article 46-2 (Patent applications based on utility model registration)

(1) Except for the following cases, a holder of utility model right may file a patent application based on his/her own utility model registration as provided by an Ordinance of the Ministry of Economy, Trade and Industry. In such a case, the utility model right shall be waived:

(i) where 3 years have lapsed from the date of filing of an application for the said utility model registration;

(ii) where a petition requesting the examiner's technical opinion as to the registerability of the utility model claimed in the utility model registration application or of the utility model registration, (in the following paragraph simply referred to as "utility model technical opinion"), is filed by the applicant of the utility model registration or the utility model right holder;

(iii) where 30 days have lapsed from the date of receipt of initial notice under Article 13(2) of the Utility Model Act pertaining to a petition requesting the Utility Model Technical Opinion on the application for the utility model registration, or on the utility model registration filed by a person who is neither the applicant of the said utility model registration nor the said holder of Utility Model right; and

(iv) where the time limit initially designated under Article 39(1) of the Utility Model Act for a utility model registration invalidation trial filed against the said utility model registration under Article 37(1) of the Utility Model Act has expired.

(2) A patent application under the preceding paragraph shall be deemed to have been filed at the time of filing of the application for the said utility model registration, provided that matters stated in the description, scope of claims or drawings attached to the application in the said patent application are within the scope of the matters stated in the description, scope of claims or drawings attached to the application in the said utility model registration application on which the said patent application is based; provided, however, that this shall not apply for the purpose of application of Article 29-2 of the Patent Act or Article 3-2 of the Utility Model Act, where the patent application falls under another patent application under the said Article of the Patent Act or the patent application under the said Article of the Utility Model Act, or for the purpose of application of Articles 30(4), 36-2(2), 41(4), 43(1) (including its mutatis mutandis application under Article 43-2(3)) and 48-3(2).

(3) Notwithstanding item(iii) of paragraph (1), where, due to reasons beyond the control of the applicant for a patent under paragraph (1), the applicant is unable to file an application for a patent within the time limit as provided in the saiditem,

the applicant may file a patent application within 14 days (where overseas resident, within two months) from the date on which the reasons ceased to be applicable, but not later than six months following the expiration of the said time limit.

(4) Where there is an exclusive licensee, a pledgee or, in the case where Article 35 (1) of the Patent Act as applied under Article 11(3) of the Utility Model Act or Article 77(4) of the Patent Act as applied under Article 18(3) of the Utility Model Act or Article 19(1) of the Utility Model Act is applicable, a non-exclusive licensee, the holder of a utility model right may file a patent application under paragraph (1), provided that the consent of the said exclusive licensee, pledgee or non-exclusive licensee is obtained.

(5) Articles 44(3) and 44(4) shall apply mutatis mutandis to the case where a patent application is filed under paragraph (1).

Chapter III Examination

Article 47 (Examination by examiner)

(1) The Commissioner of the Patent Office shall direct the examination of patent applications by an examiner.

(2) The qualifications of examiners shall be as prescribed by Cabinet Order.

Article 48 (Exclusion of examiners)

Articles 139(i) to 139(v) and 139(vii) shall apply mutatis mutandis to examiners.

Article 48-2 (Examination of patent applications)

The examination of a patent application shall be initiated after the filing of a request for examination.

Article 48-3 (Request for examination of application)

(1) Where a patent application is filed, any person may, within 3 years from the filing date thereof, file with the Commissioner of the Patent Office a request for the examination of the said application.

(2) In the case of a new patent application arising from the division of a patent application under Article 44(1), or a patent application arising from the conversion of an application under Article 46(1) or 46(2), or a patent application based on a utility model registration under Article 46-2(1), a request for the examination of the said patent application may be filed even after the lapse of the time limit prescribed in the preceding paragraph, but not later than 30 days following the division of a patent application, conversion of application or filing of patent application based on a utility model registration.

(3) A request for the examination of a patent application may not be withdrawn.
(4) Where a request for the examination of an application is not filed within the time limit as provided in paragraph (1) or (2), the said patent application shall be deemed to have been withdrawn.

Article 48-4

A person(s) filing a request for the examination of an application shall submit a written request to the Commissioner of the Patent Office stating the following :

(i) the name and domicile or residence of the demandant; and
(ii) the identification of the patent application for which the examination is requested.

Article 48-5

(1) Where a request for the examination of an application is filed, in the case where such request is filed prior to the laying open of the application, the Commissioner of the Patent Office shall publish the fact thereof in the patent bulletin either at the time of laying open of the application or thereafter without delay, and in the case where such a request is filed after laying open of the application, without delay after laying open.
(2) Where a request for the examination of an application is filed by a person other than the applicant for a patent, the Commissioner of the patent Office shall notify the applicant thereof.

Article 48-6 (Preferential examination)

Where it is recognized that a person other than the applicant is working the invention claimed in a patent application as a business after the laying open of the application, the Commissioner of the Patent Office may, where deemed necessary, cause the examiner to examine the patent application in preference to other patent applications.

Article 48-7 (Notice of statement of information concerning invention known to the public through publication)

Where the examiner recognizes that a patent application does not comply with the requirements as provided in Article 36(4)(ii), the examiner may notify the applicant of the patent thereof and give the said applicant an opportunity to submit a written opinion, designating an adequate time limit for such purpose.

Article 49 (Examiner's decision of refusal)

The examiner shall render an examiner's decision to the effect that a patent application is to be refused where the patent application falls under any of the

following:

(i) an amendment made to the description, scope of claims or drawings attached to the application of a patent application does not comply with the requirements as provided in Article 17-2(3);

(ii) the invention claimed in the patent application is not patentable under Article 25, 29, 29-2, 32, 38 or 39(1) to 39(4);

(iii) the invention claimed in the patent application is not patentable under the provisions of any relevant treaty;

(iv) the patent application does not comply with the requirements under Article 36(4)(i), 36(6), or 37;

(v) where notice under the preceding Article has been given, following the amendment of the description or submission of the written opinion, the patent application does not comply with the requirements under Article 36(4)(ii);

(vi) where the patent application is a written application in foreign language, matters stated in the description, scope of claims or drawings attached to the application of the said patent application do not remain within the scope of matters stated in the document in foreign language; and

(vii) where the applicant for the patent is not the inventor, the applicant has not succeeded to the right to obtain a patent for the said invention.

Article 50 (Notice of reasons for refusal)

Where the examiner intends to render an examiner's decision to the effect that an application is to be refused, the examiner shall notify the applicant for the patent of the reasons therefor and give the said applicant an opportunity to submit a written opinion, designating an adequate time limit for such purpose; provided, however, that in cases referred to in Article 17-2(1)(iii), this shall not apply where a ruling dismissing an amendment under Article 53(1) is rendered.

Article 51 (Examiner's decision to the effect that a patent is to be granted)

Where no reasons for refusal are found for a patent application, the examiner shall render a decision to the effect that a patent is to be granted.

Article 52 (Formal requirements for decision)

(1) The examiner's decision shall be in writing and specify the reasons therefor.

(2) Where the examiner's decision is rendered, the Commissioner of the Patent Office shall serve to the applicant of a Patent a certified copy of the examiner's decision.

Article 53 (Dismissal of amendments)

(1) In the case of Article 17-2(1)(iii), where, prior to the service of the certified copy

of the examiner's decision notifying to the effect that a patent is to be granted, an amendment made to the description, scope of claims or drawings attached to the application is found not to comply with Articles 17-2(3) to (5), the examiner shall dismiss the amendment by a ruling.

(2) The ruling dismissing an amendment under the preceding paragraph shall be made in writing and state the reasons therefor.

(3) The ruling dismissing an amendment under paragraph (1) shall not be subject to appeal; provided, however, that where a request for a trial against an examiner's decision of refusal has been filed, this shall not apply to the appeal made in the proceeding in the said trial.

Article 54 (In relation to litigation)

(1) Where deemed necessary during a examination, the examination procedure may be suspended until a trial decision has become final and binding or court proceedings have been concluded.

(2) Where an action is instituted or a motion for an order of provisional seizure or provisional disposition is filed, the court may, if it considers it necessary, suspend the court proeedings until the examiner's decision becomes final and binding.

Articles 55 through 63 Deleted

Chapter III-2 Laying Open of Applications

Article 64 (Laying open of applications)

(1) After a lapse of one year and six months from the date of the filing of a patent application, the Commissioner of the Patent Office shall lay open the patent application, except in the case where the bulletin containing the patent has already been published. The same shall apply where a request for the laying open of the patent application under paragraph (1) of the following Article is filed.

(2) The laying open of a patent application shall be effected by stating the following matters inthe patent bulletin; provided, however, that this shall not apply to the matters prescribed in item (iv) to (vi) where the Commissioner of thePatent Office recognizes that public order or morality is liable to be injured by stating such matters in the patent bulletin.

(i) the name, and the domicile or residence of the applicant(s) for the patent;

(ii) the number and the filing date of the patent application;

(iii) the name, and the domicile or residence of the inventor(s);

(iv) the matters stated in the description, scope of claims attached to the application and the contents of the drawings attached to the said application;

(v) the matters stated in the abstract attached to the application;

(vi) in the case of a written application in foreign language, the matters stated in the document in foreign language and the abstract in foreign language;

(vii) the number and the date of laying open of the patent application; and

(viii) other necessary matters.

(3) When anything stated in the abstract attached to the application does not comply with Article 36(7), or in cases where the Commissioner of the Patent Office finds it otherwise necessary, the Commissioner of the Patent Office may publish in the patent bulletin, in lieu of the matters stated in the abstract under item (v) of the preceding paragraph, matters prepared by the Commissioner of the Patent Office.

Article 64-2 (Request for laying open of a patent application)

(1) An applicant for a patent may file a request for the of the patent application with the Commissioner of the Patent Office except in the following cases:

(i) where the patent application has already been laid open;

(ii) where the patent application contains a priority claim under Article 43(1), 43-2(1) or 43-2(2), and documents relating thereto under Articles 43(2) (including its mutatis mutandis application under Article 43-2(3)) and 43(5) (including its mutatis mutandis application under Article 43-2(3)), have not been submitted to the Commissioner of the Patent Office; and

(iii) where the patent application is a written application in foreign language and translations of the documents in foreign language under Article 36-2(2) have not been submitted to the Commissioner of the Patent Office.

(2) A request for the laying open of a patent application may not be withdrawn.

Article 64-3

An applicant filing a request for the laying open of a patent application shall submit a written request to the Commissioner of the Patent Office stating the following:

(i) the name and domicile or residence of the demandant; and

(ii) the identification of the patent application for which the laying open is requested.

Article 65 (Effect of the laying open of applications)

(1) After the laying open of a patent application, where the applicant for the patent has given warning with documents stating the contents of the invention claimed in the patent application, the applicant may claim compensation against a person who has worked the invention as a business after the warning and prior to the registration establishing a patent right, and the amount of compensation shall be equivalent to the amount the applicant would be entitled to receive for the working

of the invention if the invention were patented. Even where the said warning has not been given, the same shall apply to a person who knowingly commercially worked an invention claimed in a laid open patent application, prior to the registration establishing a patent right.

(2) The right to claim compensation under the preceding paragraph may not be exercised until the registration establishing a patent right has been effected.

(3) The exercise of the right to claim compensation under paragraph (1) shall not preclude the exercise of the patent right.

(4) Where a patent application has been waived, withdrawn or dismissed after the laying open of the patent application, or where the examiner's decision or a trial decision refusing the patent application has become final and binding, or where the patent right has been deemed never to have existed from the beginning under Article 112(6) (except in the case where it is further found that the patent right is deemed to have existed from the beginning under Article 112-2(2)), or where, with exception of cases coming under the proviso to Article 125, a trial decision to the effect that the patent is to be invalidated has become final and binding, the right to claim under paragraph (1) shall be deemed never to have been established from the beginning.

(5) Articles 101, 104 to 105-2, 105-4 to 105-7 and 168(3) to 168(6) of this Act and Articles 719 and 724 (tort) of the Civil Code (Act No. 89 of 1896) shall apply mutatis mutandis to the exercise of the right to claim compensation under paragraph (1). In this case, where a person having the right to claim compensation has become aware of the fact that the invention claimed in the patent application had been worked and of the person who had worked the invention prior to the registration establishing a patent right, the term "the time when the victim or the statutory representative thereof became aware of such damages and the perpetrator therefor" in Article 724 of the Civil Code shall be deemed to be replaced with "the date of the registration establishing a patent right."

Chapter IV Patent Rights

Section 1 Patent Rights

Article 66 (Registration of establishment of a patent right)

(1) A patent right shall become effective upon registration of its establishment.

(2) The establishment of a patent right shall be registered where patent fees for each year during the period from the first year to the third year under Article 107 (1) have been paid or an exemption or deferment thereof has been granted.

(3) Where the registration under the preceding paragraph has been effected, the following matters shall be published in thepatent bulletin; provided, however, that

this shall not apply to the matters prescribed in paragraph (v) where the patent application has already beenlaid open:

(i) the name, and the domicile or residence of the patentee(s);

(ii) the number and the filing date of the patent application;

(iii) the name, and the domicile or residence of the inventor(s);

(iv) the matters stated in the description and scope of claims attached to the application and the contents of the drawings attached to the said application;

(v) the matters stated in the abstract attached to the application;

(vi) the patent number and the date of registration of establishment; and

(vii) other necessary matters.

(4) Article 64(3) shall apply mutatis mutandis where the matters stated in the abstract as provided in the preceding paragraph Paragraph (v) are published in the Patent Gazette under the preceding paragraph.

Article 67 (Duration of patent rights)

(1) The duration of a patent right shall expire after a period of 20 years from the filing date of the patent application.

(2) Where there is a period during which the patented invention is unable to be worked because approvals prescribed by relevant Acts that are intended to ensure the safely, etc. or any other disposition designated by Cabinet Order as requiring considerable time for the proper execution of the disposition in light of the purpose, procedures, etc., of such a disposition is necessary to obtain for the working of the patented invention, the duration of the patent right may be extended, upon the filing of a request for the registration of extension of theduration, by a period not exceeding 5 years.

Article 67-2 (Registration of extension ofduration)

(1) A person(s) filing a request for the registration of extension of the duration of a patent right shall submit a written application to the Commissioner of the Patent Office stating the following:

(i) the name, and the domicile or residence of the applicant;

(ii) the patent number;

(iii) the period for which the extension is requested (not exceeding 5 years); and

(iv) the description of the disposition designated by Cabinet Order as provided in Article 67(2).

(2) The written application under the preceding paragraph shall be accompanied by materials specifying the reason(s) for the extension, as provided by an Ordinance of the Ministry of Economy, Trade and Industry.

(3) The application requesting the registration of extension of the duration of a patent right shall be filed within the time limit prescribed by the Cabinet Order

after the disposition prescribed by the Cabinet Order under Article 67(2) is obtained; provided, however, that the said written application may not be filed after the expiration of the duration of a patent right as provided in Article 67(1).

(4) Where a patent right is jointly owned, none of the joint owners may file an application for the registration of extension of the duration of a patent right unless jointly with all the other joint owners.

(5) Where an application for the registration of extension of the duration of a patent right is filed, the duration shall be deemed to have been extended; provided, however, that this shall not apply where the examiner's decision to the effect that the application is to be refused has become final and binding or where the extension of the duration of a patent right has been registered.

(6) Where an application for the registration of extension of the duration of a patent right is filed, matters stated in paragraph (1) and the number and the filing date of the application shall be published in the patent bulletin.

Article 67-2-2

(1) Where the disposition designated by the Cabinet Order under Article 67(2) is unlikely to be obtained prior to 6 months before the expiration of the duration of a patent right under Article 67(1), a person filing an application for the registration of extension of the duration of a patent right shall submit to the Commissioner of the Patent Office, on or before the time limit, a document stating the following:

(i) the name, and domicile or residence of the person filing the application;

(ii) the patent number; and

(iii) the disposition designated by the Cabinet Order under Article 67(2).

(2) Unless the document required to be submitted under the preceding paragraph is submitted, an application for the registration of extension of the duration of a patent right may not be filed after 6 months before the expiration of the duration of the patent right under Article 67(1).

(3) Where the document as provided in paragraph (1) is submitted, the matters prescribed in the said paragraph shall be published in the patent bulletin.

Article 67-3

(1) Where an application for the registration of extension of the duration of a patent right falls under any of the following items, the examiner shall render the examiner's decision to the effect that the application is to be refused:

(i) where the disposition designated by the Cabinet Order under Article 67(2) is not deemed to have been necessary to obtain for the working of the patented invention;

(ii) where the patentee, or the exclusive licensee(s) or registered non-exclusive licensee(s) of the patent have not obtained the disposition designated by the

Cabinet Order under Article 67(2);

(iii) where the period for which the extension is requested exceeds the period during which the patented invention was unable to be worked;

(iv) where the person filing the application is not the patentee; and

(v) where the request does not meet the requirements under Article 67-2(4).

(2) Where no reasons for refusal are found for the application for the registration of extension of the duration of a patent right, the examiner shall render an examiner's decision to the effect that the extension is to be registered.

(3) Where the examiner ' s decision or trial decision to the effect that the extension of the duration of the patent right is to be registered is rendered, the extension of the duration of the patent right shall be registered.

(4) Where the registration under the preceding paragraph is made, the following matters shall be published in the patent bulletin:

(i) the name and domicile or residence of the patentee;

(ii) the patent number;

(iii) the number and filing date of the application for the registration of extension of the duration of the patent right;

(iv) the date of the registration of extension;

(v) the period of extension; and

(vi) the description of the disposition designated by an Cabinet Order under Article 67(2).

Article 67-4

Articles 47(1), 48, 50 and 52 shall apply mutatis mutandis to the examination of the application for registration of extension of the duration of a patent right.

Article 68 (Effect of patent right)

A patentee shall have the exclusive right to work the patented invention as a business; provided, however, that where an exclusive license regarding the patent right is granted to a licensee, this shall not apply to the extent that the exclusive licensee is licensed to exclusively work the patented invention.

Article 68-2 (Effect of patent right in the case of duration extension)

Where the duration of a patent right is extended (including the case where the duration is deemed to have been extended under Article 67-2(5)), such patent right shall not be effective against any act other than the working of the patented invention for the product which was the subject of the disposition designated by Cabinet Order under Article 67(2) which constituted the reason for the registration of extension (where the specific usage of the product is prescribed by the disposition, the product used for that usage).

Article 69 (Limitations of patent right)

(1) A patent right shall not be effective against the working of the patented invention for experimental or research purposes.

(2) A patent right shall not be effective against the following products:

(i) vessels or aircrafts merely passing through Japan, or machines, apparatus, equipment or other products used therefor; and

(ii) products existing in Japan prior to the filing of the patent application.

(3) A patent right for the invention of a medicine (refers to a product used for the diagnosis, therapy, treatment or prevention of human diseases, hereinafter the same shall apply in this paragraph) to be manufactured by mixing two or more medicines or for the invention of a process to manufacture a medicine by mixing two or more medicines shall not be effective against the act of preparation of a medicine as is written in a prescription from a physician or a dentist and the medicine prepared as is written in a prescription from a physician or a dentist.

Article 70 (Technical scope of patented invention)

(1) The technical scope of a patented invention shall be determined based upon the statements in the scope of claims attached to the application.

(2) In the case of the preceding paragraph, the meaning of each term used in the scope of claims shall be interpreted in consideration of the statements in the description and drawings attached to the application.

(3) In the case of the preceding two paragraphs, statements in the abstract attached to the application shall not be taken into consideration.

Article 71

(1) A request may be made to the Patent Office for its advisory opinion on the technical scope of a patented invention.

(2) Where a request under the preceding paragraph is made, the Commissioner of the Patent Office shall designate three trial examiners to make an advisory opinion on the requested matter.

(3) Articles 131(1), the main clause of 131-2(1), 132(1) and (2), 133, 133-2, 134(1), (3) and (4), 135, 136(1) and (2), 137(2), 138, 139 (excluding (vi)), 140 to 144, 144-2(1) and (3) to (5), 145(2) to (5), 146, 147(1) and (2), 150(1) to (5), 151 to 154, 155(1), 157 and 169(3), (4) and (6) shall apply mutatis mutandis to the advisory opinion under paragraph (1). In this case, the term "trial decision" in Article 135 shall be deemed to be replaced with "ruling", the term "trial other than the trial under the preceding paragraph" in Article 145(2) shall be deemed to be replaced with "proceedings for advisory opinion", the term "where public order or morality is liable to be injured thereby" in the proviso to Article 145(5) shall be

deemed to be replaced with "where the chief trial examiner considers it necessary", the term "Article 147" in Article 151 shall be deemed to be replaced with "Article 147(1) and (2)", the term "before a trial decision becomes final and binding" in Article 155(1) shall be deemed to be replaced with "before the certified copy of the written advisory opinion is served".

(4) No appeal shall be available against a ruling under Article 135 to be applied mutatis mutandis in the preceding paragraph.

Article 71-2

(1) Where the Commissioner of the Patent Office is commissioned by the court for the provision of an expert opinion on the technical scope of a patented invention, the Commissioner of the Patent Office shall appoint three trial examiners and direct them to provide an expert opinion on the requested matter.

(2) Articles 36(1), 36(2), 137(2) and 138 shall apply mutatis mutandis to the commissioning of the provision of an expert opinion prescribed in the preceding paragraph.

Article 72 (Related to patented inventions, etc., by others)

Where a patented invention uses another person's patented invention, registered utility model, registered design or design similar thereto for which an application was filed prior to the date of filing of the said patent application, or where the patent right is in conflict with another person's design right or trademark right obtained based on an application filed prior to the date of filing of the said patent application, the patentee, exclusive licensee or non-exclusive licensees may not work the patented invention as a business.

Article 73 (Jointly owned patent rights)

(1) Where a patent right is jointly owned, no joint owner may assign or establish a right of pledge on the said joint owner's own share without the consent of all the other joint owners.

(2) Where a patent right is jointly owned, unless otherwise agreed upon by contract, each of the joint owners of the patent right may work the patented invention without the consent of the other joint owners.

(3) Where a patent right is jointly owned, no joint owner may grant an exclusive license or non-exclusive license with regard to the patent right to any third party without the consent of all the other joint owners.

Articles 74 and 75 Deleted

Article 76 (Lapse of patent rights in absence of heir)

A patent right shall lapse where no person claims the right as an heir within the time limit designated in Article 958 of the Civil Code.

Article 77 (Exclusive license)

(1) A patentee may grant an exclusive license on the patent right.

(2) An exclusive licensee shall have an exclusive right to work the patented invention as a business to the extent permitted by the contract granting the license.

(3) An exclusive license may be transferred only where the business involving the working of the relevant invention is also transferred, where the consent of the patentee is obtained or where the transfer occurs as a result of general succession including inheritance.

(4) An exclusive licensee may establish a right of pledge or grant a non-exclusive license on his exclusive license to a third party only where the consent of the patentee is obtained.

(5) Article 73 shall apply mutatis mutandis to exclusive licenses.

Article 78 (Non-exclusive license)

(1) A patentee may grant a non-exclusive license on the patent right to any third party.

(2) A non-exclusive licensee shall have a right to work the patented invention as a business to the extent prescribed by this Act or permitted by the contract granting the license.

Article 79 (Non-exclusive license based on prior use)

A person who, without knowledge of the content of an invention claimed in a patent application, made an invention identical to the said invention, or a person who, without knowledge of the content of an invention claimed in a patent application, learned the invention from a person who made an invention identical to the said invention and has been working the invention or preparing for the working of the invention in Japan at the time of the filing of the patent application, shall have a non-exclusive license on the patent right, only to the extent of the invention and the purpose of such business worked or prepared.

Article 80 (Non-exclusive license due to the working of the invention prior to the registration of the request for a trial for patent invalidation)

(1) A person falling under any of the followingitems, who is doing a business working an invention in Japan or preparing such business, before the registration of a request for a trial for patent invalidation, without knowledge that the patent falls under any of the paragraphs of Article 123(1), shall have a non-exclusive license regarding the invalidated patent right or the exclusive license existing at

the time of the invalidation, only tothe extent of the invention and the purpose of such business worked or prepared:

(i) the original patentee in the case where one of two or more patents granted for the same invention has been invalidated;

(ii) the original patentee in the case where, after a patent has been invalidated, a patent is granted to the person who is entitled to obtain a patent for the same invention; and

(iii) in the case referred to in items (i) and (ii), a person that, at the time of the registration of the request for a trial for patent invalidation, has an exclusive license regarding the patent right to be invalidated, or a non-exclusive license effective under Article 99(1) regarding the patent right or an exclusive license on the patent right.

(2) The patentee or the exclusive licensee shall have a right to receive reasonable consideration from the non-exclusive licensee under the preceding paragraph.

Article 81 (Non-exclusive license after expiration of durationof design right)

Where a design right with regard to an application for a design registration filed on or before the date of filing of a patent application is in conflict with the patent right with regard to the patent application, the original holder of design right shall, upon expiration of the duration of the design right, have a non-exclusive license on the said patent right or on the exclusive license actually existing at the time of expiration of the duration of the design right, limited to the extent of the original design right.

Article 82

(1) Where a design right with regard to an application for a design registration filed on or before the date of filing of a patent application is in conflict with the patent right with regard to the patent application, a person who, at the time of expiration of the duration of the design right, actually owns the exclusive license on the design right, or a non-exclusive license having effect under Article 99(1) of the Patent Act as applied under Article 28(3) of the design Act on the design right or on the exclusive license shall, upon expiration of the duration of the design right, have a non-exclusive license on the patent right or on the exclusive license actually existing at the time of expiration of the duration of the design right, limited to the extent of the original right.

(2) The patentee or The exclusive licensee shall have a right to receive reasonable consideration from the non-exclusive licensee under The preceding paragraph.

Article 83 (Award granting non-exclusive license where invention is not worked)

(1) Where a patented invention is not sufficiently and continuously worked for 3

years or longer in Japan, a person intending to work the patented invention may request the patentee or the exclusive licensee to hold consultations to discuss granting a non-exclusive license; provided, however, that this shall not apply unless 4 years have lapsed from the filing date of the patent application in which the patented invention was filed.

(2) Where no agreement is reached by consultations or no consultations are able to be held as provided in the preceding paragraph, the person intending to work the patented invention may request the Commissioner of the Patent Office for an award.

Article 84 (Submission of a written answer)

Where a request for an award has been filed under Article 83(2), the Commissioner of the Patent Office shall serve a copy of the written request to the patentee or exclusive licensee pertaining to the request, or any other person having a registered right pertaining to the patent, and give such a person an opportunity to submit a written answer, designating an adequate time limit.

Article 85 (Hearing of opinions of councils, etc.)

(1) In rendering an award under Article 83(2), the Commissioner of the Patent Office shall hear the opinions of those provided by Cabinet Order, including councils, etc. (refer to organs provided in Article 8 of National Government Organization Act (Act No. 120 of 1948)).

(2) Where there is a reasonable ground for failing to properly work the patented invention, the Commissioner of the Patent Office shall not render an award to the effect that a non-exclusive license is to be granted.

Article 86 (Formal requirements for award)

(1) The award under Article 83(2) shall be rendered in writing and state the grounds therefor.

(2) The following matters shall be determined in an award to the effect that a non-exclusive license is to be granted:

(i) the scope of the non-exclusive license to be granted; and

(ii) the amount of consideration, and the method and time of payment thereof.

Article 87 (Service of certified copy of award)

(1) The Commissioner of the Patent Office shall, upon rendering an award under Article 83(2), serve a certified copy of the award to the parties and non-parties having registered rights relating to the patent.

(2) Where a certified copy of an award to the effect that a non-exclusive license is to be granted is served to the parties under the preceding paragraph, an agreement

as prescribed in the award is deemed to have been reached between the parties.

Article 88 (Deposit of consideration)

A person(s) required to pay consideration under Article 86(2)(ii) shall deposit the said consideration in the following cases:

(i) where the person(s) entitled to the consideration refuses or is unable to receive such consideration;

(ii) where an action with respect to the consideration is instituted under Article 183(1); or

(iii) where a right of pledge is established on the patent right or the exclusive license; provided, however, that this shall not apply where the consent of the pledgee is obtained.

Article 89 (Loss of effect of award)

Where a person(s) who desires a non-exclusive license to be granted fails to pay or deposit consideration (or, where such consideration is to be paid periodically or by installments, the first installment thereof) within the time of payment determined in the award under Article 83(2), the award to the effect that a non-exclusive license is to be granted shall lose its effect.

Article 90 (Cancellation of award)

(1) After rendering an award to the effect that a non-exclusive license is to be granted under Article 83(2), where the enforcement of the award becomes inappropriate due to specific reason(s) including the case where the grounds for the award have ceased to exist, or where the person to whom the non-exclusive license was granted fails to properly work the patented invention, the Commissioner of the Patent Office may, upon request of an interested person or ex officio, rescind the award.

(2) Articles 84, 85(1), 86(1) and 87(1) shall apply mutatis mutandis to the rescission of awards under the preceding paragraph and Article 85(2) shall apply mutatis mutandis to the rescission of awards under the preceding paragraph where the person to whom a non-exclusive license is granted fails to properly work the patented invention.

Article 91

A non-exclusive license shall lapse after the rescession of the award under Article 90(1).

Article 91-2 (Restriction on grounds for objection to award)

No objection under the Administrative Appeal Act (Act No. 160 of 1962) to the

award rendered under Article 83(2) may be raised on the ground that the consideration prescribed in the award is unsatisfactory.

Article 92 (Award granting non-exclusive license to work own patented invention)

(1) Where a patented invention falls under any of the cases as provided in Article 72, the patentee or exclusive licensee may request the other person under the said Article to hold consultations to discuss granting a non-exclusive license to work the patented invention or a non-exclusive license on the utility model right or the design right.

(2) The other person under Article 72 who is requested to hold consultations under the preceding paragraph may request the patentee or exclusive licensee requesting such consultations to hold consultations to discuss granting a non-exclusive license to the extent of the patented invention that the said patentee or exclusive licensee intend to workwith a non-exclusive license on the patent right, on the utility model right or on the design right granted through consultations.

(3) Where no agreement is reached by consultations or no consultations are able to be held as provided in paragraph (1), the patentee or the exclusive licensee may request the Commissioner of the Patent Office for an award.

(4) Where no agreement is reached by consultations or no consultations are able to be held as provided in paragraph (2) and where a request for an award is filed under the preceding paragraph, the other person under Article 72 may request the Commissioner of the Patent Office for an award only within the time limit for the submission of a written answer by the said other person designated by the Commissioner of the Patent Office under Article 84 as applied mutatis mutandis under paragraph (7).

(5) In the case of paragraph (3) or (4), the Commissioner of the Patent Office shall not render an award to the effect that a non-exclusive license is to be granted where the granting of the non-exclusive license will be unreasonably prejudicial to interst of the other person under Article 72, the patentee or the exclusive licensee.

(6) In the case of paragraph (4), in addition to the case provided for in the preceding paragraph, the Commissioner of the Patent Office shall not render an award ordering a non-exclusive license to be granted if an award ordering a non-exclusive license to be granted is not rendered with respect to the request for an award under paragraph (3).

(7) Articles 84, 85(1) and 86 through 91-2 shall apply mutatis mutandis to the award under paragraph (3) or (4).

Article 93 (Award granting non-exclusive license for public interest)

(1) Where the working of a patented invention is particularly necessary for the public interest, a person(s) intending to work the patented invention may request

the patentee or the exclusive licensee to hold consultations to discuss granting a non-exclusive license.

(2) Where no agreement is reached by consultations or no consultations are able to be held as provided in the preceding paragraph, the person intending to work the patented invention may request the Minister of Economy, Trade and Industry for an award.

(3) Articles 84, 85(1) and 86 through 91-2 shall apply mutatis mutandis to the award under the preceding paragraph.

Article 94 (Transfer, etc. of non-exclusive license)

(1) Except for a non-exclusive license granted by an award under Article 83(2), 92(3), 92(4) or 93(2) of the Patent Act, Article 22(3) of the Utility Model Act or Article 33(3) of the Design Act, a non-exclusive license may be transferred only where the business involving the working of the relevant invention is also transferred, where the consent of the patentee (or, in the case of non-exclusive license on the exclusive license, the patentee and the exclusive licensee) is obtained and where the transfer occurs as a result of general succession including inheritance .

(2) Except for a non-exclusive license granted by an award under Article 83(2), 92(3), 92(4) or 93(2) of the Patent Act, Article 22(3) of the Utility Model Act or Article 33(3) of the Design Act, a non-exclusive licensee may establish a right of pledge on the non-exclusive right only where the consent of the patentee (or, in the case of non-exclusive license on the exclusive license, the patentee and the exclusive licensee) is obtained.

(3) A non-exclusive license granted by an award under Article 83(2) or 93(2) may be transferred only where the business involving the working of the relevant invention is also transferred.

(4) Where a non-exclusive license is granted by an award under Article 92(3) of the Patent Act, Article 22(3) of the Utility Model Act or Article 33(3) of the Design Act, the said non-exclusive license shall be transferred together with the patent right, utility model right or design right of the non-exclusive licensee on which the non-exclusive license is granted and the business involving the working of the relevant invention in the case where each right is transferred together with the said business, and shall be extinguished in the case where each right of the said non-exclusive licensee is extinguished or transferred independently of the said business.

(5) A non-exclusive license granted by an award under Article 92(4) shall be transferred together with the patent right, utility model right or design right of the non-exclusive licensee on which the non-exclusive license is granted, and shall be extinguished in the case where the said patent right, utility model right or design

right is extinguished.

(6) Article 73(1) shall apply mutatis mutandis to non-exclusive licenses.

Article 95 (Right of pledge)

Unless otherwise agreed upon by contract, where a right of pledge is established on a patent right, exclusive license or non-exclusive license, the pledgee may not work the patented invention.

Article 96

A right of pledge on a patent right, exclusive license or non-exclusive license may be exercised against any consideration to be paid for the patent right, exclusive license or non-exclusive license or any money or goods to be received by the patentee or the exclusive licensee for the working of the patented invention; provided, however, that the pledgee have to attach the consideration, money or goods prior to the payment of money or delivery of goods.

Article 97 (Waiver of patent right, etc.)

(1) Where there is an exclusive licensee, pledgee or non-exclusive licensee as provided in Article 35(1), 77(4) or 78(1), a patentee may waive the patent right, only where the consent of the said exclusive licensee, pledgee or non-exclusive licensee is obtained.

(2) Where there is a pledgee or non-exclusive licensee as provided in Article 77(4), an exclusive licensee may waive the exclusive license, only where the consent of the said pledgee or non-exclusive licensee is obtained.

(3) Where there is a pledgee, a non-exclusive licensee may waive the non-exclusive license, only where the consent of the said pledgee is obtained.

Article 98 (Effect of registration)

(1) The following matters must be registered to take effect.

(i) the transfer (except for a transfer arising from general succession including inheritance), lapse due to waiver and restriction on disposition of a patent right;

(ii) the grant, transfer (except for a transfer arising from general succession including inheritance), amendment, lapse (except for a lapse arising from a merger or a lapse of the patent right) or restriction on disposition of an exclusive license;

(iii) the establishment, transfer (except for a transfer arising from general succession including inheritance), amendment, lapse (except for a lapse arising from a merger or extinguishment of credit secured thereby) or restriction on disposition of a right of pledge of a patent right or exclusive license.

(2) Matters of general succession including inheritance under the preceding

paragraph shall be notified to the Commissioner of the Patent Office without delay.

Article 99

(1) When a non-exclusive license is registered, the non-exclusive license shall have effect on any person who subsequently acquires the patentee or the exclusive licensee, or the exclusive license on the patent right .

(2) A non-exclusive license under Article 35(1), 79, 80(1), 81, 82(1) or 176 shall have effect as provided in the preceding paragraph without being registered.

(3) The transfer, modification, lapse or restriction on disposition of a non-exclusive license, or the establishment, transfer, amendment, lapse or restriction on disposition of a right of pledge on a non-exclusive license shall have no effect on any third party unless registered.

Section 2 Infringement of rights

Article 100 (Right to seek injunction)

(1) A patentee or exclusive licensee may demand a person who infringes or is likely to infringe the patent right or exclusive license to stop or prevent such infringement.

(2) In making a demand under the preceding paragraph, the patentee or exclusive licensee may demand measures necessary for the prevention of such infringement including the disposal of products constituting such act of infringement (including, in the case of a patented invention of a process of producing products, products produced by the act of infringement; the same shall apply in Article 102(1)) and the removal of facilities used for the act of infringement.

Article 101 (Acts Deemed to constitute infringement)

The following acts shall be deemed to constitute infringement of a patent right or an exclusive license:

(i) where a patent has been granted for an invention of a product, acts of producing, assigning, etc., importing or offering for assignment, etc. any product to be used exclusively for the producing of the said product as a business;

(ii) where a patent has been granted for an invention of a product, acts of producing, assigning, etc., importing or offering for assignment, etc. any product (excluding those widely distributed within Japan) to be used for the producing of the said product and indispensable for the resolution of the problem by the said invention as a business, knowing that the said invention is a patented invention and the said product is used for the working of the invention;

(iii) where a patent has been granted for an invention of a process, acts of producing, assigning, etc., importing or offering for assignment, etc. any product

to be used exclusively for the use of the said process as a business; and

(iv) where a patent has been granted for an invention of a process, acts of producing, assigning, etc., importing or offering for assignment, etc. any product (excluding those widely distributed within Japan) to be used for the use of the said process and indispensable for the resolution of the problem by the said invention, knowing that the said invention is a patented invention and the said product is used for the working of the invention as a business.

Article 102 (Presumption of Amount of Damage, etc.)

(1) Where a patentee or an exclusive licensee claims against an infringer compensation for damage sustained as a result of the intentional or negligent infringement of the patent right or exclusive license, and the infringer assigned articles that composed the act of infringement, the amount of damage sustained by the patentee or the exclusive licensee may be presumed to be the amount of profit per unit of articles which would have been sold by the patentee or the exclusive licensee if there had been no such act of infringement, multiplied by the quantity (hereinafter referred to in this paragraph as the "assigned quantity") of articles assigned by the infringer, the maximum of which shall be the amount attainable by the patentee or the exclusive licensee in light of the capability of the patentee or the exclusive licensee to work such articles; provided, however, that if any circumstances exist under which the patentee or the exclusive licensee would have been unable to sell the assigned quantity in whole or in part, the amount calculated as the number of articles not able to be sold due to such circumstances shall be deducted.

(2) Where a patentee or an exclusive licensee claims against an infringer compensation for damage sustained as a result of the intentional or negligent infringement of the patent right or exclusive license, and the infringer earned profits from the act of infringement, the amount of profits earned by the infringer shall be presumed to be the amount of damage sustained by the patentee or exclusive licensee.

(3) A patentee or an exclusive licensee may claim against an infringer compensation for damage sustained as a result of the intentional or negligent infringement of the patent right or exclusive license, by regarding the amount the patentee or exclusive licensee would have been entitled to receive for the working of the patented invention as the amount of damage sustained.

(4) The preceding paragraphs shall not prevent any relevant party from claiming compensation for damage in an amount exceeding the amount provided for therein. In such a case, where the infringer committed the infringement of the patent right or exclusive license without intent or gross negligence, the court may take these circumstances into consideration in determining the amount of damages.

Article 103 (Presumption of negligence)

An infringer of a patent right or exclusive license of another person is presumed negligent in the commission of said act of infringement.

Article 104 (Presumption of (patented) producing process)

Where the invention of a process of producing a product has been patented and the product was not publicly known in Japan prior to the filing of the patent application, a product identical with such product shall be presumed to have been produced by the patented process.

Article 104-2 (Obligation to clarify the specific conditions (of infringement))

In litigation concerning the infringement of a patent right or an exclusive license, in order to deny the specific conditions of an article or process that a patentee or an exclusive licensee claims as one that composed an act of infringement, the adverse party shall clarify the specific conditions of his/her act; provided, however, that this shall not apply where there exist reasonable grounds preventing the adverse party from so doing.

Article 104-3 (Restriction on exercise of rights of patentee, etc.)

(1) Where, in litigation concerning the infringement of a patent right or an exclusive license, the said patent is recognized as one that should be invalidated by a trial for patent invalidation, the rights of the patentee or exclusive licensee may not be exercised against the adverse party.

(2) Where the court considers that the materials used for an allegation or defense under the preceding paragraph are submitted for the purpose of unreasonably delaying the proceedings, the court may, upon a motion or ex officio, render a ruling to the effect that the allegation or the defense is to be dismissed.

Article 105 (Production of documents, etc.)

(1) In litigation concerning the infringement of a patent right or exclusive license, the court may, upon a motion of a party, order the other party to produce documents that are required to prove the said act of infringement or to calculate the damage arising from the said act of infringement; provided, however, that this shall not apply where there are reasonable grounds for the person possessing the documents to refuse production of the said documents.

(2) When the court finds it necessary for determining whether or not there are reasonable grounds as provided in the proviso to the preceding paragraph, the court may cause the person possessing the documents to present such documents. In such a case, no person may request the disclosure of the documents presented.

(3) In the case of the preceding paragraph, where the court finds it necessary to hear opinions by disclosing the documents as provided in the latter sentence of the preceding paragraph to make a decision concerning the existence of reasonable grounds as provided in the proviso to paragraph (1), the court may disclose the documents to the parties, etc. (the parties (or, in the case of juridical persons, their representatives), their representatives (excluding attorneys and assistant), employees and other workers, the same shall apply hereinafter), attorneys or assistant.

(4) The preceding three paragraphs shall apply mutatis mutandis to the presentation of the subject-matter of the inspection that is required to prove the act of infringement in litigation concerning the infringement of a patent right or exclusive license.

Article 105-2 (Expert opinion for calculation of damages)

In litigation concerning the infringement of a patent right or exclusive license, where, upon the motion of a party, the court orders that an expert opinion be obtained for the calculation of damage arising from the act of infringement, the other party shall explain to the expert witness the matters necessary for the expert witness's expert opinion.

Article 105-3 (Determination of reasonable damages)

In litigation concerning the infringement of a patent right or exclusive license, where the court has determined that damage actually arose and where it is extremely difficult for the court, due to the nature of the facts, to prove the facts necessary to determine the amount of damage, the court may determine a reasonable amount of damage based on the gist of the entire oral proceedings and the result of the examination of evidence.

Article 105-4 (Protective order)

(1) In litigation concerning the infringement of a patent right or exclusive license, where there is prima-facie evidence of the fact that trade secrets (refers to trade secrets as provided in Article 2(6) of the Unfair Competition Prevention Act (Act No. 47 of 1993), the same shall apply hereinafter) possessed by a party satisfy all of the following paragraphs, the court may, upon a motion of the party, order by a ruling that the parties, etc., attorneys or assistants shall neither use the trade secrets for any purpose other than those for the proceedings of the litigation nor disclose the trade secrets to any person other than those who receive the order regarding the trade secrets under this provision; provided, however, that this shall not apply where the parties, etc., attorneys or assistants have, prior to the filing of the motion, already obtained or been in the possession of the trade secrets by a

method other than by reading of the briefs under item (i) or through the examination or disclosure of evidence under the said item.

(i) where the trade secrets possessed by the party were or are contained in the briefs already submitted or to be submitted or such trade secrets were or are contained in the evidence already examined or to be examined (including documents disclosed under Article 105(3) and under Article 105-7(4)); and

(ii) where it is necessary to restrict the use or the disclosure of the trade secrets under the preceding paragraph to prevent any possible interference with the party's business activities based on the trade secrets, that might arise if the trade secrets are used for any purpose other than those for the proceedings of the litigation or if the said trade secrets are disclosed.

(2) A motion requesting the order under the preceding paragraph (hereinafter referred to as a "protective order") shall be made in writing specifying the following matters:

(i) the person(s) to whom the protective order is to be issued;

(ii) the facts that clearly identify the trade secrets to be protected by the protective order; and

(iii) the facts corresponding to the reasons each of the items in the preceding paragraph is applicable.

(3) Where the protective order is issued, a written ruling thereof shall be served to the person(s) to whom the protective order is issued.

(4) The protective order shall take effect as of the date the written ruling is served to the person(s) to whom the protective order is issued.

(5) The decision dismissing a motion requesting the protective order shall be subject to immediate appeal.

Article 105-5 (Rescission of protective order)

(1) A person(s) who has filed a motion requesting a protective order or to whom a protective order is issued may file a motion with the court where the record of a case(s) is maintained (or, in the case of no such court maintaining the record of a case(s), the court issuing the protective order), requesting the rescission of the protective order on the ground that the requirements as provided in Article 105-4 (1) are not met or are no longer met.

(2) Where a decision on a motion requesting the rescission of a protective order is rendered, a written ruling thereof shall be served to the person who filed the motion and the adverse party in the case.

(3) The decision on a motion requesting the rescission of a protective order shall be subject to immediate appeal.

(4) A decision to the effect that a protective order is to be rescinded shall have no effect unless the decision becomes final and binding.

(5) Where a decision to the effect that a protective order is to be rescinded is rendered, the court shall immediately notify the person(s) who, in the litigation in which the said protective order was issued, received the protective order pertaining to the trade secrets who are neither the person filing the motion requesting the rescission of the protective order nor the adverse party, if any, of the fact that the decision to the effect that the protective order is to be rescinded was rendered.

Article 105-6 (Notice, etc. of a request inspection of record, etc)

(1) Where a ruling under Article 92(1) of the Code of Civil Procedure was rendered concerning the record of litigation in which a protective order was issued (excluding litigation in which all protective orders have been rescinded), where a party to whom the protective order was not issued in the litigation requests inspection etc. of a part of the record in which the confidential information is contained, etc under the said Article., immediately after the filing of therequest, the court clerk shall notify the party who filed the motion (restricting access to the record) under the said Article (excluding the person who filed therequest, the same in paragraph (3)) of the fact that the said request has been filed.

(2) In the case of the preceding paragraph, the court clerk shall not allow the person who filed the request to inspect etc. the part in which confidential information is contained under Article 92(1) of the Code of Civil Procedure before a lapse of two weeks from the date of filing of the said request (or, where a motion requesting a protective order is filed prior to the day in which two weeks have lapsed,against the person who filed therequest, before the decision on the motion becomes final and binding).

(3) The preceding two paragraphs shall not apply where the consent of all the parties who filed a motion under Article 92(1) of the Code of Civil Procedure is obtained, allowing the person who filed a request under paragraph (1) to inspect etc. the part in which confidential information is contained.

Article 105-7 (Ban on open examination of parties, etc.)

(1) When a party, etc., to litigation concerning the infringement of a patent right or exclusive license is to be examined as a party to the litigation, as its statutory representative or as a witness, with regard to matters that will be a basis for the determination of the existence or non-existence of the said infringement, and such matters are trade secrets possessed by a party, the court may, by a ruling, elect to hold closed examinations of such matters where the court, upon the unanimous consent of all judges, finds that the parties, etc. will be unable to make sufficient statements regarding the matters due to the obvious fact that making statements regarding the matters at an open examination will significantly interfere with the business activities of the party based on such trade secrets and that, without such

statements, a proper decision on the fact of the existance or non-existence of the infringement of a patent right or exclusive license that ought to be made based on the said matters may not be made based solely on other evidence.

(2) The court shall, in rendering the ruling as provided in the preceding paragraph, hear the opinions of the parties, etc. in advance.

(3) In the case of the preceding paragraph, where necessary, the court may cause the parties, etc., to present a document stating the gist of the matters to be stated. In such a case, no person may request the disclosure of the document presented.

(4) When the court finds it necessary to hear opinions by disclosing the document as provided in the latter sentence of the preceding paragraph, the court may disclose the document to the parties, etc., their attorneys or assistants.

(5) Where the examination on certain matters is to be closed under paragraph (1), the court shall declare such fact and reasons therefor prior to requiring the public to leave the court. Upon completion of the examination on said matters, the court shall allow the public to re-enter the court.

Article 106 (Measures to restore credibility)

The court may, upon the request of a patentee or exclusive licensee, order the person(s) who harmed the business credibility of the patentee or exclusive licensee by intentionally or negligently infringing upon the patent right or exclusive license to take measures necessary to restore the business credibility of the patentee or exclusive licensee in lieu of or in addition to compensation for damages.

Section 3 Patent Fees

Article 107 (Patent fees)

(1) A person obtaining the registration establishing a patent right, or a patentee, shall pay as patent fees the amount specified in the right-hand column of the following table, corresponding to the relevant period in the left-hand column, for each patent registration and for each year from the date of the registration establishing the patent right to the expiration of the duration as provided in Article 67(1), (and, where the said duration is extended by Article 67(2), for such additional period):

Period within term	Amount
First to third year Annually	2,600 yen plus 200 yen per claim
Fourth to sixth year Annually	8,100 yen plus 600 yen per claim
Seventh to ninth year Annually	24,300 yen plus 1,900 yen per claim

Tenth to twenty-fifth year Annually	81,200 yen plus 6,400 yen per claim

(2) The preceding paragraph shall not apply to patent rights belonging to the State.

(3) Notwithstanding the provisions of paragraph (1), where a patent right is jointly owned by persons including the State and/or a person entitled to receive a reduction of the patent fees or exemption therefrom under Article 109 or the provisions of any other laws or ordinances (hereinafter referred to as a "reduction/exemption" in this paragraph), and the portion of their respective shares of said patent right has been agreed, the patent fees payable under paragraph (1) shall be determined as the sum of the amounts calculated for each person other than the State jointly owning the patent right by multiplying the applicable patent fees as provided in paragraph (1) (in the case of a person receiving a reduction/exemption, the amount after said reduction/exemption) by the ratio of the share of each person other than the State jointly owning the patent right, and, the persons other than the State shall pay such sum.

(4) For the amount of patent fees calculated under the preceding paragraph, fractional figures of less than ten yen shall be discarded.

(5) The payment of patent fees under paragraph (1) shall be made by patent revenue stamps as provided by an Ordinance of the Ministry of Economy, Trade and Industry; provided, however, that where so provided by an Ordinance of the Ministry of Economy, Trade and Industry, a cash payment thereof shall be accepted.

Article 108 (Time limit for payment of patent fees)

(1) The patent fees for each year from the first to the third year under Article 107 (1) shall be paid in a lump sum within 30 days from the date on which a certified copy of the examiner's decision or the trial decision to the effect that the patent is to be granted has been served.

(2) The patent fees for each year from the fourth and subsequent years under Article 107(1) shall be paid by the end of the previous year; provided, however, that where the date on which a certified copy of the examiner's decision or the trial decision to the effect that the extension of the duration of the patent right is to be registered is served (hereinafter referred to in this paragraph as the "certified copy service date") is on or after the thirtieth day before the end of the year in which the duration of the patent right would have expired if the said extension of duration had not been registered, the patent fees for each year from the year following that year to the year in which the certified copy service date falls (or, in the case where a period from the certified copy service date to the last day of the year in which the certified copy service date falls is shorter than 30 days, the year

following the year in which the certified copy service date falls) shall be paid in a lump sum within 30 days from the certified copy service date.

(3) The Commissioner of the Patent Office may, upon a request by a person by whom the patent fees are to be paid, extend the time limit under paragraph (1) by a period not exceeding 30 days.

Article 109 (Reduction, exemption or deferment of patent fees)

Where the Commissioner of the Patent Office recignizes a person who falls under any of the following paragraphs and meets the requirements of the Cabinet Order to be recognized as a person with insufficient funds has difficulties paying the patent fees, the Commissioner of the Patent Office may, pursuant to the provisions of the Cabinet Order, grant the person a reduction of, exemption from or deferment of the payment of the patent fees for each year from the first to the third year under Article 107(1).

(i) the inventor of the patented invention or the inventor's heir;

(ii) the employer, etc., who has succeeded the right to obtain a patent from the employee, etc., where the patented invention is an invention by the employee, etc., under Article 35(1) and there exists any provision of any contract, employment rules or any other stipulations providing in advance that the employer, etc. shall succeed the right to obtain a patent.

Article 110 (Payment of patent fees by interested persons)

(1) An interested person may pay the patent fees even against the will of the person by whom the patent fees are to be paid.

(2) The interested person who has paid the patent fees under the preceding paragraph may request the reimbursement of the expenses arising therefrom to the extent of the actual benefit obtained by the person by whom the patent fees were to be paid.

Article 111 (Refund of patent fees)

(1) The following patent fees shall be refunded upon the request of the person that paid them,

(i) patent fees paid in error or in excess;

(ii) patent fees for each year following the year in which a trial decision to the effect that the patent is to be invalidated has become final and binding; and

(iii) patent fees for the year following the year in which a trial decision to the effect that the registration of extension of the duration of a patent right is to be invalidated became final and binding, and subsequent years (limited to those for the year following the year in which the duration of a patent right would have expired if the said extension of duration had not been registered, and subsequent

years).

(2) A request for refund of patent fees under the preceding paragraph may not be filed after one year from the date of payment in the case of patent fees under item (i) above, or after six months from the date on which a trial decision became final and binding in the case of patent fees under items (ii) and (iii) above.

Article 112 (Late payment of patent fees)

(1) Where a patentee is unable to pay the patent fees within the time limit under Article 108(2) or the time limit for deferred payment under Article 109, the patentee may make a late payment of the patent fees after the expiration of the said time limit, but not later than 6 months following the expiration of the said time limit.

(2) The patentee who makes a late payment of the patent fees under the preceding paragraph shall pay, in addition to the patent fees to be paid under Article 107(1), a patent surcharge in the same amount as the patent fees.

(3) The payment of the patent surcharge under the preceding paragraph shall be made by patent revenue stamps as provided by an Ordinance of the Ministry of Economy, Trade and Industry; provided, however, that where so provided by an Ordinance of the Ministry of Economy, Trade and Industry, a cash payment thereof shall be accepted.

(4) Where a patentee fails to pay, within the time limit for late payment of the patent fees under paragraph (1), the patent fees that were due and payable within the time limit as provided in the main clause of Article 108(2) and the patent surcharge under paragraph (2), the patent right shall be deemed to have been extinguished retroactively upon expiration of the time limit as provided in the main clause of Article 108(2).

(5) Where a patentee fails to pay, within the time limit for late payment of the patent fees under paragraph (1), the patent fees as provided in the proviso to Article 108(2) and the surcharge under paragraph (2), the patent right shall be deemed to have been extinguished retroactively upon the lapse of the year in which the duration of the patent right would have expired if the said extension of the duration had not been registered.

(6) Where a patentee fails to pay, within the time limit for late payment of the patent fees under paragraph (1), the patent fees for which the deferment was granted under Article 109 and the patent surcharge under paragraph (2), the patent right shall be deemed never to have existed.

Article 112-2 (Restoration of patent right by late payment of patent fees)

(1) Where the original patentee of the patent right which was deemed to have been extinguished under Article 112(4) or 112(5), or which was deemed never to have

existed under Article 112(6), was unable to pay the patent fees and the patent surcharge under Articles 112(4) to 112(6) within the time limit for late payment of the patent fees under Article 112(1), due to reasons not attributable to the original patentee, the original patentee may make a late payment of the patent fees and the surcharge within 14 days (where overseas resident, within two months) from the date on which the reasons ceased to exist, but not later than six months following the expiration of the said time limit.

(2) Where the patent fees and the surcharge are paid under the preceding paragraph, the patent right shall be deemed to have been maintained retroactively from the time of expiration of the time limit as provided in the main clause of Article 108(2) or the lapse of the year in which the day of the expiration of the duration of the patent right falls or existed from the beginning.

Article 112-3 (Restriction on effect of restored patent right)

(1) Where a patent right has been restored under paragraph (2) of the preceding Article, where the patent has been granted for the invention of a product, such patent right shall not be effective against the product which was imported into, produced or acquired within Japan after the lapse of the time limit during which the late payment of the patent fees is allowed under Article 112(1) but before the registration of the restoration of the patent right.

(2) A restored patent right under paragraph (2) of the preceding Article shall not be effective against the following acts conducted after the lapse of the time limit during which the late payment of the patent fees is allowed under Article 112(1) but before the registration of the restoration of the patent right:

(i) the working of the said invention;

(ii) where a patent has been granted for an invention of a product, producing, assigning, etc., importing or offering for assignment, etc. of any product to be used for producing of the said product; and

(iii) where a patent has been granted for an invention of a process, producing, assigning, etc., importing or offering for assignment, etc. of any product to be used for the use of the said process.

Chapter V (Deleted)

Articles 113 through 120 Deleted

Chapter VI Trial

Article 121 (Trial against examiner's decision of refusal)

(1) A person who has received an examiner's decision to the effect that an

application is to be refused and is dissatisfied may file a request for a trial against the examiner's decision of refusal within 30 days from the date the certified copy of the examiner's decision has been served.

(2) Where, due to reasons beyond the control of the person, said person is unable to file a request for a trial against the examiner's decision of refusal within the time limit as provided in the preceding paragraph, the said person may, notwithstanding the said paragraph, file the request within 14 days (where overseas resident, within two months) from the date on which the reasons ceased to be applicable, but not later than six months following the expiration of the said time limit.

Article 122 Deleted

Article 123 (Trial for patent invalidation)

(1) Where a patent falls under any of the following, a request for a trial for patent invalidation may be filed. In the event of two or more claims, a request for a trial for patent invalidation may be filed for each claim.

(i) where the patent has been granted on a patent application (excluding awritten application in foreign language) with an amendment that does not comply with the requirements as provided in Article 17-2(3);

(ii) where the patent has been granted in violation of Articles 25, 29, 29-2, 32, 38 or 39(1) to 39(4);

(iii) where the patent has been granted in violation of a treaty;

(iv) where the patent has been granted on a patent application not complying with the requirements as provided in Article 36(4)(i) or 36(6) (excluding 36(6)(iv));

(v) where matters stated in the description, scope of claims or drawings attached to the application in a written application in foreign language are not within the scope of matters stated in the document in foreign language;

(vi) where the patent has been granted on a patent application filed by a person who is not the inventor and has not succeeded to the right to obtain a patent for the said invention;

(vii) where, after the grant of a patent, the patentee has become unable to hold a patent right under Article 25, or the patent has become in violation of a treaty; and

(viii) where the correction of the description, scope of claims or drawings attached to the application for the patent has been obtained in violation of the proviso to Article 126(1), Article 126(3) to (5) (including its application mutatis mutandis under Article 134-2(5)) or the proviso to Article 134-2(1).

(2) Any person may file a request for a trial for patent invalidation; provided,

however, that where a request for a trial for patent invalidation is filed on the ground that the patent falls under item (ii) of the preceding paragraph (limited to cases where the patent is obtained in violation of Article 38) or item (vi) of the preceding paragraph, only an interested person may file a request for a trial for patent invalidation.

(3) A request for a trial for patent invalidation may be filed even after the lapse of the patent right.

(4) Where a request for a trial for patent invalidation has been filed, the chief trial examiner shall notify the exclusive licensee of the patent right and other persons who have any registered rights relating to the patent.

Article 124 Deleted

Article 125

Where a trial decision to the effect that a patent is to be invalidated has become final and binding, the patent right shall be deemed never to have existed; provided, however, that where a patent falls under Article 123(1)(vii) and where a trial decision to the effect that the patent is to be invalidated has become final and bunding, the patent shall be deemed not to have existed from the time the said item first became applicable to the patent.

Article 125-2 (Trial for invalidation of a registration of extension of duration)

(1) A request for a trial for invalidation of the registration of extension of duration of a patent right may be filed if the registration of extension falls under any of the following:

(i) where the registration of extension has been made for an application filed where the disposition as provided in the Cabinet Order under Article 67(2) for the working of the patented invention is not deemed to have been required;

(ii) where the registration of extension has been made for an application filed where the patentee or an exclusive licensee or a registered non-exclusive licensee of the patent did not receive the disposition as provided in the Cabinet Order under Article 67(2);

(iii) where the duration extended by the registration of extension exceeds the period during which the patented invention could be worked;

(iv) where the registration of extension has been made upon an application filed by a person who is not the said patentee; and

(v) where the registration of extension has been made upon an application not complying with the requirements as provided in Article 67-2(iv).

(2) Articles 123(3) and (4) shall apply mutatis mutandis to a request for a trial for invalidation of the registration of extension of duration.

(3) Where a trial decision to the effect that the registration of extension is to be invalidated has become final and binding, the extension of the duration by the said registration of extension shall be deemed never to have been made; provided, however, that where the registration of extension falls under paragraph (1)(iii) and a trial decision to the effect that the registration of extension for the duration exceeding the period during which the patented invention could be worked is to be invalidated has become final and binding, the extension for the said excess period shall be deemed not to have been made.

Article 126 (Trial for correction)

(1) The patentee may file a request for a trial for correction with regard to the correction of the description, scope of claims or drawings attached to theapplication; provided, however, that such correction shall be limited to the following:

(i) restriction of the scope of claims;

(ii) correction of errors or incorrect translations; and

(iii) clarification of an ambiguous statement.

(2) A request for a trial for correction may not be filed from the time the relevant trial for patent invalidation has become pending before the patent Office to the time the trial decision has become final and binding; provided, however, that this shall not apply to a request for a trial for correction filed within 90 days from the day an action against the trial decision in the trial for patent invalidation is instituted (in the case of the judgment rescinding the trial decision under Article 181(1) or a ruling rescinding the trial decision under Article 181(2) concerning the case, the period after the judgment or the ruling has become final and binding shall be excluded).

(3) The correction of the description, scope of claims or drawings under paragraph (1) above shall remain within the scope of the matters disclosed in the description, scope of claims, or drawings attached to the application [in the case of correction for the purposes provided in item (ii) of the proviso to paragraph (1), the description, scope of claims and drawings originally attached to the application (in the case of a patent with regard to a written application in foreign language, the document in foreign language)].

(4) The correction of the description, scope of claims or drawings under paragraph (1) shall not substantially enlarge or alter the scope of claims.

(5) In the case of correction for any of the purposes as provided in item (i) or (ii) of the proviso to paragraph (1), an invention constituted by the matters described in the corrected scope of claims must be one which could have been patented independently at the time of filing of the patent application.

(6) A request for a trial for correction may be filed even after the lapse of the patent

right; provided, however, that this shall not apply after the patent has been invalidated in a trial for patent invalidation.

Article 127

Where there is a non-exclusive licensee under Article 35(1), 77(4) or 78(1), an exclusive licensee, or a pledgee, the patentee may file a request for a trial for correction only with the consent of the said person.

Article 128

Where a trial decision to the effect that the description, scope of claims or drawings attached to the application is to be corrected, has become final and binding, the filing of the patent application, the laying open of the patent application, the examiner's decision or the trial decision to the effect that the patent is to be granted, or the registration of the establishment of the patent right, shall be deemed to have been made based on the corrected description, scope of claims or drawings.

Articles 129 and 130 Deleted

1 Article 131 (Formal requirements of request for trial)

(1) A person filing a request for a trial shall submit a written request stating the following to the Commissioner of the Patent Office:

(i) the name, and the domicile or residence of the party and the representative thereof;

(ii) the identification of the trial case; and

(iii) the gist and grounds of the claim.

(2) When a request for a trial for patent invalidation is filed, the facts on which the invalidation of the patent is based shall be specified in concrete terms, and the relationship of each fact that is required to be proved with the relevant evidence shall be stated in the grounds for the request as provided in item (iii) of the preceding paragraph.

(3) Where a request for a trial for correction is filed, the corrected description, scope of claims or drawings shall be attached to the written request.

Article 131-2 (Amendment of request for trial)

(1) An amendment of the written request filed under paragraph (1) of the preceding Article shall not change the gist thereof; provided, however, that this shall not apply where the said amendment is made with respect to the grounds for the request as provided in paragraph (1) item (iii) of the preceding Article in the course of filing a request for a trial other than a trial for patent invalidation , or in the event that approval is granted by the chief trial examiner under the following

paragraph.

(2) In the course of filing a request for a trial for patent invalidation, where an amendment of the grounds for the request as provided in paragraph (1), item (iii) of the preceding Article changes the gist thereof, the chief trial examiner may make a ruling approving such amendment if the chief trial examiner recognizes that there is no possibility of unreasonable delay of the proceedings by such amendment and any of the following facts exists:

(i) a request for correction under Article 134-2(1) has been filed in the said trial for patent invalidation and such request for correction has given rise to a need for amendment of the grounds for the request; and

(ii) other than the case as provided in the preceding paragraph there exist reasonable grounds for not stating the grounds for the request with regard to the amendment of the request at the time the request for a trial was filed, and the demandee has agreed to such amendment.

(3) The approval of the amendment as provided in the preceding paragraph may not be granted if the written amendment of proceedings with regard to the said amendment is submitted prior to the service of a copy of the written request under Article 134(1).

(4) No appeal shall be available from a ruling under paragraph (2).

Article 132 (Joint trial)

(1) Where two or more persons file a request for a trial for patent invalidation or a trial for invalidation of the registration of extension of duration concerning the same patent right, the request may be filed jointly.

(2) Where a request for a trial is filed against patentees jointly owning a patent right, the demandees in the said request shall be all the joint owners of the said patent right .

(3) Where a request for a trial is filed by a joint owner or owners of a patent right or a right to obtain a patent, with regard to the right under joint ownership, all of the said joint owners shall jointly file the request.

(4) Where there is a ground for suspension or termination of trial procedures on any of the demandants of a request for a trial under paragraph (1) or (3) or any of the demandees of a request for a trial under paragraph (2), the said suspension or termination shall have effect on all of the demandants or demandees.

Article 133 (Dismissal by ruling in the case of non-compliance with formal requirements)

(1) Where a written request does not comply with Article 131, the chief trial examiner shall order the demandant to amend the written rewest, designating an adequate time limit.

(2) Excluding the case as provided in the preceding paragraph, the chief trial examiner may order the demandant to amend a procedure pertaining to the trial, designating an adequate time limit, in any of the following cases:

(i) where the procedure does not comply with Articles 7(1) to (3) or Article 9;

(ii) where the procedure does not comply with formal requirements as provided in this Act or an order thereunder; and

(iii) where the fees for a procedure payable under Articles 195(1) or (2) have not been paid;

(3) The chief trial examiner may dismiss the procedure by a ruling where a person ordered to make an amendment to a procedure pertaining to a trial fails to make such amendment within the time limit designated under the preceding two paragraphs or where such amendment is made in violation of Article 131-2(1).

(4) The ruling under the preceding paragraph shall be made in writing and state the grounds thereof.

Article 133-2 (Dismissal of inadequate procedures)

(1) In the procedures pertaining to a trial case (excluding a request for a trial), the chief trial examiner may, by a ruling, dismiss procedures that are inadequate and not amendable.

(2) Where the chief trial examiner intends to dismiss a procedure under the preceding paragraph, he/she shall notify the person who undertook the procedures of the reasons therefor, and give the said person an opportunity to submit a statement of explanation, designating an adequate time limit.

(3) The ruling under this paragraph (1) shall be in writing and state the grounds therefor.

Article 134 (Submission of a written answer, etc.)

(1) Where a request for a trial has been filed, the chief trial examiner shall serve a copy of the written request to the demandee and give the demandee an opportunity to submit a written answer, designating an adequate time limit.

(2) When the chief trial examiner approves the correction of the written request under Article 131-2(2), the chief trial examiner shall serve a copy of the statement of the amendment of proceedings with regard to such amendment to the demandee, and shall give the demandee an opportunity to submit a written answer, designating an adequate time limit; provided, however, that this shall not apply where special circumstances exist under which it is recognized that giving an opportunity to the demandee to submit a written answer is not required.

(3) Upon receipt thereof, the chief trial examiner shall serve to the demandant a copy of the written answer under paragraph (1) or the main clause of the preceding paragraph.

(4) The chief trial examiner may question the parties and the intervenors with regard to the trial.

Article 134-2 (Request for correction in a trial for patent invalidation)

(1) The demandee in a trial for patent invalidation may file a request for a correction of the description, scope of claims or drawing(s) attached to the application only within the time limit designated in accordance with paragraph (1) or (2) of the preceding Article, paragraph (1) or (2) of the following Article or Article 153(2); provided, however, that such correction shall be limited to the following purposes:

(i) restriction of the scope of claims;

(ii) correction of errors in the description or of incorrect translations; and

(iii) clarification of an ambiguous description.

(2) Upon receipt thereof, the chief trial examiner shall serve to the demandant a copy of the written request for correction as well as the corrected description, scope of claims or drawings attached to the request under the preceding paragraph.

(3) The trial examiner may examine grounds that have not been pleaded by a the party in the case or an intervenor in determining whether the request for correction under paragraph (1) is not for any of the purposes provided in the items of the proviso to the said paragraph, or does not conform the provisions of Articles 126(3) to (5) that shall be applied mutatis mutandis upon reading the specified terms in accordance with paragraph (5). In such a case, where the request for correction on the above grounds is not approved of, The chief trial examiner shall notify the parties in the case and the intervenors of the result of the proceedings and shall give them an opportunity to state their opinions, designating an adequate time limit.

(4) Where a request for correction under paragraph (1) is made, if another request for correction has been previously made in the said trial, such previous request shall be deemed to have been withdrawn.

(5) Articles 126(3) to (6), 127, 128, 131(1) and (3), 131-2(1) and 132(3) and (4) shall apply mutatis mutandis to the case of paragraph (1). In this case, the term "item (i) or (ii) of the proviso to paragraph (1)" in Article 126(5) shall be deemed to be replaced with "item (i) or (ii) of the proviso to paragraph (1) pertaining to a claim or claims for which a request for a trial for patent invalidation is not filed."

Article 134-3 (Request for correction where rescission judgment, etc. is rendered)

(1) Where a judgment rescinding a trial decision in a trial for patent invalidation (limited to a trial decision concluding that the request for a trial is groundless) under Article 181(1) has become final and binding, and following which

proceedingsare initiated under paragraph (5) of the said Article, the chief trial examiner may designate to the demandee an adequate time limit for filing a request for correction of the description, scope of claim(s) or drawing(s) attached to theapplication, only if such motion is made by the demandee within one week from the date such judgment became final and binding.

(2) Where a ruling rescinding a trial decision under Article 181(2) has become final and binding, and following which proceedingsare initiated under paragraph (5) of the said Article, the chief trial examiner shall designate to the demandee an adequate time limit for filing a request for correction of the description, scope of claim(s) or drawing(s) attached to theapplication; provided, however, that this shall not apply where a trial decision in a trial for correction with regard to the said case filed within the time limit as provided in the proviso to Article 126(2) has become final and binding at the time of the initiation of the proceedings.

(3) Where a request for a trial for correction is filed within the time limit as provided in the proviso to Article 126(2) and a request for correction under paragraph (1) of the preceding Article is filed within the time limit designated in accordance with the preceding two paragraphs, the demandee in a trial for patent invalidation may quote the description, scope of claims or drawings attached to the written request for the trial for correction .

(4) Where a request for a trial for correction is filed within the time limit as provided in the proviso to Article 126(2) and a request for correction under paragraph (1) of the preceding Article is filed within the time limit designated in accordance with paragraph (1) or (2), the request for a trial for correction shall be deemed to have been withdrawn; provided, however, that this shall not apply where a trial decision in such trial for correction has become final and binding at the time of the request for correction.

(5) Where a request for a trial for correction is filed within the time limit as provided in the proviso to Article 126(2) and a request for correction under paragraph (1) of the preceding Article is not filed within the time limit designated in accordance with paragraph (1) or (2) of this Article, a request for correction under paragraph (1) of the said Article quoting the corrected description, scope of claims or drawings attached to the written request for the trial for correction in accordance with paragraph (3) of the said Article shall be deemed to have been filed at the end of such time limit; provided, however, that this shall not apply where a decision in such trial for correction has become final and binding at the end of such time limit.

Article 135 (Dismissal of inadequate request for trial by trial decision)

An inadequate request for a trial, that is not amendable, may be dismissed by a trial decision without giving the demandee an opportunity to submit a written

answer.

Article 136 (Panel system for trial)

(1) A trial shall be conducted by a panel consisting of three or five trial examiners.

(2) A decision of the panel under the preceding paragraph shall be made by a majority vote.

(3) Qualifications of trial examiners shall be as provided by Cabinet Order.

Article 137 (Designation of trial examiners)

(1) The Commissioner of the Patent Office shall designate the trial examiners constituting a panel under Article 136(1) for each trial (for a trial that is to be examined by an examiner under Article 162, limited to the case where a report is submitted under Article 164(3)).

(2) Where any of the trial examiners designated under the preceding paragraph is unable to participate in the trial, the Commissioner of the Patent Office shall terminate the designation and appoint another trial examiner to fill the vacancy.

Article 138 (Chief trial examiner)

(1) The Commissioner of the Patent Office shall designate one of the trial examiners designated under Article 137(1) as the chief trial examiner.

(2) The chief trial examiner shall preside over matters relating to the trial.

Article 139 (Exclusion of trial examiners)

A trial examiner shall be excluded from performing his/her duties in any of the following cases:

(i) where the trial examiner or his/her spouse or former spouse is or was a party in the case or an intervenor in the case;

(ii) where the trial examiner is or was a relative by blood within the fourth degree of kinship, a relative by affinity within the third degree of kinship or a relative living together (as defined in the Civil Code of Japan) of a party in the case or an intervenor in the case;

(iii) where the trial examiner is a guardian, a supervisor of a guardian, a curator, a supervisor of the curator, an assistant or a supervisor of the assistant of a party in the case or an intervenor in the case;

(iv) where the trial examiner has become a witness or an expert witness in the case;

(v) where the trial examiner is or was a representative of a party in the case or an intervenor in the case;

(vi) where the trial examiner was involved in the procedures relating to the examiner's decision who is being appealed in the case as the examiner; and

(vii) where the trial examiner has a direct interest in the case.

Article 140

Where there exists any ground for exclusion under Article 139, a party or an intervenor may file a motion requesting the exclusion.

Article 141 (Rcusation to trial examiner)

(1) Where there exists any circumstances of a trial examiner that might hinder fair proceedings of the trial, a party or an intervenor may recuse the trial examiner.

(2) A party or an intervenor may not recuse a trial examiner after making a written or oral statement to the trial examiner with regard to the case; provided, however, that this shall not apply where the party or the intervenor was not aware of the ground of the recusation or the ground of the recusation occurred after making such statement.

Article 142 (Formal requirements for a motion requesting exclusion or recusation)

(1) A person filing a motion requesting an exclusion or recusation shall submit a document to the Commissioner of the Patent Office stating the grounds therefor; provided, however, that in the case of oral proceedings such request may be made orally.

(2) The grounds for the exclusion or recusation shall be showed of a prima facie within 3 days from the date the motion under the preceding paragraph has been filed. The same shall apply to the facts prescribed in the proviso to Article 141(2).

Article 143 (Ruling on motion requesting exclusion or recusation)

(1) Where a motion requesting an exclusion or recusation has been filed, trial examiners who are not the trial examiner named in the motion shall render a ruling thereon through a trial; provided, however, that the trial examiner named in the motion may present his opinion.

(2) The ruling under the preceding paragraph shall be made in writing and state the grounds therefor.

(3) The ruling under paragraph (1) shall not be subject to appeal.

Article 144

Where a motion requesting an exclusion or recusation has been filed, the trial procedures shall be suspended until a ruling on the motion is rendered; provided, however, that this shall not apply to the case requiring urgent action.

Article 144-2 (Trial Clerk)

(1) The Commissioner of the Patent Office shall designate the trial clerk for each

trial case (in the case of a trial case for which a request is to be examined by the examiner in accordance with Article 162, limited to a trial case in which a report has been submitted under Article 164(3)).

(2) Qualifications of trial clerks shall be as provided by Cabinet Order

(3) Where the trial clerk designated under paragraph (1) is unable to participate in the trial, the Commissioner of the Patent Office shall relieve the designated trial clerk and appoint another trial clerk.

(4) The trial clerk shall undertake affairs relating to the preparation of the trial record and service for each trial case and, upon the order of the chief trial examiner, undertake any other affairs relating thereto.

(5) Article 139 (excluding item (vi)) and 140 to 144 shall apply mutatis mutandis to the trial clerk. In such a case, the trial clerk named in the motion requesting the exclusion or recusation may not participate in the trial with regard to the said exclusion or recusation.

Article 145 (Procedure of Proceedings)

(1) A trial for patent invalidation or a trial for invalidation of the registration of extension of the duration of a patent shall be conducted by oral proceedings; provided, however, that the chief trial examiner may, upon a motion by a party or intervenor in the case, or ex officio decide to conduct the trial by documentary proceedings.

(2) Trials, excluding those as provided in the preceding paragraph, shall be conducted by documentary proceedings; provided, however, that the chief trial examiner may, upon a motion by the party or ex officio, decide to conduct the trial by oral proceedings.

(3) Where a trial is conducted by oral proceedings under paragraph (1) or the proviso to the preceding paragraph, the chief trial examiner shall designate the date and place thereof and summon the parties and the intervenor on the designated date.

(4) Article 94 (Summon on the designated date) of the Code of Civil Procedure shall apply mutatis mutandis to a summon on the designated date as provided in the preceding paragraph.

(5) The oral proceedings under paragraph (1) or the proviso to paragraph (2) shall be conducted in public; provided, however, that this shall not apply where public order or morality is liable to be injured thereby.

Article 146

Article 154 (attendance of interpreter, etc.) of the Code of Civil Procedure shall apply mutatis mutandis to a trial.

Article 147 (Trial Records)

(1) In oral proceedings under paragraph (1) or the proviso to paragraph (2) of Article 145, the trial clerk shall prepare a trial record stating the gist of the proceedings and all other necessary matters on each trial date.

(2) When the trial clerk finds that an order received from the chief trial examiner with regard to the preparation or amendment of the trial record under the preceding paragraph is inappropriate, the trial clerk may add his/her opinion.

(3) Articles 160(2) and 160(3) (record of oral proceedings) shall apply mutatis mutandis to the trial record under paragraph (1).

Article 148 (Intervention)

(1) A person who may file a request for a trial under Article 132(1) may intervene in the trial as a demandant until the conclusion of the proceedings.

(2) An intervenor under the preceding paragraph may continue the trial procedures even after the withdrawal of the request for a trial by the original party.

(3) A person with an interest in the result of the trial may intervene in the trial to assist one of the original parties until the conclusion of the proceedings.

(4) The intervenor under the preceding paragraph may undertake all trial procedures.

(5) Where there is a ground for interruption or suspension of trial procedures on behalf of the intervenor under paragraph (1) or (3), the said interruption or suspension shall have effect on the original parties.

Article 149

(1) A person applying to intervene shall submit an application for intervention to the chief trial examiner.

(2) Where an application for intervention is submitted, the chief trial examiner shall serve a copy of the application for intervention to the original parties and intervenor(s) and give such persons an opportunity to present opinions, designating an adequate time limit.

(3) Where an application for intervention is filed, the trial examiner of the trial in which the applicant intends to intervene shall render a ruling through a trial.

(4) The ruling under the preceding paragraph shall be made in writing and state the grounds therefor.

(5) The ruling under paragraph (3) shall not be subject to appeal

Article 150 (Examination and preservation of evidence)

(1) Evidence may be examined in a trial, upon a motion by a party or an intervenor, or ex officio.

(2) Evidence may be preserved in an trial, upon a motion by an interested person

prior to the filing of a request for a trial, or by a party to or an intervenor in the trial, or ex officio when the trial is pending.

(3) A motion prior to the filing of a request for a trial under the preceding paragraph shall be filed to the Commissioner of the Patent Office.

(4) Where a motion has been filed prior to the filing of a petition for a trial under paragraph (2), the Commissioner of the Patent Office shall designate the trial examiner and the trial clerk who shall be in charge of preservation of evidence.

(5) Where evidence has been, ex officio, examined or preserved under paragraph (1) or (2), the chief trial examiner shall notify the parties and intervenor(s) of the result thereof and give such persons an opportunity to present opinions, designating an adequate time limit.

(6) The examination or preservation of evidence under paragraph (1) or (2) may be entrusted to a district court or summary court having jurisdiction over the matter.

Article 151

Article 147 of this Act and Articles 93(1) (designation of date), 94 (summons on designated date), 179 to 181, 183 to 186, 188, 190, 191, 195 to 198, 199(1), 201 to 204, 206, 207, 210 to 213, 214(1) to 214(3), 215 to 222, 223(1) to 223(6), 226 to 228, 229(1) to 229(3), 231, 232(1), 233, 234, 236 to 238, 240 to 242 (evidence) and 278 (submission of document in lieu of examination) of the Code of Civil Procedure shall apply mutatis mutandis to the examination and preservation of evidence under the preceding Article. In this case, the term "facts that are admitted by the party in court or that are obvious" in Article 179 of the said Code shall be deemed to be replaced with "obvious facts", and the term "Supreme Court Rules" in Article 204 and 215-3 of the said Code shall be deemed to be replaced with "an Ordinance of the Ministry of Economy, Trade and Industry."

Article 152 (Ex officio proceedings)

The chief trial examiner may proceed with the trial procedures, even if a party or intervenor fails to undertake required procedures within the legal or designated time limit or the said person fails to appear pursuant to the provision of Article 145(3).

Article 153

(1) Any grounds not pleaded by a party or intervenor may be examined in a trial.

(2) Where any grounds not pleaded by a party or intervenor has been examined under the preceding paragraph, the chief trial examiner shall notify the parties and the intervenor(s) of the result thereof and give such persons an opportunity to present opinions, designating an adequate time limit.

(3) Gist not claimed by the demandant may not be examined in a trial.

Article 154 (Joint or separate conduct of proceedings)

(1) Where one or both parties to two or more trials are identical, the proceedings may be jointly conducted.

(2) Proceedings that have been jointly conducted under the preceding paragraph may later be separately conducted.

Article 155 (Withdrawal of request for trial)

(1) A request for a trial may be withdrawn before a trial decision becomes final and binding.

(2) A request for a trial may not be withdrawn without the consent of the adverse party, after the written answer under Article 134(1) has been submitted.

(3) When a request for a trial for patent invalidation has been filed with regard to two or more claims covered by a patent that has two or more claims, the request may be withdrawn for any of the claims.

Article 156 (Notice of conclusion of proceedings)

(1) When the case has reached the point at which a trial decision may be rendered, the chief trial examiner shall notify the parties and intervenor(s) of the conclusion of the proceedings.

(2) The chief trial examiner may, upon a motion by a party or intervenor, or ex officio, resume proceedings, where necessary, even after the notice has been given under the preceding paragraph.

(3) The trial decision shall be rendered within 20 days from the date on which the notice under paragraph (1) has been issued; provided, however, that this shall not apply where the case is complex or there are unavoidable reasons therefor.

Article 157 (Trial decision)

(1) When a trial decision has been rendered, the trial shall be concluded.

(2) A trial decision shall be rendered in writing stating the following matters:

(i) the trial number;

(ii) the name, and domicile or residence of each of the parties, intervenor(s) and their representatives;

(iii) the identification of the trial case;

(iv) the conclusion of and reasons for the trial decision; and

(v) the date of the trial decision.

(3) Where a trial decision has been rendered, the Commissioner of the Patent Office shall serve a certified copy of the trial decision to the parties, intervenor(s) and person whose application for intervention has been refused.

Article 158 (Special provisions regarding trials against examiner's decision of refusal)

Any procedure taken during the examination procedure shall also be effective in a trial against an examiner's decision of refusal.

Article 159

(1) Article 53 shall apply mutatis mutandis to a trial against an examiner's decision of refusal. In this case, the term "Article 17-2(1)(iii)" in Article 53(1) shall be deemed to be replaced with "Article 17-2(1)(iii) or (iv)", and the term "an amendment" in Article 53(1) shall be deemed to be replaced with "an amendment (in the case of Article 17-2(1)(iii), excluding the amendment made prior to the request for a trial against the examiner's decision of refusal)".

(2) Article 50 shall apply mutatis mutandis where a reason for refusal found in a trial against an examiner's decision of refusal is different from the reason(s) of the examiner's decision. In this case, the term "in the case of Article 17-2(1)(iii)" in the proviso to Article 50 shall be deemed to be replaced with "in the case of Article 17-2(1)(iii) or (iv) (in the case of Article 17-2(1)(iii), excluding the amendment made prior to the request for a trial against an examiner's decision of refusal)."

(3) Articles 51 and 67-3(2) shall apply mutatis mutandis where a request for a trial against an examiner's decision of refusal is found to have reasonable grounds.

Article 160

(1) Where an examiner's decision has been rescinded in a trial against the examiner's decision of refusal, a trial decision may be made to order a further examination to be carried out.

(2) The decision made in the trial decision under the preceding paragraph shall be binding upon the examiner with respect to the case.

(3) Article 159(3) shall not apply where a trial decision under paragraph (1) is rendered.

Article 161

Articles 134(1) to (3), 134-2, 134-3, 148 and 149 shall not apply to a trial against the examiner's decision of refusal.

Article 162

Where, in the case of a request for a trial against an examiner's decision of refusal, where an amendment has been made to the description, scope of claims or drawings attached to the application in the patent application pertaining to the request within 30 days from the request, the Commissioner of the Patent Office shall direct the examiner to examine the request.

Article 163

(1) Articles 48, 53 and 54 shall apply mutatis mutandis to an examination under the preceding Article. In this case, the term "Article 17-2(1)(iii)" in Article 53(1) shall be deemed to be replaced with "Article 17-2(1)(iii) or (iv)" and the term "an amendment" in Article 53(1) shall be deemed to be replaced with "an amendment (in the case of Article 17-2(1)(iii), excluding the amendment made prior to the request for a trial against an examiner's decision of refusal)."

(2) Article 50 shall apply mutatis mutandis where a reason for refusal which was not contained in the examiner's decision concerned in the request for a trial is found in the examination under the preceding Article. In this case, the term "in the case of Article 17-2(1)(iii)" in the proviso to Article 50 shall be deemed to be replaced with "in the case of Article 17-2(1)(iii) or (iv) (in the case of Article 17-2(1)(iii), excluding the amendment made prior to the request for a trial against an examiner's decision of refusal)."

(3) Articles 51 and 52 shall apply mutatis mutandis where a request for a trial is found to have reasonable grounds in the examination under the preceding Article.

Article 164

(1) In an examination under Article 162, where the examiner renders a decision to the effect that a patent is to be granted, the examiner shall rescind the examiner's decision of refusal that is the basis of the trial request.

(2) Except in the case of the preceding paragraph, the examiner may not render a ruling dismissing an amendment under Article 53(1) as applied under Article 163 (1).

(3) Except in the case of paragraph (1), the examiner shall report to the Commissioner of the Patent Office the result of the examination without rendering a decision on the request for the said trial.

Article 165 (Special provisions for trials for correction)

Where a request for a trial for correction does not correspond to one of the purposes provided in the proviso to Article 126(1) or does not comply with Articles 126(3) to (5), the chief trial examiner shall notify the demandant of the reasons therefore and give the demandant an opportunity to submit an written opinion, designating an adequate time limit.

Article 166

Articles 134(1) to (3), 134-2, 134-3, 148 and 149 shall not apply to a trial for correction.

Article 167 (Effect of trial decision)

When a final and binding trial decision in a trial for patent invalidation or a trial for invalidation of the registration of extension of the duration has been registered, no one may file a request for a trial on the basis of the same facts and evidence.

Article 168 (In relation to litigation)

(1) Where deemed necessary during a trial, the trial proceedings may be suspended until the decision in another trial has become final and binding or court proceedings have been concluded.

(2) Where an action is instituted or a motion for order of provisional seizure or order of provisional disposition is filed, the court may, if it considers it necessary, suspend the court proceedings until the trial decision becomes final and binding.

(3) Where an action with respect to infringement of a patent right or an exclusive license is instituted, the court shall notify the Commissioner of the Patent Office thereof. The same shall apply when the said court proceedings have been concluded.

(4) Where the Commissioner of the Patent Office receives the notice as provided in the preceding paragraph, the Commissioner of the Patent Office shall notify the court of whether a request for a trial with regard to the said patent right has been filed. The same shall apply when, with regard to the said trial, a ruling dismissing the written request or a trial decision has been rendered or the request has been withdrawn.

(5) Where the court receives the notice to the effect that a request for a trial with regard to the said patent right has been filed under the preceding paragraph, if a document stating a method of allegation or defense as provided in Article 104-3(1) has already been submitted in the action prior to the said notice or if the said document is submitted for the first time after the said notice, the court shall notify the Commissioner of the Patent Office thereof.

(6) Where the Commissioner of the Patent Office receives the notice as provided in the preceding paragraph, the Commissioner of the Patent Office may request the court to deliver copies of any record of the said action which the trial examiner considers necessary for the trial.

Article 169 (Burden of costs of trial)

(1) The burden of costs in connection with a trial for patent invalidation or a trial for invalidation of the registration of extension of the duration shall be decided ex officio by a trial decision where the trial is terminated by a trial decision or by a ruling in the trial where the trial is terminated otherwise than by a trial decision.

(2) Articles 61 to 66, 69(1), 69(2), 70 and 71(2) (Bearing of litigation costs) of the Code of Civil Procedure shall apply mutatis mutandis to the costs in connection with the trial under the preceding paragraph. In this case, the term "Supreme

Court Rules" in Article 71(2) of the said Code shall be deemed to be replaced with "Ordinance of the Ministry of Economy, Trade and Industry."

(3) The costs in connection with a trial against an examiner's decision of refusal and a trial for correction shall be borne by thedemandant.

(4) Article 65 (Bearing of litigation costs in joint litigation) of the Code of Civil Procedure shall apply mutatis mutandis to the costs to be borne by the demandant under the preceding paragraph.

(5) The amount of costs in connection with a trial shall be determined by the Commissioner of the Patent Office upon request, after a trial decision or a ruling has become final and binding.

(6) The scope, the amount and the payment of the costs in connection with a trial, and the payment required for undertaking a procedure for a trial shall be governed by the relevant provisions of the Act on Civil procedure costs, etc. (Act No. 40 of 1971) (excluding provisions in Chapter II, Sections 1 and 3 of the said Act) unless such provisions are contrary to the nature of the said matters.

Article 170 (Enforceability of ruling on amount of costs)

A final and binding ruling on the amount of costs for a trial shall have the same effect as that of an enforceable title of obligation.

Chapter VII Retrial

Article 171 (Request for retrial)

(1) A party or an intervenor may file a request for a retrial against a final and binding trial decision.

(2) Articles 338(1), 338(2) and 339 (Grounds for retrial) of the Code of Civil Procedure shall apply mutatis mutandis to a request for a retrial under the preceding paragraph.

Article 172

(1) Where a demandant for a trial, in conspiracy with the demandee, has caused the trial decision to be rendered for the purpose of harming the right or interest of a third party, the third party may file a request for a retrial against the final and binding trial decision.

(2) A request for a retrial under the preceding paragraph shall be filed against the demandant and the demandee in the trial as joint demandees.

Article 173 (Time limit for request for retrial)

(1) A request for a retrial shall be filed within 30 days from the date on which the demandant became aware of the grounds for the retrial after the trial decision became final and binding.

(2) Where a person intending to file a request for a retrial is unable to file the said request within the time limit as provided in the preceding paragraph due to reasons beyond the control of the person, notwithstanding the said paragraph, the said person may file the request within 14 days (in the case of an overseas resident, within two months) from the date on which the said reasons ceased to exist, prior to the lapse of six months from the expiration of the said time limit.

(3) Where a request for a retrial is filed on the ground that the demandant was not represented in accordance with the applicable legal provisions, the time limit as provided in paragraph (1) shall be counted from the day following the date on which, by being served a copy of the trial decision, the demandant or his statutory representative became aware that the trial decision had been rendered.

(4) No request for a retrial may be filed after the expiration of three years from the date on which the trial decision became final and binding.

(5) Where a ground for a retrial has arisen after the trial decision became final and binding, the time limit as provided in the preceding paragraph shall be counted from the day following the date on which the ground first arose.

(6) paragraphs (1) and (4) shall not apply to a request for a retrial filed on the ground that the trial decision is in conflict with a final and binding trial decision previously rendered.

Article 174 (Application mutatis mutandis of provisions regarding trial, etc.)

(1) Articles 131(1), the main clause of 131-2(1), 132(3) and (4), 133, 133-2, 134(4), 135 to 147, 150 to 152, 155(1), 156 to 160, 168, 169(3) to (6), and 170 shall apply mutatis mutandis to a retrial against a final and binding trial decision in a trial against an examiner's decision of refusal.

(2) Articles 131(1), the main clause of 131-2(1), 132(1), (2) and (4), 133, 133-2, 134(1), (3) and (4), 135 to 152, 154 to 157, 167, 168, 169(1), (2), (5) and (6), and 170 shall apply mutatis mutandis to a retrial against a final and binding trial decision in a trial for patent invalidation or a trial for invalidation of the registration of extension of the duration.

(3) Articles 131(1) and (3), the main clause of 131-2(1), 132(3) and (4), 133, 133-2, 134(4), 135 to 147, 150 to 152, 155(1), 156, 157, 165, 168, 169(3) to (6), and 170 shall apply mutatis mutandis to a retrial against a final and binding trial decision in a trial for correction .

(4) Article 348(1) of the Code of Civil Procedure (Scope of proceedings) shall apply mutatis mutandis to a retrial.

Article 175 (Restriction on effect of patent right restored by retrial)

(1) Where a patent right pertaining to an invalidated patent or a patent right pertaining to the invalidated registration of extension of the duration thereof has

been restored by a retrial, or where the establishment of a patent right or the extension of the duration of a patent right with respect to a patent application or an application for the registration of extension of the duration of a patent right which was refused by a trial decision has been registered by a retrial, and where the patent has been granted for the invention of a product, such patent right shall not be effective against any product imported into or pruduced or acquired in Japan without knowledge, after the trial decision became final and binding but before the registration of the request for a retrial.

(2) Where a patent right pertaining to an invalidated patent or a patent right pertaining to the invalidated registration of extension of the duration thereof has been restored by a retrial or where the establishment of a patent right or the extension of the duration of a patent right with respect to a patent application or an application for the registration of extension of the duration of a patent right which was refused by a trial decision has been registered by a retrial, such patent right shall not be effective against the following acts conducted after the trial decision became final and binding but before the registration of the request for a retrial:

(i) working of the said invention without knowledge;

(ii) where a patent has been granted for the invention of a product, producing, assigning, etc., importing or offering for assignment, etc. any product to be used for producing of the said product without knowledge; and

(iii) where a patent has been granted for the invention of a process, producing, assigning, etc., importing or offering for assignment, etc. any product to be used for the use of the said process without knowledge.

Article 176

Where a patent right pertaining to an invalidated patent or a patent right pertaining to the invalidated registration of an extension of the duration thereof has been restored through a retrial or where the establishment of a patent right or the extension of the duration of a patent right with respect to a patent application or an application for registration of an extension of the duration of a patent right refused by a trial decision has been registered through a retrial, and where a person has, without knowledge, been working the invention in Japan or has, without knowledge, been making preparations therefore, after the trial decision became final and binding but before the registration of the demand for a retrial, such person shall have a non-exclusive license on the patent right, , to the extent of the invention and the purpose of such business worked or prepared.

Article 177 Deleted

Chapter VIII Litigation

Article 178 (Actions against trial decisions, etc.)

(1) The Tokyo High Court shall have exclusive jurisdiction over any action against a trial decision or a ruling to dismiss a written request for a trial or a retrial.

(2) An action under paragraph (1) may be instituted only by a party in the case, an intervenor, or a person whose application for intervention in the trial or in the retrial has been refused.

(3) An action under paragraph (1) may not be instituted after the expiration of thirty days from the date on which a certified copy of the trial decision or the ruling has been served.

(4) The time limit as provided in the preceding paragraph shall be invariable.

(5) The chief trial examiner may ex officio designate an additional period extending the invariable time limit under the preceding paragraph for a person in a remote area or an area with transportation difficulty.

(6) An action with regard to a matter for which a request for a trial may be instituted only against a trial decision.

Article 179 (Appropriate party as defendant)

In an action under Article 178(1), the Commissioner of the Patent Office shall be the defendant; provided, however, that in the case of an action against a trial decision in a trial for patent invalidation, or a trial for invalidation of the registration of extension of duration, or in a retrial under Article 171(1) against a final and binding trial decision in such trial, the demandant or the demandee in the trial or retrial shall be the defendant.

Article 180 (Notice of institution of action)

Where an action under the proviso to Article 179 has been instituted, the court shall notify the Commissioner of the Patent Office thereof without delay.

Article 180-2 (Opinion of the Commissioner of the Patent Office in litigation rescinding the trial decision)

(1) Where an action under the proviso to Article 179 is instituted, the court may seek the opinion of the Commissioner of the Patent Office regarding the application of this Act or any other necessary matters relating to such case.

(2) Where an action under the proviso to Article 179 is instituted, upon the court's consent, the Commissioner of the Patent Office may express his/her opinions to the court regarding the application of this Act or any other necessary matters relating to such case.

(3) The Commissioner of the Patent Office may designate another Patent Office

official to express the Commissioner's opinions for the purpose of the preceding two paragraphs.

Article 181 (Rescission of the trial decision or ruling)

(1) Where the court finds for the plaintiff in an action instituted under Article 178 (1), it shall rescind the trial decision or ruling.

(2) When an action ageinst a decision in a trial for patent invalidation is instituted under Article 178(1), and the court finds it appropriate to cause the trial examiners in a trial for patent invalidation to carry out further proceedings with regard to whether or not the said patent shall be invalidated, on the basis that the patentee has filed a request or will file a request for a trial for correction with regard to the patent in question in the action after such action is brought, the court may rescind the said trial decision by a ruling in order to return the case to the trial examiners.

(3) Before rendering a ruling under the preceding paragraph, the court shall hear the opinions of the parties.

(4) The ruling under paragraph (2) shall have effect on the trial examiners and any other third parties.

(5) When the court's decision rescinding a trial decision or ruling under paragraph (1) or the court's ruling rescinding a trial decision under paragraph (2) has become final and binding, the trial examiners shall carry out further proceedings and render a trial decision or ruling.

Article 182 (Delivery of original copy of judgment)

Where the court procedures with respect to an action under the proviso to Article 179 have been concluded, the court shall, without delay, deliver the original copy of the judgment rendered by the court of each instance to the Commissioner of the Patent Office.

Article 182-2 (Composition of panel)

With respect to an action under Article 178(1), the ruling that proceedings and judgment shall be rendered by a panel consisting of five judges may be made if so determined by the said panel.

Article 183 (Action against amount of compensation)

(1) A person(s) who has received an award under Article 83(2), 92(3), 92(4), or 93 (2) may, if not satisfied with the amount of the compensation determined in the award, institute an action demanding an increase or decrease of the said amount.

(2) An action under the preceding paragraph may not be instituted after the expiration of six months from the date on which a certified copy of the award has

been served.

Article 184 (Standing as defendant)

In an action under Article 183(1), the following person shall have standing as a defendant:

(i) in an action against an award under Article 83(2) , 92(4) or 93(2), the non-exclusive licensee, patentee or exclusive licensee; and

(ii) in an action against an award under Article 92(3), the non-exclusive licensee or the other person under Article 72.

Article 184-2 (Relationship between (administrative) objection and litigation)

An action demanding the rescission of dispositions imposed by this Act or an order thereunder (excluding dispositions under Article 195(4)), may be instituted only after the rendering of a ruling or an award on an objection against the dispositions or on the request for examination thereof.

Chapter IX Special Provisions Concerning International Applications under the Patent Cooperation Treaty

Article 184-3 (Patent application based on international application)

(1) An international application (a patent application only) to which the international application date is accorded under Article 11(1), 11(2)(b) or 14(2) of the Patent Cooperation Treaty signed in Washington on June 19, 1970 (hereinafter referred to as the "Treaty" in this Chapter) and which specifies Japan as a designated State under Article 4(1)(ii) of the Treaty shall be deemed to be a patent application filed on the said international application date.

(2) Article 43 (including its mutatis mutandis application under Article 43-2(3)) shall not apply to the international application deemed to be a patent application under the preceding paragraph (hereinafter referred to as "International Patent Application").

Article 184-4 (Translations of international patent application in foreign language)

(1) An applicant of an international patent application in a foreign language (hereinafter referred to as a "Patent Application in Foreign Language") shall submit to the Commissioner of the Patent Office Japanese translations of the description, scope of claims, drawings (the descriptive text in such drawings only), and the abstract, as provided in Article 3(2) of the Treaty, as of the international application date as provided in paragraph (1) of the preceding Article (hereinafter referred to as "International Application Date") within the period from the priority date under Article 2 (xi) of the Treaty (hereinafter referred to as "priority date"),

to two years and six months (hereinafter referred to as "Time Limit for the Submission of National Documents") therefrom; provided, however, that the applicant of a Patent Application in Foreign Language who has submitted the document under paragraph (1) of the following Article during the period from two months before the expiration of the Time Limit for the Submission of National Documents to the expiry date thereof (excluding the case where the said translations have been submitted prior to the submission of the said documents) may submit the said translations within two months from the date of submission of the said document (hereinafter referred to as "Special Time Limit for the Submission of Translations").

(2) In the case of the preceding paragraph, where the applicant of the Patent Application in Foreign Language has made an amendment under Article 19(1) of the Treaty, the applicant may, in lieu of the translation of scope of the claim(s) as provided in the preceding paragraph, submit a translation of the amended scope of claim(s).

(3) Where the translation of the description as provided in paragraph (1) and the translation of the scope of claim(s) as provided in the preceding two paragraphs have not been submitted within the Time Limit for the Submission of National Documents (in the case of a Patent Application in Foreign Language under the proviso to paragraph (1), the Special Time Limit for the Submission of Translations, hereinafter the same shall apply in the following paragraph), the International Patent Application shall be deemed to have been withdrawn.

(4) Where an amendment under Article 19(1) of the Treaty has been made, an applicant who has submitted the translation of the scope of claim(s) as provided in paragraph (1) may further submit a Japanese translation of the said amended scope of claim(s) no later than the date on which the Time Limit for the Submission of National Documents expires (the time of requesting where the applicant requests the examination of the application within the Time Limit for the Submission of National Documents, hereinafter referred to as "National Processing Standard Time").

(5) The main clause of Article 184-7(3) shall apply mutatis mutandis to the case where the translation under paragraph (2) or the preceding paragraph has not been submitted.

Article 184-5 Submission of documents and order to amend procedures

(1) An applicant of an International Patent Application shall submit a document to the Commissioner of the Patent Office within the Time Limit for the Submission of National Documents stating the following:

(i) the name, and the domicile or residence of the applicant;

(ii) the name, and the domicile or residence of the inventor;

(iii) matters as provided by an Ordinance of the Ministry of Economy, Trade and Industry, including the international application number.

(2) The Commissioner of the Patent Office may order the amendment of procedures for an applicant, designating an adequate time limit, in the following cases:

(i) where the document to be submitted under the preceding paragraph is not submitted within the Time Limit for the Submission of National Documents;

(ii) where the procedure as provided in the preceding paragraph does not comply with Articles 7(1) to (3) or Article 9;

(iii) where the procedure as provided in the preceding paragraph does not comply with the formal requirements as provided by an Ordinance of the Ministry of Economy, Trade and Industry;

(iv) where a translation of the abstract to be submitted under paragraph (1) of the preceding Article is not submitted within the Time Limit for the Submission of National Documents (in the case of a Patent Application in Foreign Language under the proviso to paragraph (1) of the preceding Article, the Special Time Limit for the Submission of Translations); and

(v) where the fees payable under Article 195(2) are not paid within the Time Limit for the Submission of National Documents.

(3) Where the person ordered to amend a procedure under the preceding paragraph does not make the amendment within the designated time limit under the said paragraph, the Commissioner of the Patent Office may dismiss the said International Patent Application.

Article 184-6 (Effect, etc. of application, description, etc. of international application)

(1) The application of an International Patent Application as of the international application date shall be deemed to be an application submitted under Article 36 (1).

(2) The description of an International Patent Application in the Japanese language (hereinafter referred to as a "Patent Application in Japanese Language") as of the international application date and translations of the description of a Patent Application in Foreign Language as of the international application date shall be deemed to be the description submitted with the application under Article 36(2); scope of claim(s) of a Patent Application in Japanese Language as of the international application date and a translation of the scope of claim(s) of a Patent Application in Foreign Language as of the international application date shall be deemed to be the scope of claim(s) submitted with the application under the said paragraph; drawing(s) of a Patent Application in Japanese Language as of the international application date, drawing(s) of a Patent Application in Foreign Language as of the international application date (excluding the descriptive text in the drawing(s)) and a translation of the descriptive text in the

drawing(s) shall be deemed to be the drawing(s) submitted with the application under the said paragraph; and, the abstract of a Patent Application in Japanese Language and a translation of the abstract of a Patent Application in Foreign Language shall be deemed to the abstract submitted with the application under the said paragraph.

(3) Where a translation of the amended scope of claim(s) under Article 19(1) of the Treaty is submitted as provided in Article 184-4(2) or (4), notwithstanding the preceding paragraph, a translation of the said amended scope of claim(s) shall be deemed to be the scope of claim(s) submitted with the application under Article 36 (2).

Article 184-7 (Amendment under Article 19 of the Treaty with regard to Patent Application in Japanese Language)

(1) Where an applicant of a Patent Application in Japanese Language has made an amendment under Article 19(1) of the Treaty, such applicant shall submit to the Commissioner of the Patent Office a copy of the written amendment submitted under Article 19(1) on or before the date which the National Processing Standard Time falls into.

(2) Where a copy of a written amendment has been submitted under the preceding paragraph, an amendment to the scope of claim(s) attached to the application shall be deemed to have been made under Article 17-2(1) by the said copy of the written amendment; provided, however, that where the written amendment has been served to the Patent Office under Article 20 of the Treaty within the time limit under the preceding paragraph, the amendment is deemed to have been made by the said written amendment.

(3) Where the procedure under paragraph (1) has not been taken by the applicant of a Patent Application in Japanese Language within the time limit under paragraph (1), no amendment under Article 19(1) of the Treaty shall be deemed to have been made; provided, however, that this shall not apply to the case as provided in the proviso to the preceding paragraph.

Article 184-8 (Amendment under Article 34 of the Treaty)

(1) Where an applicant of an International Patent Application has made an amendment under Article 34(2)(b) of the Treaty, such applicant shall submit to the Commissioner of the Patent Office, in the case of amendment with regard to a Patent Application in Japanese Language, a copy of the written amendment submitted under Article 34(2)(b) and, in the case of amendment with regard to a Patent Application in Foreign Language, a Japanese translation of the said written amendment, on or before the date which the National Processing Standard Time falls into.

(2) Where a copy of the written amendment or a translation of the written amendment has been submitted under the preceding paragraph, an amendment to the description, scope of claim(s) or drawing(s) attached to the application shall be deemed to have been made under Article 17-2(1) by the copy of the written amendment or the translation of the written amendment; provided, however, that where the written amendment with regard to a Patent Application in Japanese Language has been served to the Patent Office under Article 36(3)(a) of the Treaty within the time limit under the preceding paragraph, the amendment is deemed to have been made by the said written amendment.

(3) Where the procedure under paragraph (1) has not been taken by the applicant of an International Patent Application within the time limit under paragraph (1), no amendment under Article 34(2)(b) of the Treaty shall be deemed to have been made; provided, however, that this shall not apply to the case as provided in the proviso to the preceding paragraph.

(4) Where, in accordance with paragraph(2), an amendment to the description, scope of claims or drawings attached to the application with regard to a Patent Application in Foreign Language has been deemed to have been made under Article 17-2(1), such amendment shall be deemed to have been made by submitting the written correction of incorrect translation as provided in Article 17-2(2).

Article 184-9 (National publication, etc.)

(1) The national publication of a Patent Application in Foreign Language, a translation of which has been submitted under Article 184-4, excluding a Patent Application in Foreign Language, patent bulletin containing registered patent of which has been published, shall be effected, without delay, by the Commissioner of the Patent Office after the lapse of the Time Limit for the Submission of National Documents (in the case of a Patent Application in Foreign Language under the proviso to Article 184-4(1), the Special Time Limit for the Submission of Translations, hereinafter the same shall apply in this paragraph) [in the case of an International Patent Application for which the applicant has requested an examination of the patent application within the Time Limit for the Submission of National Documents and of which the international publication under Article 21 of the Treaty (hereinafter referred to as "International Publication") has been effected, after such request for the examination of the patent application].

(2) National publication shall be effected by publishing the following matters in the patent bulletin:

(i) the name, and the domicile or residence of the applicant;

(ii) the filing number of the application;

(iii) the international application date;

(iv) the name, and the domicile or residence of the inventor;

(v) the matters stated in the translations of the description and the descriptive text in the drawing(s) as provided in Article 184-4(1); the matters stated in the translation of the scope of claim(s) (in the case where a translation has been submitted under paragraph (2) of the said Article, the said translation); the matters stated in the translation under paragraph (4) of the said Article; the contents of the drawing(s) (excluding the descriptive text in the drawing(s)); and the matters stated in the translation of the abstract (excluding matters, recognized by the Commissioner of the Patent Office, to be liable to contravene public order or morality by stating those in the patent bulletin);

(vi) the number and the date of the national publication; and

(vii) other necessary matters.

(3) Article 64(3) shall apply mutatis mutandis where the matters stated in the translation of the abstract as provided in item (v) of the preceding paragraph are to be contained in the patent bulletin under the preceding paragraph.

(4) Article 64 shall not apply to an International Patent Application.

(5) For the purpose of an International Patent Application, the term "the laying open of the patent application" in Articles 48-5(1), 48-6, the proviso to 66(3), 128, 186(1)(i) and (ii) and 193(2)(i), (ii), (vi) and (ix) shall be deemed to be replaced with "the international publication under Article 184-9(1)" in the case of a Patent Application in Japanese Language and "the national publication under Article 184-9(1)" in the case of a Patent Application in Foreign Language.

(6) For the purpose of a request for a certificate, etc., with regard to a Patent Application in Foreign Language, the term "or the materials under Article 67-2(2)" in Article 186(1)(i) shall be deemed to be replaced with "or an application, a description, scope of claim(s), drawing(s), or an abstract in an international application under Article 3(2) of the Patent Cooperation Treaty signed in Washington on June 19, 1970 (excluding those with regard to an international patent application where the establishment of a patent right has been registered has been made or those contained in the International Publication)."

(7) For the purpose of the matters to be contained in the patent bulletin with regard to an International Patent Application, the term "after the laying open of a patent application" in Article 193(2)(iii) shall be deemed to be replaced with "with regard to an International Patent Application, the International Publication of which has been effected."

Article 184-10 (Effect etc., of International Publication and National Publication)

(1) After the International Publication of a patent application in the case of a Patent Application in Japanese Language, or after the National Publication of a patent application in the case of a Patent Application in Foreign Language, where the

applicant of the International Patent Application has given warning with documents stating the contents of the invention claimed in the International Patent Application, the applicant of the International Patent Application may claim compensation against a person who has worked the invention as a business after the warning, prior to the registration establishing a patent right, and the amount of compensation shall be equivalent to the amount the applicant(s) would be entitled to receive for the working of the invention if the invention were patented. Even where the said warning has not been given, the same shall apply to a person who worked the invention as a business prior to the registration establishing a patent right , in the case of a patent application in Japanese Language,with knowledge of the invention having been claimed in the International Patent Application that the International Publication has been effected, or, in the case of a patent application in Foreign Language, with knowledge of the invention having been claimed in the International Patent Application that the National Publication has been effected.

(2) Articles 65(2) to 65(5) shall apply mutatis mutandis to the exercise of the right to claim compensation under the preceding paragraph.

Article 184-11 (Special provisions concerning patent administrators for overseas residents)

(1) Notwithstanding Article 8(1), an applicant of an International Patent Application who is an overseas resident may, prior to the National Processing Standard Time, undertake procedures without being represented by a patent administrator.

(2) The person prescribed in the preceding paragraph shall appoint a patent administrator and notify the Commissioner of the Patent Office thereof on or after the National Processing Standard Time, but not later than the time limit as provided in an Ordinance of the Ministry of Economy, Trade and Industry.

(3) Where no appointment of a patent administrator has been notified within the time limit as provided in the preceding paragraph, the International Patent Application shall be deemed to have been withdrawn.

Article 184-12 (Special provisions concerning amendment)

(1) Notwithstanding the main clause of Article 17(1), no amendment of the procedures shall be allowed (excluding those under Articles 184-7(2) and 184-8 (2)) unless, in the case of a Patent Application in Japanese Language, the procedure under Article 184-5(1) has been taken and the fee payable under Article 195(2) has been paid, and, in the case of a Patent Application in Foreign Language, the procedures under Articles 184-4(1) and 184-5(1) have been taken, the fee payable under Article 195(2) has been paid, and the National Processing

Standard Time has lapsed.

(2) For the purpose of the allowable scope of amendment to the description, scope of claims or drawings with regard to a Patent Application in Foreign Language, the term "a written application in foreign language as provided in Article 36-2(2)" in Article 17-2(2) shall be deemed to be replaced with "a Patent Application in Foreign Language as provided in Article 184-4(1)"; the term "the description, scope of claims or drawings originally attached to the application [in the case of a written application in foreign language under Article 36-2(2), the translation of the documents in foreign language as provided in Article 36-2(2) that is deemed to be the description, scope of claims and drawings under Article 36-2(4) (in the case where the amendment to the description,scope of claims or drawing has been made through the submission of the statement of correction of incorrect translation, the said translations or the amended description, scope of claim or drawings]" in Article 17-2(3) shall be deemed to be replaced with "a translation as provided in Article 184-4(1) of the description or drawings (limited to the descriptive text in the drawings) of an International Patent Application as provided in Article 184-3 (2) (hereinafter referred to as an "International Patent Application" in this paragraph) as of the international application date as provided in Article 184-4(1) (hereinafter referred to as the "International Application Date" in this paragraph), a translation as provided in Article 184-4(1) of scope of the claims of an International Patent Application as of the International Aplication Date (in the case where a translation of the scope of claim(s) amended under Article 19(1) of the Patent Cooperation Treaty signed in Washington on June 19, 1970 has been submitted under Article 184-4(2) or (4), the said translation)or drawings (excluding the descriptive text in the drawings) of an International Patent Application as of the International Application Date (hereinafter referred to as the "Translations, etc." in this paragraph) (in the case where an amendment to the description, scope of claim(s) or drawing(s) has been made through the submission of the statement of correction of incorrect translation, the Translations, etc. or the said amended description, scope of claims or drawings)".

(3) Notwithstanding Article 17-3, an applicant of an International Patent Application may amend the abstract attached to the application only within one year and three months from the priority date (in the case of a Patent Application in Foreign Language, a translation of which has been submitted under Article 184-4(1), where such application falls under an International Patent Application of which the applicant has requested an examination within the Time Limit for the Submission of National Documents and the International Publication has been effected, excluding the time after the request for an examination of the application has been filed).

Article 184-13 (Special provision concerning patentability)

For the purpose of the application of Article 29-2, in the case where another patent application or a utility model registration application as provided in Article 29-2 is an International Patent Application or an International utility model registration application under Article 48-3(2) of the Utility Model Act, the term "another patent application or a utility model registration application " under Article 29-2 of this Act shall be deemed to be replaced with "another patent application or utility model registration application (excluding a patent application in Foreign Language under Article 184-4(1) or a utility model registration application in foreign language under Article 48-4(1) of the Utility Model Act which has been deemed to have been withdrawn in accordance with Article 184-4(3) of this Act or Article 48-4(3) of the Utility Model Act)," the term "the laying open of the patent application or" shall be deemed to be replaced with "laying open of the patent application," the term "published" shall be deemed to be replaced with "published or where international publication under Article 21 of the Patent Cooperation Treaty signed in Washington on June 19, 1970 has been effected," and the term "the description, scope of claims or drawings originally attached to the application" shall be deemed to be replaced with "the description, scope of claims, or drawings of an international application as of the International Application Date under Article 184-4(1)of this Act or Article 48-4(1) of the Utility Model Act."

Article 184-14 (Special provision concerning exception to lack of novelty of invention)
る期間内に特許庁長官に提出することができる。

Notwithstanding Article 30(4), an applicant of an International Patent Application who requests the application of Article 30(1) or 30(3) may submit to the Commissioner of the Patent Office, after the National Processing Standard Time, but not later than the time limit as provided in an Ordinance of the Ministry of Economy, Trade and Industry, a document stating thereof and a document proving the fact that the invention which has fallen under any of the paragraphs of Article 29(1) has become applicable is an invention to which Article 30(1) or 30(3) may be applicable.

Article 184-15 (Special provisions concerning priority claim based on a patent application, etc.)

(1) Articles 41(4) and 42(2) shall not apply to an International Patent Application.

(2) For the purpose of application of Article 41(3) to a Patent Application in Japanese Language, the term "or the laying open of the patent application" in the said Article shall be deemed to be replaced with "or the International Publication under Article 21 of the Patent Cooperation Treaty signed in Washington on June 19, 1970."

(3) For the purpose of the application of Article 41(3) for a Patent Application in

Foreign Language, the term "the description, scope of claims or drawings originally attached to the application in a patent application" in the said Article shall be deemed to be replaced with "the description, scope of claims or drawings of an international application as of the international application date under Article 184-4(1)," and the teem "or the laying open of the application" shall be deemed to be replaced with "or the international publication under Article 21 of the Patent Cooperation Treaty done in Washington on June 19, 1970."

(4) For the purpose of application of Articles 41(1) to (3) and 42(1), in the case where the earlier application under Article 41(1) of this Act is an International Patent Application or an international utility model registration application under Article 48-3(2) of the Utility Model Act, the term "the description, scope of claims for a patent or utility model registration and drawings originally attached to the application" in Articles 41(1) and (2) shall be deemed to be replaced with "the description, scope of claims or drawings of an international application as of the international application date under Article 184-4(1) of this Act or Article 48-4(1) of the Utility Model Act,"; the term "the description, scope of claims for patent or utility model registration and drawings originally attached to the application in the earlier application " in Article 41(3) shall be deemed to be replaced with "the description, scope of claims or drawings of an international application of the earlier application as of the International Application Date under Article 184-4(1) of this Act or Article 48-4(1) of the Utility Model Act,"; the term "the laying open of the patent application relating to" in Article 41(3) shall be deemed to be replaced with "the international publication under Article 21 of the patent Cooperation Treaty signed in Washington on June 19, 1970 relating to,"; and the term "when one year and three months from the filing date has lapsed" in Article 42(1) shall be deemed to be replaced with "at the later of the time of the National Processing Standard Time under Article 184-4 (4) of this Act or Article 48-4(4) of the Utility Model Act or the time when one year and three months has lapsed from the International Application Date under Article 184-4 (1) of this Act or Article 48-4 (1) of the Utility Model Act".

Article 184-16 (Special provision concerning conversion of application)

An international application that has been deemed to be an application for utility model registration under Article 48-3(1) or 48-16(4) of the Utility Model Act may be converted to a patent application, only after the fees payable under Article 54(2) of the said Act have been paid (or, in the case of an international application that is deemed to be a Utility Model registration application under Article 48-16(4) of the said Act, after the ruling as provided in Article 48-16(4) has been rendered), and, in the case of a Utility Model Registration Application in Japanese Language under Article 48-5(4) of the said Act, the procedures under Article 48-5(1) of the said Act

has been completed, or, in the case of a Utility Model Registration Application in Foreign Language under 48-4(1) of the said Act, the procedures under Article 48-4 (1) and 48-5(1) of the said Act have been completed.

Article 184-17 (Restriction on the time for request for examination of application)

A request for an examination of an International Patent Application shall not be allowed unless, for an applicant of the International Patent Application, the procedure under Article 184-5 in the case of a Patent Application in Japanese Language or the procedures under Article 184-4(1) and 184-5(1) in the case of a Patent Application in Foreign Language have been taken and the fee payable under Article 195(2) has been paid, and, for any person who is not the applicant of the International Patent Application, the Time Limit for the Submission of National Documents (in the case of a Patent Application in Foreign Language under the proviso to Article 184-4(1), the Special Time Limit for the Submission of Translation) has lapsed.

Article 184-18 (Provisions for reasons for refusal, etc.)

For the purpose of an examiner's decision of refusal and a trial for patent invalidation, with respect to a patent application in foreign language, the term "written application in foreign language" in Articles 49(vi), and 123(1)(i) and (v) shall be deemed to be replaced with "patent application in foreign language referred to in Article 184-4(1)," and the term "document in foreign language" in Article 49(vi) and 123(1)(v) shall be deemed to be replaced with "the description, scope of claim (s) or drawing(s) of the international application as of the international application date referred to in Article 184-4(1)."

Article 184-19 (Special provisions concerning correction)

For the purpose of the request for correction under Article 134-2(1) and the rewuest for a trial for correction with respect to a patent application in foreign language, the term "written application in foreign language" in Article 126(3) shall be deemed to be replaced with "patent application in foreign language referred to in Article 184-4(1)" and the term "document in foreign language" shall be deemed to be replaced with "the description, scope of claim(s) or drawing(s) of the international application as of the international application date referred to in Article 184-4(1)."

Article 184-20 (International application deemed to be patent application by decision)

(1) Where a refusal under Article 25(1)(a) of the Treaty or a declaration under Article 25(1)(a) or (b) of the Treaty has been made by the receiving Office under Article 2(xv) of the Treaty, or a finding under Article 25(1)(a) of the Treaty has

been made by the International Bureau under Article 2(xix) of the Treaty in relation to an international application (a patent application only) which specifies Japan as a designated State under Article 4(1)(ii) of the Treaty, the applicant of the international application under Article 2(vii) of the Treaty may make a request to the effect that the Commissioner of the Patent Office shall render a decision under Article 25(2)(a) of the Treaty in accordance with an Ordinance of the Ministry of Economy, Trade and Industry within the time limit provided in the Ordinance of the Ministry of Economy, Trade and Industry.

(2) A person making a request under the preceding paragraph with regard to an international application in a foreign language shall submit at the time of the request to the Commissioner of the Patent Office Japanese translations of documents concerning the international application as required by an Ordinance of the Ministry of Economy, Trade and Industry, including the description, scope of claims, drawings (limited to the explanations in the drawings), and abstract.

(3) Upon receiving the request under paragraph (1), the Commissioner of the Patent Office shall rule on whether the refusal, declaration or finding relating thereto was justified under the provisions of the Treaty and the Regulations under the Patent Cooperation Treaty.

(4) Where the Commissioner of the Patent Office has rendered a ruling under the preceding paragraph to the effect that the refusal, declaration or finding under the said paragraph was not justified under the provisions of the Treaty and the Regulations under the Patent Cooperation Treaty, the international application for which the decision is rendered shall be deemed to be a patent application filed on the day which would have been be accorded as the international application date if no such refusal, declaration or finding had been made for the international application.

(5) For the purpose of laying open of an international application that is deemed to be a patent application under the preceding paragraph, the term "the date of the filing of a patent application" in Article 64(1) shall be deemed to be replaced with "the priority date under Article 184-4(1)", the term "Written application in foreign language" and "Document in foreign language and the Abstract in foreign language" in Article 64(2)(vi) shall be deemed to be replaced with "international application in a foreign language" and "description, scope of claim, drawing and abstract of an international application filed on the day to be accorded as the International application Date under Article 184-20(4)".

(6) Article 184-3(2), 184-6(1) and (2), 184-9(6), 184-12 to 184-14, 184-15(1), (3) and (4), 184-17 to 184-19 shall apply mutatis mutandis to an international application that is deemed to be a patent application under paragraph (4). In such a case, the replacement of terms necessary for the application of the said provisions shall be made as prescribed by Cabinet Order."

Chapter X Miscellaneous Provisions

Article 185 (Special provisions for patent or patent right covering two or more claims)

Pertaining to the patent or patent rights covering two or more claims, for the purposes of the application of Article 27(1)(i) or Article 65(4) (including its application under Article 184-10(2)), 80(1), 97(1), 98(1)(i), 111(1)(ii), 123(3), 125, 126(6) (including its application under Article 134-2(5)), Article 132(1) (including its application under Article 174(2)) or 175, 176 or 193(2)(iv) of this Act, or of Article 20(1) of the Utility Model Act, the patent shall be deemed to have been granted, or the patent right shall be deemed to exist, for each claim.

Article 186 (Request for certificate, etc).

(1) Any person may file a request with regard to patents to the Commissioner of the Patent Office to issue a certificate, a certified copy of documents or an extract of documents, to allow the inspection or copying of documents, or to issue documents stored on the magnetic tapes that constitute the part of the Patent Registry; provided, however, that if the Commissioner of the Patent Office considers it necessary to keep such documents confidential, this provision shall not apply in the case of the following documents:

(i) an application, or the description, acope of claims, drawings or abstract attached to an application, a document in foreign language, an Abstract in foreign language or any document pertaining to the examination of a patent application (except where the establishment of a patent right has been registered or where the laying open of a patent application has been effected), or the materials under Article 67-2(2);

(ii) documents concerning a trial against an examiner's decision of refusal (except where the establishment of the patent right has been registered or where the laying open of a patent application has been effected);

(iii) documents concerning a trial for patent invalidation, a trial for invalidation of the registration of extension of the duration or a retrial of the final and binding trial decision in the such trials, with respect to which a party in the case or intervenor has given notice that a trade secret owned by the said party in the case or intervenor has been described (trade secret as provided in Article 2(4) of the Unfair Competition Prevention Act (Act No. 47 of 1993));

(iv) documents which are liable to cause damage to an individual's reputation or peaceful life; and

(v) documents which are liable to cause damage to public order or morality .

(2) Where the Commissioner of the Patent Office approves of the request under the

main clause of the preceeding paragraph with regard to the documents as provided in items (i) to (iv) of the said paragraph, the Commissioner of the Patent Office shall notify the person who submitted the said documents thereof and reasons therefor.

(3) Provisions of the Act on Access to Information Held by Administrative Organs (Act No. 42 of 1999) shall not apply to the documents concerning patents and the part of the Patent Registry stored on magnetic tapes.

(4) Provisions in Chapter 4 of the Act on Protection of Personal Information Possessed by Administrative Organs (Act No. 58 of 2003) shall not apply to the possessed personal information (refers to the possessed personal information as provided in Article 2(3) of the said Act) recorded in the documents concerning patents and the part of the Patent Registry stored on magnetic tapes.

Article 187 (Mark of Patent)

A patentee, exclusive licensee or non-exclusive licensee shall make efforts to place a mark (hereinafter referred to as a "mark of patent") as provided by an Ordinance of the Ministry of Economy, Trade and Industry, on the patented product, product produced by the patented process (hereinafter referred to as a "patented product"), or package thereof, indicating that the product or process is patented.

Article 188 (Prohibition of false marking)

It shall be prohibited for a person to do the following acts:

(i) putting a mark of patent or a mark confusing therewith on or in a non-patented product or the packaging thereof;

(ii) assigning, etc. or displaying for the purpose of assignment, etc. a non-patented product or the packaging thereof on or in which a mark of a patent or a mark confusing therewith is put;

(iii) giving in an advertisement an indication to the effect that a non-patented product is related to a patent or an indication confusing therewith for the purpose of having the product produced or used, or assigning, etc. the product; or

(iv) giving in an advertisement an indication to the effect that a non-patented process is related to a patent or an indication confusing therewith for the purpose of having the process used, or assigning or leasing the process.

Article 189 (Service)

Documents to be served shall be as provided in this Act and by ordinance of the Ministry of Economy, Trade and Industry.

Article 190

Articles 98(2), 99 to 103, 105, 106, 107(1) (excluding items (ii) and (iii)), 107(3)

and 109 (Service) of the Code of Civil Procedure shall apply mutatis mutandis to the service of documents as provided in this Act or the Ordinance of the Ministry of Economy, Trade and Industry under the preceding Article. In this case, the term "a court clerk" in Articles 98(2) and 100 of the Code of Civil Procedure shall be deemed to be replaced with "an official designated by the Commissioner of the Patent Office or a trial clerk", the term "mailt or court enforcement officer" in Article 99(1) of the said Act shall be deemed to be replaced with "mail", the term "where … the court clerk" in Article 107(1) of the said Act shall be deemed to be replaced with "where … and where documents concerning the examination are to be served, an official designated by the Commissioner of the Patent Office or a trial clerk" and the term "Supreme Court Rules" in Article 107(1) of the said Act shall be deemed to be replaced with "an Ordinance of the Ministry of Economy, Trade and Industry".

Article 191

(1) Where the domicile or residence of the person who is to be served or any other place to which service is to be made is unknown, or where the service is unable to be effected under Article 107(1) (excluding itemhs (ii) and (iii)) of the Code of Civil Procedure as applied mutatis mutandis under Article 190 of this Act, service may be effected by public notification.

(2) Service by public notification shall be effected by publishing in the Official Gazette and the patent bulletin and posting on the noticeboard of the Patent Office a notification stating the fact that documents to be served are ready to be served at any time to the person who is to be served.

(3) Service by public notification shall take effect following the duration of 20 days from the day the notification is published in the Official Gazette.

Article 192

(1) Where an overseas resident has a patent administrator, service shall be made to the patent administrator.

(2) Where an overseas resident has no patent administrator, documents may be dispatched by registered mail, etc. (refers to service of registered mail under Article 2(2) of the Act on service of Mail by Private Business Operator (Act No. 99 of 2002) provided by a general mail delivery service operator under Article 2(6) of the said Act or by a special mail delivery service operator under Article 2(9) of the said Act that is equivalent to registered mail by Ordinance of the Ministry of Economy, Trade and Industry, hereinafter the same shall apply in paragraph (3)).

(3) Where documents are dispatched by registered mail, etc., under the preceding paragraph, the documents shall be deemed to have been served at the time of dispatch.

Article 193(Patent Bulletin)

(1) The Patent Office shall publish the Patent Bulletin (Tokkyo Koho).

(2) In addition to the matters provided for in this Act, the Patent Bulletin shall contain:

(i) the examiner's decision to the effect that an application is to be refused, or the waiver, withdrawal or dismissal of a patent application after the laying open of the patent application, or the withdrawal of an application for the registration of an extension of the duration of a patent right;

(ii) successions to the right to obtain a patent after the laying open of a patent application;

(iii) amendments of the description, scope of claims or drawings attached to an application under Article 17-2(1) after the laying open of a patent application (in the case of an amendment under any of the items in the proviso to the said paragraph, limited to an amendment made through the submission of a statement of correction of an incorrect translation);

(iv) the extinguishment of patent rights (excluding extinguishment upon expiration of the duration and under Article 112(4) or 112(5)) or the restoration thereof (limited to restoration under Article 112-2(2));

(v) filings for a request for trials or retrials, or withdrawals thereof;

(vi) final and binding trial decisions or retrial decisions (limited to patent applications in which the establishment of a patent right has been registered or which have been laid open);

(vii) matters stated in the corrected description and scope of claims and the contents of drawings (limited to those corrected following a final and binding trial decision to the effect that the correction was to be made);

(viii) requests for an award , the withdrawal thereof or a Commissioner's decision; and

(ix) final and binding judgments in an action under Article 178(1) (limited to cases where the establishment of a patent right has been registered or the laying open of the patent application has been effected).

Article 194 (Submission of documents, etc.)

(1) The Commissioner of the Patent Office or the examiner may request a party in a case to submit documents or other materials necessary for a procedure other than one relating to a trial or a retrial.

(2) The Commissioner of the Patent Office or the examiner may commission related administrative agencies, educational institutions or any other organizations to conduct an investigation necessary for an examination.

Article 195 (Fees)

(1) Fees shall be paid by the following persons in an amount to be provided by Cabinet Order in view of the actual costs:

(i) persons filing a request for an extension of the duration under Article 4, 5 (1), 108(3), or a change of the date under Article 5(2);

(ii) persons filing a request for the re-issuance of the certificate of patent;

(iii) persons notifying of succession under Article 34(4);

(iv) persons filing a request for the issuance of a certificate under Article 186(1);

(v) persons filing a request for the issuance of a certified copy of documents or an extract of documents under Article 186(1);

(vi) persons filing a request to allow the inspection or copying of documents under Article 186(1); and

(vii) persons filing a request for the issuance of documents whose contents are stored on the magnetic tapes that constitute the part of the Patent Registry under Article 186(1).

(2) The persons listed in the center column of the attached table shall pay fees in the amount as provided by Cabinet Order within the range of the amounts specified in the corresponding right-hand column of the table.

(3) Notwithstanding the provisions of the preceding paragraph, where, after a request for the examination of an application has been filed by a person who is not the applicant of the patent, the number of claims is increased due to the amendment of the scope of claims attached to the application in the said patent application, the fees for the request for the examination of the patent application payable under the preceding paragraph regarding the increased claims shall be paid by the applicant of the patent.

(4) The three preceding paragraphs shall not apply where the person to pay the fee in accordance with these paragraphs is the State.

(5) Where the State has joint ownership of a patent right or a right to obtain a patent with a person other than the State, and the portion of their respective shares of said right has been agreed, notwithstanding the provisions of paragraph (1) or (2), the fees payable thereunder (limited to those provided by Cabinet Order excluding the fees for the request for an examination) shall be determined as the sum of the provided fees multiplied by the ratios of the share of each person other than the State, and, the person(s) other than the State shall pay such sum.

(6) Where the State has joint ownership of a right to obtain a patent with person(s) including a person entitled to receive a reduction of the fees for the request for an examination or exemption therefrom under the following Article or provisions of any other laws and ordinances (hereinafter in this paragraph referred to as a "reduction/exemption"), and the portion of their respective shares of said right has been agreed, notwithstanding the provisions of paragraph (2), the fees for the request for an examination payable by such person for their right to obtain a

patent thereunder shall be determined as the sum of the amounts calculated for each person other than the State jointly owning the right, by multiplying the applicable fees for the request for an examination provided thereunder (in the case of a person who receives the reduction or exemption, the amount after said reduction/exemption) by the ratios of the share of each person other than the State, and the person(s) other than the State shall pay such sum.

(7) Where the amount of the fees calculated under the two preceding paragraphs has a fractional figure of less than ten yen, said portion shall be discarded.

(8) The payment of the fees under paragraphs (1) to (3) shall be made by patent revenue stamps as provided by an Ordinance of the Ministry of Economy, Trade and Industry; provided, however, that where so provided by an Ordinance of the Ministry of Economy, Trade and Industry, a cash payment thereof shall be accepted.

(9) After the request for examination of an application, where said patent application has been waived or withdrawn, upon the request of the person who paid the fees for the request for examination under paragraph(2), such fees in the amount prescribed by the relevant Cabinet Order shall be refunded, provided that the certified copy of the examiner's decision has not been served, and none of the following orders or notices has been made.

(i) an order under Article 39(7);

(ii) notice under Article 48-7;

(iii) notice under Article 50; and

(iv) service of a certified copy of the examiner's decision under Article 52(2).

(10) No request for a refund of fees under the preceding paragraph may be filed after six months from the date on which a patent application has been waived or withdrawn.

(11) Fees paid in excess or in error shall be refunded upon the request of the person who made payment thereof.

(12) No request for a refund of the fees under the preceding paragraph may be filed after one year from the date on which the payment thereof has been made.

Article 195-2 (Reduction of or exemption from fees for request for examination of application)

Where the Commissioner of the Patent Office recognizes that a person meets the requirements of the Cabinet Order to be recognized as a person with insufficient funds, and that the person has difficulties paying the fees for a request for the examination of an application, the Commissioner of the Patent Office may, in accordance with the Cabinet Order, grant the person a reduction of or exemption from the payment of the fees for the request for the examination of the person's own patent application payable under Article 195(2), where the Commissioner of the

Patent Office recognizes that the person falls under any of the following paragraphs:

(i) the inventor of the invention or the inventor's heir; and

(ii) the employer, etc., who has succeeded to the right to obtain a patent from the employee, etc., where the invention is an invention by the employee, etc., under Article 35(1) and where it is provided in advance in any stipulations including contract or employment rules that the employer, etc. shall succeed to the right to obtain a patent.

Article 195-3 (Exclusion of application of Administrative Procedures Act)

Chapters II and III of the Administrative Procedures Act (Act No. 88 of 1993) shall not apply to dispositions under this Act or an order issued under this Act.

Article 195-4 (Restriction on appeals under Administrative Appeal Act)

No appeal shall be available under the Administrative Appeal Act against an examiner's decision or a trial decision, or a ruling to dismiss a written request for a trial or retrial, or against dispositions against which no appeal lies in accordance with this Act.

Chapter XI Penal Provisions

Article 196 (Crime of infringement)

An infringer of a patent right or exclusive license shall be punished by imprisonment with work for a term not exceeding five years or a fine not exceeding 5,000,000 yen.

Article 197 (Crime of fraud)

Any person who has obtained a patent, a registration of extension of the duration of a patent right or a trial decision by means of a fraudulent act shall be punished by imprisonment with work for a term not exceeding three years or a fine not exceeding 3,000,000 yen.

Article 198 (Crime of false marking)

A person(s) who fails to comply with Article 188 shall be punished by imprisonment with work for a term not exceeding three years or a fine not exceeding 3,000,000yen.

Article 199 (Crime of perjury, etc.)

(1) A witness, an expert witness or an interpreter who has sweared under this Act and made a false statement or given an expert opinion or interpretation to the Patent Office or the court commissioned thereby shall be punished by

imprisonment with work for a term between three month and ten years.

(2) Where a person who has committed the crime in the preceding paragraph has made a voluntary confession before a certified copy of the judgment on the case has been served or a trial decision has become final and binding, the punishment may be reduced or exculpated.

Article 200 (Crime of divulging secrets)

A present or former official of the Patent Office who has divulged or appropriated any secret relating to an invention claimed in a pending patent application that has become known to him/her in the course of performing his/her duties shall be punished by imprisonment with work for a term not exceeding one year or a fine not exceeding 500,000 yen.

Article 200-2 (Crime of breach of protective order)

(1) A person who fails to comply with a protective order shall be punished by imprisonment with work for a term not exceeding five years or a fine not exceeding 5,000,000 yen or combination thereof .

(2) The prosecution of the crime under the preceding paragraph may not be initiated unless a complaint is filed.

(3) The crime under paragraph (1) shall apply to a person who commits the crime outside Japan.

Article 201 (Dual liability)

(1) Where a representative of a duridical person or an agent, employee or other worker of a juridical person or an individual has committed in the course of performing his/her duties for the juridical person or individual, any act in violation prescribed in the following items, in addition to the offender, the juridical person shall be punished by a fine as provided in the corresponding item and the individual shall be punished by a fine as provided in the Article prescribed in the corresponding item:

(i) Article 196 or 200-2(1), a fine not exceeding 150 million yen; and

(ii) Article 197 or 198, a fine not exceeding 100 million yen.

(2) In the case of the preceding paragraph, the complaint under 200-2(2) against the offender shall have effect on the juridical person or individual and the complaint against the juridical person or individual shall have effect on the offender.

Article 202 (Civil fine)

Where a person who has sweared under Article 207(1) of the Code of Civil Procedure as applied under Article 151 (including its application under Articles 71

(3), and 174(1) to (3) of this Act) has made a false statement before the Patent Office or a court commissioned thereby, said person shall be punished by a civil fine not exceeding 100,000 yen.

Article 203

A person(s) who has been summoned by the Patent Office or a court commissioned thereby in accordance with this Act, and fails to appear or refuses to swear, make a statement, testify, give an expert opinion or interpret without a justifiable reason shall be punished by a civil fine not exceeding 100,000 yen.

Article 204

A person(s) who has been ordered by the Patent Office or a court commissioned thereby to submit or present documents or other materials for the purpose of examination or preservation of evidence in accordance with this Act and fails to comply with the order without a justifiable reason shall be punished by a civil fine not exceeding 100,000 yen.

Appended Table (In relation to Article 195)

	A person(s) who shall pay fees	Amounts
1	A person filing a patent application (excluding one in the following item)	16,000 yen per case
2	A person filing a written application in foreign language	26,000 yen per case
3	A person responsible for the procedures under Article 184-5(1)	16,000 yen per case
4	A person responsible for the procedures under Article 184-20(1)	16,000 yen per case
5	A person filing an application for the registration of extension of the duration of a patent right	74,000 yen per case
6	A person requesting an examination of an application	168,600 yen per case plus 4,000 yen per claim
7	A person amending a description, scope of claims or drawings through the submission of a statement of correction of incorrect translation	19,000 yen per case

8	A person requesting an advisory opinion under Article 71 (1)	40,000 yen per case
9	A person requesting an award	55,000 yen per case
10	A person requesting canceling of an award	27,500 yen per case
11	A person filing a request for a trial or retrial (excluding one in the following item)	49,500 yen per case plus 5,500 yen per claim
12	A person filing a request for a trial against an examiner's decision of refusal of the registration of extension of the duration of a patent right, a trial for invalidation of the registration of extension of the duration of a patent right, or a retrial against the final and binding trial examiner's decision in these trials.	55,000 yen per case
13	A person filing a request for a correction of the description, scope of claim (s) or drawing (s) (excluding cases where, by a request for such correction, the reqeust for a correction trial is deemed to have been withdrawn under Article 134-3 (4))	49,500 yen per case plus 5,500 yen per claim
14	A person applying intervention in a trial or retrial.	55,000 yen per case