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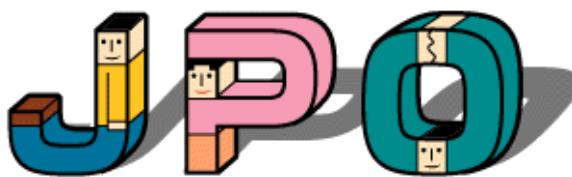
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# ***Outline of Industrial Property Systems***

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# Outline of Industrial Property Systems

## 1. Intellectual Property Rights

In a society which can be described as being saturated with a large amount of information, technological reforms can progress very quickly. Today, this progress involves an international society, and in recent years, this progress was based on what is known as intellectual rights such as patent rights, trademark rights, confidential business information, copyright, and other rights related to intellectual property (referred to as intellectual property rights). Intellectual property issues cause a number of problems which have attracted much interest in the present society.

To begin with, intellectual property represents an indication pointing out general trends relating to human creativity and management techniques. In concrete terms, this means the the results of intellectual activities of people are represented by original and creative ideas ("inventions") or ("utility models"), representing unique designs ("designs") , but also by music, novels, paintings or similar "works". These works are protected by laws such as the patent law, utility model law, design law, and copyright law. On the other hand, "trade names or trademarks", which represent an indication of business activities are names used in order to conduct a business. These trademarks are names created by the user in order to indicate what kind of services or products can be provided under the "trademark" name (also called a brand). Trade names are also protected by commercial laws and trademark laws. The (narrowly defined) rights which are based on these industrial property rights, such as trademark laws, representing an indication of a business, or design rights, utility model rights, and patent rights, are a result of intellectual activities in the industrial spheres, while copyright relates to activities in the cultural sphere.

In addition, new spheres which should be also protected are emerging among these intellectual property spheres. Among these new spheres are for example biotechnology, electronics-information processing, and other so called high-tech fields which are experiencing a tremendous amount of development due for instance to development of computer programs (involving copyright laws), or semiconductor chips (involving laws protecting semiconductor chips), etc. Moreover, improper acquisition and use of trade secrets such as client lists or manufacturing technologies indicate attempts at production and sale of imitations of products purporting to contain a content or quality representing a trademark (such as a Champagne, or a cognac, or another unique regional trademark). These business activities, which are tantamount to a false claim of authorship by another person to receive the benefits connected with a well known brand), also represent unfair competition and thus are subject to regulations relating to improper competition and laws design to stop unfair competition. (Laws aimed at stopping unfair competition have been adopted in addition to narrowly defined industrial property rights, and in a broad sense, these laws are also related to intellectual property rights).

The fact that protection of intellectual property rights has been strengthened in recent

years is due among other things to agreements reached between the WIPO (World Intellectual Property Organization), WTO and TRIPS (and organization for intellectual property rights related to trade), which are specialized UN organs aiming at increasing the level of international consciousness about the effect of increased competitions among countries and industries in each country. These and other agreements have made it possible to create an integrated system designed to protect intellectual property rights in each country through treaties, various international meetings, and similar activities.

[ The Types of Intellectual Property Rights and the System for Their Protection ]

(1) Intellectual Creations

(a) Inventions

Patent Law

(b) Utility Models

Utility Model Law

(c) Designs

\*designs            Design Law

\*product form    laws to stop unfair competition

(d) Trade Secrets (manufacturing technologies, customer lists, etc.)

laws to stop unfair competition

(e) Integrated Semiconductor Circuits

laws for protection of semiconductor chips

(f) Copyright (novels, music, etc.)

Copyright Law

\*rights similar to copyright

(for stage performance producers, record producers, broadcasters, etc.)

(2) Commercial Symbols

a. types of new plants

Seedling Law

b. trade names

Trade Name Law

c. trademarks (including service marks)

\*registered trademarks

Trademark Law

\* unregistered (well known) trademarks

Unfair Competition Law

d. geographical indications (shampoo or scotch brands)

Unfair Competition Law, Trademark Law,

Liquor Industry Law.

[ Intellectual Property Rights Registered by the Patent Office ]

(1) Inventions

\*Concrete Examples products or methods characterized by a high level of a creative technological idea; items characterized by a longer life cycle than a new utility model; hardware and related computer programs, items including plants, animals, and microorganisms.

\*Applicable Laws Patent Law

\*Protection Period 20 years from the day when an application was filed (a limit of five years is applied to cases of pharmaceutical products and agricultural chemicals, but this period can be extended).

(2) Utility Models

\*Concrete Examples Items having a short life cycle, characterized by the potential for an early implementation and a creative idea relating to the shape of products, their structure and other technological aspects; the technological aspect of a utility model may be on a lower level when compared to a patent; an idea of a method is not a valid subject.

\*Applicable Law Law for New Utility Models

\*Protection Period 6 years from the day when an application was filed.

### (3) Designs

\*Concrete Examples The shape, pattern, color, and other design characteristics of items relating to their external appearance; a simple picture or drawing is not a valid subject.

\*Applicable Laws Design Law

\*Protection Period 15 years from the day when an application was filed.

### (4) Trademarks

\*Concrete Examples Letters, diagrams, symbols (colors) having the effect of identifying the subject of various products or services with which are identified

\*Applicable Laws Trademark Law

\*Protection Period 10 years from the day when a created trademark was registered (continuous use can be obtained if an application is updated).

## 2. Industrial Property Right System

### (1) The Aim of an Industrial Property Right System

Industrial development is one of the principal forces contributing to a rich daily life. This development is the result of research and investment and of the efforts of many talented inventors, authors of utility models, creators of new designs, new tools, new technologies, etc. The purpose of a system of industrial property rights is to encourage and to motivate inventors of inventions and creators of designs, to protect their rights, and to instill confidence in the maintenance of business activities related to trademarks. The system thus must be designed to form a solid base for industrial development.

#### a. Patent System (New Utility Model System)

Article 1 of the Patent Law states the following: "The purpose of this law is to encourage invention and to contribute to industrial development through a design promoting the use and protection of inventions". Inventions and utility models are concept and ideas

which cannot be seen with eyes. Such items cannot be controlled in the same manner as tangible objects in our homes and cars which can be owned by anyone and which are visible. Accordingly, a suitable protection must be ensured through a system. An invention is something that should be probably kept secret so that it would not be stolen by other people. On the other hand, this would not only make it impossible for the inventor himself to put his own invention to an effective use, but it would also cause other people to needlessly spend resources in order to invent the same thing. That is why a patent system should be designed to prevent such occurrences. On the one hand, a patent system is design to provide protection which is provided to an inventor when his invention is granted so called exclusive patent rights under certain conditions and for a specified period of time. On the other hand, the system is also designed to contribute to industrial development by promoting technological progress, enabling joint utilization of new technological resources by publishing new inventions.

As far as a system for new utility models is concerned, the subject of protection of this system is defined only as "utility models relating to the shape of items, their structure or combinations". This is different from the subject of protection in the patent system (for example, a method cannot become a subject for registration in a new utility model), although the purpose of both systems is identical.

(Note)

The quotation of American president Lincoln "The patent system added the fuel of interest to the fire of genius" can be seen at the entrance to the U.S. Patent Office.

## b. Design System

Article 1 of the Design Law states the following: "This law was design to protect and utilize designs and to encourage creation of designs in order to contribute to industrial development".

Designs represent a quest for a better appearance or external form, resulting in enjoyment which is connected with the use of beautiful products. This external appearance is something that can be perceived uniformly by anybody. That is why designs can be easily copied, which poses obstacles to a healthy industrial development because ease of copying can be an invitation to unfair competition.

That is why a design system should be planned so that it would on one hand protect the assets of the creator of a new creative design, while on the other hand, the usage of the design should be also determined so as to encourage design creativity which also contributes to industrial development.

## c. Trademark System

Article 1 of the Trademark Law states the following: "The purpose of this law is to protect the interests of all consumers by protecting trademarks through a design ensuring confidence for operations of persons using trademarks, to further contribute to development of industry". Because it goes without saying that consumers benefit from satisfactory economic activities of various companies and other economic entities, a

system determining different brands must be created so that the consumers could expect a certain level of quality of products or services from certain brands. by being eable to dtermined who is the manufacturer of a certain product or provider of a certain service which they come into contact with.

That is why a system of trademarks which are attached printed on products are which identify services must be established in order to protect these trademarks because such trademarks indicate a certain specific function of a product or a service identified by a trademark. The system thus on the one hand protects the interests of the consumer, and on the other hand it also contributes to the development of industries through a design maintaining confidence in the oeprations of persons using these trademarks for advertising functions or for functions aimed at protecting the quality of products.

## (2) Subject of Protection of Industrial Property Laws

### a. Subject of Protection of the Patent Law

According to the provisions of Article 2 of the Patent Law, the subject of the protection of this law are Patents. Specifically, the purpose of the law is to protect a high level of creativity in technological concepts which use natural laws and rules. Consequently, calculation methods or encryption dtermined by arbitrarily defined rules, for instance for finance and insurance systems or taxation methods, which are not based on natural laws and rules, do not represent a protected subject. The discovery per se (for instance Newton's sudden discovery of a certain rule) is not a protected subject either. Finally, the created product must be characterized by a high level of technological creativity because a creation characterized by a low technological creativity level cannot be protected.

### b. Subject of Protection of the New Utility Model Law

According to the provisions of Article 2 and Article 3 of the New Utility Model Law, the subject of protection are forms of products, structures, or cominations of related items which were created using creative technological concepts based on natural laws and rules.

Consequently, methods relating to products are not a protected subject as long as they only relate to shapes and forms of products, etc.

In addition, a high level of creativity applied to creation of a technological concept is no longer required for protected subjects, although this is required for protected subjects under the Patent Law.

### c. Subject of Protection of the Design Law

According to the provisions of Article 2 of the Design Law, the subject of protections are items which give rise to a sense of beauty through a visual perception which is connected to the shape of a product, or its pattern or color. Consequently, products arranged in a relationshis which makes integration impossible, or structural functions which are not apparent from the external appearance of a product are not a protected



subject. Although the creation of a design is an abstract concept, similar to the conception according to the New Utility Model Law or Patent Law, while inventions and utility models are created with technological concepts using the operation of natural laws and rules, and the protection Patent Law and New Utility Model Law is based on this aspect of these concepts, in contrast to that the Design Law provides protection for creativity which is based on the concept of beauty from the viewpoint of an esthetic perception of a design.

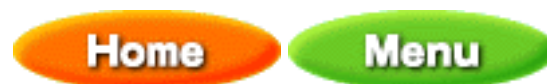
#### d. Subject of Protection of the Trademark Law

According to the provisions of Article 2 of the Trademark Law, the subject of protections are letters, figures, or combinations thereof, used to certify produced commercial merchandize, or commercial merchandize of parties to which the use of a trademark was transferred, or the role which is played by the commercial activity identified by a trademark or by the party which is exercising this role. While in the past, parties engaged in the use of trademarks for commercial transactions such as manufacturing of goods, sales, etc., used these trademarks in order to identify the types of commercial products as merchandize manufactured by these parties alone, and only the public acknowledgement of the right to use a commercial product was protected, due to the rapid development in recent years of service products, it was determined that existing legislation for protection of other publicly acknowledged rights relating to other roles was no longer sufficient, and the Trademark Act (adopted on April 1, 1992) established the same type of protection as the protection which is applied to merchandize for marks used to identify a service in order to provide identification of the same type of service provided by the same provider for persons offering these services in areas such as broadcasting, finances, the restaurant business, etc.

What we now call a system of industrial property rights is therefore a system of laws consisting of laws adopted in accordance with the "Patent Law", "New Utility Model Law", "Design Law", and "Trademark Law". This system thus relates to four types of rights, which are based on the above mentioned legislation, to items called patents, new utility models, designs, and trademarks.

\*[A telephone set as a practical example](#)

\*[A fountain pen as a practical example](#)





## JAPAN

### [PATENT LAW]

(Law No. 121 of April 13, 1959, as last amended on May 6, 1998)

Effective as of June 1, 1998

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## Chapter I General Provisions

### (Purpose)

**1.-- The purpose of this Law shall be to encourage inventions by promoting their protection and utilization so as to contribute to the development of industry.**

### (Definitions)

**2.--(1) "Invention" in this Law means the highly advanced creation of technical ideas by which a law of nature is utilized.**

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

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

**(i) in the case of an invention of a product, acts of manufacturing, using, assigning, leasing, importing or offering for assignment or lease (including displaying for the purpose of assignment or lease -- hereinafter the same) of, the product;**

**(ii) in the case of an invention of a process, acts of using the process;**

**(iii) in the case of an invention of a process of manufacturing a product, acts of using, assigning, leasing, importing or offering for assignment or lease of, the product manufactured by the process, in addition to the acts mentioned in the preceding paragraph.**

### (Computation of time limits)

**3.--(1) Time limits fixed in this Law or an order or ordinance under this Law shall be computed according to the following provisions:**

**(i) the first day of the period shall not be included. However, this provision shall not apply when the period begins from 00.00 a.m.;**

**(ii) when the period is expressed in months or years, it shall be counted according to the calendar. When the period is not computed from the beginning of a month or year, it shall expire on the day preceding the day of the last month or year corresponding to the day on which the computation begins. However, where there is no corresponding day in the last month, it shall expire on the last day of that month.**

**(2) Where the last day of a period prescribed for the filing of a patent application or demand or for any other procedure relating to a patent (hereinafter referred to as "procedure") falls on a Sunday, a holiday referred to in each**

of the paragraphs of Section 1(1) of the Law concerning holidays of administrative organizations (Law No. 91 of 1988), the last day of the period shall be the day following such holiday or holidays.

(Extension of time limits)

4.-- The Commissioner of the Patent Office may, for the benefit of a person residing in a place that is remote or difficult of access, extend upon request or ex officio the period prescribed in Section 108(1), 121(1) or 173(1).

(Extension of time limits)

5.--(1) The Commissioner of the Patent Office, the trial examiner-in-chief or the examiner may, where he has designated a time limit for a procedure to be initiated under this Law, extend the time limit upon request or ex officio.

(2) The trial examiner-in-chief may, where he has designated a date under this Law, change the date upon request or ex officio.

(Capacity of associations, etc. which are not legal entities to proceed before the Office)

6.--(1) An association or foundation which is not a legal entity but for which an officer representing it or an administrator has been designated may, in its name:

(i) make a request for examination;

(ii) file an opposition to the patent;

(iii) demand a trial under Section 123(1) or 125bis(1);

(iv) demand a retrial against a final and conclusive trial decision under Section 123(1) or 125bis(1), in accordance with Section 171(1).

(2) An association or foundation which is not a legal entity but for which an officer representing it or an administrator has been designated may be made a party in its name to a retrial against a final and conclusive trial decision under Section 123(1) or 125bis(1).

(Capacity of minors or other persons under disability to proceed before the Office)

7.--(1) Minors and persons declared to be under disability may proceed before the Office only through their legal representatives. However, this provision shall not apply where a minor can perform a legal act independently.

(2) Where a person under a quasi-disability proceeds before the Office, he shall obtain the consent of his curator.

(3) Where a legal representative proceeds before the Office and there is a supervisor of guardianship, the former shall obtain the consent of the latter.

(4) Where a person under a quasi-disability or a legal representative takes part in a procedure with regard to an opposition to the patent, a trial or retrial demanded by an adverse party, the two preceding subsections shall not apply.

(Patent administrator for residents abroad)

8.--(1) A person who has neither his domicile nor residence (nor, in the case of a legal entity, its establishment) in Japan (hereinafter referred to as a "resident abroad") may not, except where prescribed by Cabinet Order, proceed before the Office or institute a suit against any measure taken by an administrative agency in accordance with this Law or an order or ordinance thereunder, except through his representative with respect to his patent who has his domicile or residence in Japan (hereinafter referred to as "patent administrator").

(2) The patent administrator shall represent the principal in all procedures and in a suit instituted against measures taken by an administrative agency in accordance with this Law or an order or ordinance thereunder. However, this provision shall not apply where a resident abroad restricts the scope of power of attorney of his patent administrator.

(Scope of powers of attorney)

9.-- A representative of a person who is domiciled or a resident (or, in the case of a legal entity, established) in Japan and who is proceeding before the Office shall not, unless expressly so empowered, convert, abandon or withdraw a

**patent application, withdraw an application for registration of an extension of the term of a patent right, withdraw a demand, request or motion, make or withdraw a priority claim under Section 41(1), demand a trial under Section 121(1), surrender a patent right or appoint a sub-representative.**

**10.-- Deleted.**

**(Non-extinguishment of powers of attorney)**

**11.-- The power of attorney of a representative of a person proceeding before the Office shall not become extinguished on the principal's death or on merger in the case of a legal entity, or on the termination of the duty of trust, where a trustee is the principal, or on the death of a legal representative or on the modification or extinguishment of his power of attorney.**

**(Independent representation)**

**12.-- Where a person proceeding before the Office has two or more representatives, each of them shall represent the principal.**

**(Replacement of representatives, etc.)**

**13.--(1) The Commissioner of the Patent Office or the trial examiner-in-chief may, if he considers a person proceeding before the Office to be incompetent, order a representative to act.**

**(2) The Commissioner of the Patent Office or the trial examiner-in-chief may, if he considers the representative of a person proceeding before the Office to be incompetent, order him to be replaced.**

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

**(4) The Commissioner of the Patent Office or the trial examiner-in-chief may dismiss any action taken before the Office by a person or representative referred to respectively in Subsection (1) or (2) after the issuance of an order under Subsection (1) or (2).**

**(Mutual representation of parties)**

**14.-- Where two or more persons are jointly proceeding before the Office, each of them shall represent the other or others with respect to a procedure other than the conversion, abandonment and withdrawal of a patent application, the withdrawal of an application for registration of an extension of the term of a patent right, the withdrawal of a demand, request or motion, the making and withdrawal of a priority claim under Section 41(1), and the demand for a trial under Section 121(1). However, this provision shall not apply where they have appointed a representative for both or all of them and have notified the Office accordingly.**

**(Venue of court for residents abroad)**

**15.-- With respect to a patent right or other right relating to a patent of a resident abroad, the domicile or residence of his patent administrator or, where there is no such administrator, the location of the Patent Office shall be the place of the property under Section 5(iv) of the Code of Civil Procedure (Law No. 109 of 1996).**

**(Ratification of acts of persons lacking capacity)**

**16.--(1) The acts of a minor (other than one who has independent capacity to perform legal acts) or of a person declared to be under disability may be ratified by his legal representative (or by the principal when he has gained capacity to proceed before the Office).**

**(2) The acts of a person who has no power of attorney may be ratified by the principal when he has capacity to proceed before the Office or by his legal representative.**

**(3) The acts of a person under a quasi-disability taken without his curator's consent may be ratified by such person with his curator's consent.**

**(4) The acts of a legal representative taken without the consent of the supervisor of guardianship, where there is such a supervisor, may be ratified by the legal representative when he has obtained the supervisor's consent or by the principal when he has gained capacity to proceed before the Office.**

**(Amendment of proceedings)**

**17.--(1) A person who is proceeding before the Office may make amendments only during the pendency of the case before the Office. However, subject to Section 17bis, 17ter or 17quater, he may not amend the specification, the drawings or the abstract attached to the request as well as the corrected specification or drawings attached to the written demand under Section 126(1), Section 134(2) or 120quater(2).**

**(2) Notwithstanding the principal sentence of Subsection (1), an applicant of a foreign language file application referred to in Section 36bis(2) may not amend the foreign language file and foreign language abstract referred to in Section 36bis(1).**

**(3) The Commissioner of the Patent Office may invite amendment, designating an adequate time limit, in the following cases:**

**(i) when the requirements of Section 7(1) to (3) or 9 have not been complied with;**

**(ii) when the formal requirements specified in this Law or in an order or ordinance thereunder have not been complied with;**

**(iii) when the fees due to be paid under Section 195(1) to (3) have not been paid with respect to a procedure.**

**(4) Subject to Section 17bis(2), any amendment under the principal sentence of Subsection (1) of this Section (except in the case of the payment of fees) shall be submitted in writing.**

**(Amendment of specification or drawings attached to request)**

**17bis.--(1) An applicant for a patent may, before the transmittal of the copy of an examiner's decision that a patent is to be granted, amend the specification or drawings attached to the request. However, after the receipt of the notification under Section 50, the amendment may be made only in the following cases:**

**(i) where the applicant has received a first notification (referred to in this Section as "the notification of reasons for refusal") under Section 50 [including its application under Section 159(2) (including its application under Section 174(1) and under Section 163(2)) (hereinafter referred to in this paragraph as "Section 50")] and amendment is made within the time limit designated in accordance with Section 50;**

**(ii) where the applicant has received a notification of refusal and amendment is made within the time limit designated in accordance with Section 50 with respect to the final notification of reasons for refusal;**

**(iii) where the applicant demands a trial under Section 121(1) and amendment is made within 30 days of such demand.**

**(2) Where the applicant of a foreign language file application under Section 36bis(2) amends the specification or drawings under Subsection (1) for the object of the correction of an incorrect translation, he shall submit a written correction of an incorrect translation stating the grounds thereof.**

**(3) An amendment of the specification or drawings under Subsection (1) shall, except in the case of submission of the written correction of an incorrect translation, remain within the scope of the features disclosed in the specification or drawings originally attached to the request [in the case of a foreign language file application under Section 36bis(2), the translation of the foreign language file referred to in said Subsection (2) is considered to be a specification and drawings by virtue of the provisions of said Section (4) (in the case where the applicant amended the specification or drawings by submitting of the written correction of an incorrect translation, said translation, the specification or drawings as amended)].**

**(4) Subject to the provisions of the preceding subsection, in the case of Subsection (1)(ii) and (iii) of this Section, the amendment of the claim or claims shall be limited to the following:**

**(i) the cancellation of the claim or claims referred to in Section 36(5);**

(ii) the restriction of the claim or claims (only the restriction of all or some of the matters necessary to define the invention claimed in the claim or claims under Section 36(5) and the industrial applicability and the problem to be solved of the invention claimed in the amended claim or claims are the same as those of the invention claimed in the claim or claims prior to the amendment);

(iii) the correction of errors in the description;

(iv) the clarification of an ambiguous description (only the amendment with respect to the matters mentioned in the reasons for the refusal concerned in the notification of the reasons for the refusal).

(5) Section 126(4) shall apply mutatis mutandis to the case of the preceding subsection.

(Amendment of abstract)

**17ter.** -- An applicant for a patent may amend the abstract within one year and three months from the filing date of his patent application [or -- in the case of a patent application containing a priority claim under Section 41(1) -- the filing date of the earlier application referred to in Section 41(1), -- in the case of a patent application containing a priority claim under Section 43(1) or 43bis(1) or (2) -- the filing date of the first application or the application considered to be the first application in accordance with Article 4C(4) of the Paris Convention (meaning the Paris Convention for the Protection of Industrial Property of March 20, 1883, as revised at Brussels on December 14, 1990, 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 -- hereinafter the same) or of an application recognized as the first application in accordance with Article A(2) of the Paris Convention; and, in the case of a patent application containing two or more priority claims under Section 41(1), 43(1), or 43bis(1) or (2), from the earliest date amongst the filing dates of the applications whose priorities are so claimed -- the same meaning as Section 64(1)].

(Amendment of corrected specification or drawings)

**17quater.** -- (1) A patentee may amend the corrected specification or drawings attached to the written demand for a correction under Section 120quater(2), only within the time limit designated under Section 165 as applied under Section 120quater(1) or (3).

(2) The defendant of a trial under Section 123(1) may amend the specification or drawings attached to the written demand for a correction under Section 134(2), only within the time limit designated under Section 134(1), under Section 165 as applied under Section 134(5) or under Section 153(2).

(3) The demandant of a trial under Section 126(1) may amend the specification or drawings attached to the written demand for a trial under Section 126(1), only before he is notified under Section 156(1) (in the case where the trial has been reopened under Section 156(2), before he is notified again under Section 156(1)).

(Dismissal of procedure)

**18.** -- (1) The Commissioner of the Patent Office may dismiss a procedure when a person whom he has invited to make amendment in accordance with Section 17(3) fails to do so within the time limit designated in accordance with that subsection or when a person who is to obtain registration of the establishment of a patent right fails to pay the annual fees within the time limit fixed in Section 108(1).

(2) The Commissioner of the Patent Office may dismiss an application for a patent where he has invited the applicant, in accordance with Section 17(3), to pay the fee under Section 195(3) and the applicant fails to do so within the time limit designated in accordance with Section 17(3).

(Dismissal of an irregular procedure)

**18bis.** -- (1) The Commissioner of the Patent Office shall dismiss an irregular procedure which cannot be amended.

(2) Where the Commissioner of the Patent Office intends to dismiss a procedure under the preceding Subsection, he shall notify the person who is proceeding of the reasons for dismissal designating an adequate time limit and give him an opportunity to submit a statement describing an explanation (hereinafter referred to as "explanatory statement").

(Time of submission of request, etc.)

**19.--** Where a request, document or any other matter to be submitted to the Patent Office in accordance with this Law, or an order or ordinance thereunder, within a specified time limit is sent by mail, the request, document or matter shall be deemed to have reached the Office at the date and time when it was handed in to a post office, if such date and time are proved by the receipt of the mail, or at the date and time on the postmark if they are clearly indicated, or at 12.00 p.m. on the date indicated on the postmark if only the date is clear.

(Succession to effects of procedure)

**20.--** The effects of a procedure regarding a patent right or other right relating to a patent shall extend to a successor in title.

(Continuation of procedure)

**21.--** Where a patent right or other right relating to a patent is transferred while the case is pending in the Patent Office, the Commissioner of the Patent Office or the trial examiner-in-chief may continue the procedure concerned on behalf of the successor in title.

(Interruption or suspension of procedure)

**22.--(1)** The Commissioner of the Patent Office or the trial examiner shall, in regard to a motion for the resumption of a procedure interrupted after the transmittal of a ruling, an examiner's decision or a trial decision, render a ruling as to whether the procedure may be resumed.

(2) Such a ruling shall be in writing and state the reasons therefor.

(Interruption or suspension of procedure)

**23.--(1)** Where a person who is to resume the procedure for an examination or a trial examination of the opposition to the patent and ruling thereon, a trial or retrial which has been interrupted fails to do so, the Commissioner of the Patent Office or the trial examiner shall, upon a motion or ex officio, order such person to resume the procedure and designate an adequate time limit for this purpose.

(2) Where the procedure is not resumed within the time limit designated in accordance with the preceding subsection, the resumption may be deemed by the Commissioner of the Patent Office or the trial examiner to have commenced on the date when the time limit expired.

(3) When the resumption is deemed to have taken place, in accordance with the preceding subsection, the Commissioner of the Patent Office or the trial examiner-in-chief shall notify the parties accordingly.

(Interruption or suspension of procedure)

**24.--** Sections 124(excluding (1)(vi)), 125 to 127, 128(1), 130, 131 and 132(2)(interruption or suspension of litigation) of the Code of Civil Procedure shall apply mutatis mutandis to the procedure with respect to an examination, a trial examination of the opposition to the patent and ruling thereon, a trial or retrial. In such a case, "process attorney" in Section 124(2), "court" in Section 127, "court" in Section 128(1) and 131, and "court" in Section 130 of the said Code shall read, respectively, "representative entrusted with the examination, trial examination of the opposition to the patent and ruling thereon, a trial or retrial," "Commissioner of the Patent Office or the trial examination-in-chief," "Commissioner of the Patent Office or the trial examiner," and "Patent Office".

(Enjoyment of rights by aliens)

**25.--** An alien who is neither domiciled nor a resident (nor established, in the case of a legal entity) in Japan shall not enjoy a patent right or other right relating to a patent, except in any one of the following cases:

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

(ii) where his country allows Japanese nationals to enjoy patent rights or other rights relating to a patent under the same conditions as its own nationals provided that Japan allows his country's nationals to enjoy such rights;

(iii) where there are specific provisions in a treaty.

(Effect of treaties)

**26.--** Where there are specific provisions relating to patents in a treaty, such provisions shall prevail.

**(Registration in Patent Register)**

**27.--(1)** The following matters shall be registered in the Patent Register kept in the Patent Office:

- (i)** the establishment, extension of the term, transfer, extinguishment, restoration or restriction on disposal, of a patent right;
- (ii)** the establishment, maintenance, transfer, modification, extinguishment or restriction on disposal, of an exclusive or non-exclusive license;
- (iii)** the establishment, transfer, modification, extinguishment or restriction on disposal, of rights in a pledge upon a patent right or an exclusive or non-exclusive license.

**(2)** The Patent Register, either in whole or in part, may be prepared by means of magnetic tapes (including other materials on which matters can be accurately recorded by an equivalent method -- hereinafter referred to as "magnetic tapes").

**(3)** Other matters relating to registration that are not provided for in this Law shall be prescribed by Cabinet Order.

**(Issuance of Certificate of Patent)**

**28.--(1)** When the establishment of a patent right has been registered or when a ruling or trial decision to the effect that the specification or drawings attached to the request are to be corrected has become final and conclusive and such decision has been registered, the Commissioner of the Patent Office shall issue the certificate of patent to the patentee.

**(2)** Re-issuance of the certificate of patent shall be prescribed by an ordinance of the Ministry of International Trade and Industry.PAT.LAW-1P. 10

## **Chapter II Patents and Applications for Patents**

**(Patentability of inventions)**

**29.--(1)** Any person who has made an invention which is industrially applicable may obtain a patent therefor, except in the case of the following inventions:

- (i)** inventions which were publicly known in Japan prior to the filing of the patent application;
- (ii)** inventions which were publicly worked in Japan prior to the filing of the patent application;
- (iii)** inventions which were described in a publication distributed in Japan or elsewhere prior to the filing of the patent application.

**(2)** Where an invention could easily have been made, prior to the filing of the patent application, by a person with ordinary skill in the art to which the invention pertains, on the basis of an invention or inventions referred to in any of the paragraphs of Subsection (1), a patent shall not be granted for such an invention notwithstanding Subsection (1).

**(Patentability of inventions)**

**29bis.--** Where an invention claimed in a patent application is identical with an invention or device (excluding an invention or device made by the same person as the inventor of the invention claimed in the patent application) disclosed in the specification or drawings originally attached to the request of another application for a patent (in the case of a foreign language file application referred to in Section 36bis(2) of this Law, the foreign language file referred to in Section 36bis(1) of the said Law) or of an application for a utility model registration which was filed earlier than the patent application and for which the Patent Gazette which states the matter referred to in each paragraph of Section 66(3) of the said Law (hereinafter referred to as "the Gazette containing the Patent") was published under the said subsection or the laying open for public inspection (Kokai) was effected or the Utility Model Gazette which states the matter referred to in each paragraph of Section 14(3) of Utility Model Law (No. 123 of 1959) (hereinafter referred to as "the Gazette containing the Utility Model") was published under the said subsection after the filing of the patent application, a patent shall not be granted for the invention notwithstanding Section 29(1). However, this provision shall not apply where, at the time of filing of the patent application, the applicant of the patent application and the applicant



of the other application for a patent or the application for a utility model registration are the same person.

**(Exceptions to lack of novelty of invention)**

**30.--(1) In the case of an invention which has fallen under any of the paragraphs of Section 29(1) by reason of the fact that the person having the right to obtain a patent has conducted an experiment, has made a presentation in a printed publication, or has made a presentation in writing at a study meeting held by a scientific body designated by the Commissioner of the Patent Office, such invention shall be deemed not to have fallen under any of the paragraphs referred to, provided that such person has filed a patent application within six months from the date on which the invention first fell under those paragraphs.**

**(2) In the case of an invention which has fallen under any of the paragraphs of Section 29(1) against the will of the person having the right to obtain a patent, the preceding subsection shall also apply, provided that such person has filed a patent application within six months from the date on which the invention first fell under those paragraphs.**

**(3) In the case of an invention which has fallen under any of the paragraphs of Section 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 by any local public entity (hereinafter referred to as the "Government, etc.") or at one which is not held by the Government, etc. but is designated by the Commissioner of the Patent Office, or at an international exhibition held in the territory of a country party to the Paris Convention or of a Member of the World Trade Organization by its government, etc. or by a person authorized thereby, or at an international exhibition held in the territory of a country not party to the Paris Convention nor a Member of the World Trade Organization by its government, etc. or by a person authorized thereby where such country has been designated by the Commissioner of the Patent Office, Subsection (1) shall also apply, provided that the person having the right to obtain a patent has filed a patent application within six months from the date on which the invention first fell under those paragraphs.**

**(4) Any person who desires the application of Subsection (1) or the preceding subsection with respect to an invention claimed in a patent application shall submit a written statement to that effect to the Commissioner of the Patent Office simultaneously with the patent application. Within 30 days of the filing of the patent application, he shall also submit to the Commissioner of the Patent Office a document proving that the invention claimed in the patent application is an invention falling under Subsection (1) or the preceding subsection.**

**31.-- Deleted.**

**(Unpatentable inventions)**

**32.-- The inventions liable to contravene public order, morality or public health shall not be patented, notwithstanding Section 29.**

**(Right to obtain patent)**

**33.--(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) A joint owner of the right to obtain a patent may not assign his share without the consent of all the other joint owners.**

**(Right to obtain patent)**

**34.--(1) The succession to the right to obtain a patent before the filing of the patent application shall not be effective against third persons unless the successor in title files the patent application.**

**(2) Where two or more applications for a patent are filed on the same date, on the basis of the same right to obtain a patent that has been derived by succession from the same person, the succession by any person other than the one agreed upon by the patent applicants shall not be effective against third persons.**

**(3) The preceding subsection shall also apply where a patent application and a utility model application are filed on the same date, on the basis of a right to obtain a patent and utility model registration for the same invention and device**

which has been derived by succession from the same person.

**(4) The succession to the right to obtain a patent after the filing of the patent application shall not take effect unless the Commissioner of the Patent Office is notified accordingly, except in the case of inheritance or other general succession.**

**(5) Upon inheritance or other general succession with respect to a right to obtain a patent, the successor in title shall notify the Commissioner of the Patent Office accordingly without delay.**

**(6) Where two or more notifications are made on the same date, on the basis of the same right to obtain a patent that has been derived by succession from the same person, a notification made by any person other than the one agreed upon after mutual consultation among the persons making the notifications shall not take effect.**

**(7) Section 39(7) and (8) shall apply mutatis mutandis to the cases under Subsections (2), (3) and (6).**

**(Employees' inventions)**

**35.--(1) An employer, a legal entity or a state or local public entity (hereinafter referred to as the "employer, etc.") shall have a non-exclusive license on the patent right concerned, where an employee, an executive officer of a legal entity or a national or local public official (hereinafter referred to as the "employee, etc.") has obtained a patent for an invention which by reason of its nature falls within the scope of the business of the employer, etc. and an act or acts resulting in the invention were part of the present or past duties of the employee, etc. performed on behalf of the employer, etc. (hereinafter referred to as an "employee's invention") or where a successor in title to the right to obtain a patent for an employee's invention has obtained a patent therefor.**

**(2) In the case of an invention made by an employee, etc. which is not an employee's invention, any contractual provision, service regulation or other stipulation providing in advance that the right to obtain a patent or the patent right shall pass to the employer, etc. or that he shall have an exclusive license on such invention shall be null and void.**

**(3) The employee, etc. shall have the right to a reasonable remuneration when he has enabled the right to obtain a patent or the patent right with respect to an employee's invention to pass to the employer, etc. or has given the employer, etc. an exclusive right to such invention in accordance with the contract, service regulations or other stipulations.**

**(4) The amount of such remuneration shall be decided by reference to the profits that the employer, etc. will make from the invention and to the amount of contribution the employer, etc. made to the making of the invention.**

**(Applications for patent)**

**36.--(1) Any person desiring a patent shall submit a request to the Commissioner of the Patent Office stating the following:**

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

**(ii) the title of the invention;**

**(iii) the name and the domicile or residence of the inventor.**

**(2) The request shall be accompanied by the specification, any drawings necessary and the abstract.**

**(3) The specification under Subsection (2) shall state the following:**

**(i) the title of the invention;**

**(ii) a brief explanation of the drawings;**

**(iii) a detailed explanation of the invention;**

**(iv) patent claim(s).**

**(4) The detailed explanation of the invention under the preceding Subsection (iii) shall state the invention, as provided for in an ordinance of the Ministry of International Trade and Industry, in a manner sufficiently clear and complete for the invention to be carried out by a person having ordinary skill in the art to which the invention pertains.**

**(5) In the patent claim under Subsection (3)(iv), there shall be set forth, by statements separated on a claim by a claim basis, all matters which an applicant for a patent considers necessary in defining an invention for which a patent is sought. In such a case, it shall not preclude the statements of the patent claim(s) to be such that an invention claimed in one claim is the same as an invention claimed in another claim.**

**(6) The statement of the patent claim(s) under Subsection (3)(iv) shall comply with each of the following paragraphs:**

**(i) statements setting forth the invention(s) for which patent is sought and which is described in the detailed explanation of the invention;**

**(ii) statements setting forth the invention(s) for which a patent is sought and which is clear;**

**(iii) statements setting forth the claim(s) which is concise;**

**(iv) statements which are as provided for in an ordinance of the Ministry of International Trade and Industry.**

**(7) The abstract under Subsection (2) shall state the summary of the invention disclosed in the specification or drawings and other matters provided for in an ordinance of the Ministry of International Trade and Industry.**

**(Applications for patent)**

**36bis.--(1) Any person desiring a patent may, in lieu of the specification, drawings necessary and abstract under the preceding Section (2), attach to the request a paper stating the matters to be stated in the specification under the preceding Section (3) to (6) in a foreign language specified in an ordinance of the Ministry of International Trade and Industry and any text matter of the drawings in the foreign language (hereinafter referred to as the "foreign language file") and a paper stating the matters to be stated in the abstract under the preceding Section (7) in the foreign language (hereinafter referred to as the "foreign language abstract").**

**(2) The applicant of an application for a patent to which he has attached the foreign language file and foreign language abstract to the request under the preceding subsection (hereinafter referred to as the "foreign language file application") shall furnish to the Commissioner of the Patent Office a translation into Japanese of the foreign language file and foreign language abstract within two months from the filing date of the application for a patent.**

**(3) Where the translation of the foreign language file (excluding the drawings) referred to in the preceding subsection has not been furnished within the time limit prescribed in that subsection, the application for a patent shall be deemed withdrawn.**

**(4) The translation of the foreign language file referred to in Subsection (2) is deemed to be the specification and drawings as submitted attached to the request under the preceding Section (2) and the translation of the foreign language abstract referred to in Subsection (2) is deemed to be the abstract as submitted attached to the request under the preceding Section (2).**

**(Applications for patent)**

**37.-- Where there are two or more inventions, they may be the subject of a patent application in the same request provided that these inventions are of an invention claimed in one claim (hereinafter referred to as "the specified invention") and of another or other inventions having the relationship as indicated below with respect to such specified invention:**

**(i) inventions of which the industrial applicability and the problem to be solved are the same as those of the specified invention;**

**(ii) inventions of which the industrial applicability and the substantial part of the features stated in the claim are the same as those of the specified invention;**

**(iii) where the specified invention relates to a product, inventions of process of manufacturing the product, inventions**

**of process of using the product, inventions of process used for handling the product, inventions of machines, instruments, equipment or other things used for manufacturing the product, inventions of products solely utilizing the specific properties of the product, or inventions of things used for handling the product;**

**(iv) where the specified invention relates to a process, inventions of machines, instruments, equipment or other things used directly in the working of the specified invention;**

**(v) inventions having a relationship as provided for in Cabinet Order.**

**(Joint applications)**

**38.-- Where the right to obtain a patent is owned jointly, the patent may only be applied for jointly by all the joint owners.**

**(First-to-file rule)**

**39.--(1) Where two or more patent applications relating to the same invention are filed on different dates, only the first applicant may obtain a patent for the invention.**

**(2) Where two or more patent applications relating to the same invention are filed on the same date, only one such applicant, agreed upon after mutual consultation among all the applicants, may obtain a patent for the invention. If no agreement is reached or no consultation is possible, none of the applicants shall obtain a patent for the invention.**

**(3) Where an invention claimed in a patent application is the same as a device claimed in a utility model application and the applications are filed on different dates, the patent applicant may obtain a patent only if his application was filed before the utility model application.**

**(4) Where an invention claimed in a patent application is the same as a device claimed in a utility model application and the applications are filed on the same date, only one applicant, agreed upon after mutual consultation between the applicants, may obtain the patent or the utility model registration. If no agreement is reached or no consultation is possible, the patent applicant shall not obtain a patent for the invention.**

**(5) Where a patent application or a utility model applications is withdrawn or dismissed, such application shall, for the purposes of Subsections (1) to (4), be deemed never to have been made.**

**(6) A patent application or a utility model application filed by a person who is neither the inventor nor the creator nor the successor in title to the right to obtain a patent or utility model registration shall, for the purposes of Subsections (1) to (4), be deemed not to be a patent application or a utility model application.**

**(7) The Commissioner of the Patent Office shall, in the case of Subsection (2) or (4), order the applicants to hold consultations for an agreement under Subsection (2) or (4) and to report the result thereof, within an adequate time limit.**

**(8) Where the report under the preceding subsection is not made within the time limit designated in accordance with that subsection, the Commissioner of the Patent Office may deem that no agreement under Subsection (2) or (4) has been reached.**

**40.-- Deleted.**

**(Priority claim based on patent application, etc.)**

**41.--(1) Any person desiring a patent may declare a priority claim for the invention claimed in a patent application on the basis of the invention which has been disclosed in the specification or drawings originally attached to the request (in the case where the earlier application is a foreign language file application, the foreign language file) of a patent or utility model application in which he has the right to obtain a patent or utility model registration and which has been filed earlier (hereinafter referred to as an "earlier application") except in the following cases:**

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

(ii) the earlier application is a new patent application divided out from a patent application under Section 44(1), a patent application converted from an application under Section 46(1) or (2), or a new utility model application divided out from a utility model application under Section 44(1) of this Law as applied under Section 11(1) of the Utility Model Law or a utility model application converted from an application under Section 10(1) or (2) of the Utility Model Law;

(iii) at the time when the patent application concerned is filed, the earlier application has been abandoned, withdrawn or dismissed;

(iv) at the time when the patent application concerned is filed, the examiner's decision or the trial decision on the earlier application has become final and conclusive;

(v) at the time when the patent application concerned is filed, the registration of establishment referred to in Section 14(2) of the Utility Model Law with respect to the earlier application has been effected.

(2) For inventions which are amongst those claimed in a patent application containing a priority claim under Subsection (1) and which are disclosed in the specification or drawings (in the case where the earlier application is a foreign language file application, the foreign language file) originally attached to the request of an earlier application whose priority is so claimed [in the case where the earlier application contains a priority claim under Subsection (1) or under Section 8(1) of the Utility Model Law or a priority claim under Section 43(1) or Section 43bis(1) or (2) of this Law (including its application under Section 11(1) of the Utility Model Law), excluding the inventions disclosed in the document (limited to those equivalent to the specification and drawings) submitted at the time of the filing of the application whose priority is claimed for the earlier application]: the patent application concerned shall be deemed to have been filed at the time when the earlier application was filed, for the purposes of Section 29, the principal sentence of Section 29bis and Sections 30(1) to (3), 39(1) to (4), 69(2)(ii), 72, 79, 81, 82(1), 104 [including its application under Section 65(5) (including its application under Section 184decies(2))], and 126(4) (including its application under Sections 17bis(5), 120quater(3) and 134(5)) of this Law, for the purposes of Sections 7(3) and 17 of the Utility Model Law, and for the purposes of Sections 26, 31(2), and 32(2) of the Design Law (Law No. 125 of 1959).

(3) For inventions which are amongst those disclosed in the specification or drawings (in the case of a foreign language file application, in the foreign language file) originally attached to the request of a patent application containing a priority claim under Subsection (1) and which are disclosed in the specification or drawings (in the case where the earlier application is a foreign language file application, the foreign language file) originally attached to the request of an earlier application whose priority is so claimed [in the case where the earlier application contains a priority claim under that subsection or Section 8(1) of the Utility Model Law or a priority claim under Section 43(1) or 43bis(1) or (2) of this Law (including its application under Section 11(1) of the Utility Model Law), excluding the inventions disclosed in the documents (limited to those equivalent to the specification and drawings) submitted at the time of the filing of the application whose priority is claimed for the earlier application]: the laying open for public inspection or the Gazette containing the Utility Model relating to the earlier application shall be deemed to have been effected or published at the time when the publication of the Gazette containing the Patent or the laying open for public inspection relating to the patent application concerned was published or effected, for the purposes of the principal sentence of Section 29bis of this Law or the principal sentence of Section 3bis of the Utility Model Law.

(4) A person desiring to declare a priority claim under Subsection (1) shall, simultaneously with the patent application, submit to the Commissioner of the Patent Office a document setting forth a statement to that effect and an identification of the earlier application.

(Withdrawal, etc. of earlier application)

42.--(1) The earlier application whose priority is claimed under Section 41(1) shall be deemed to have been withdrawn at the expiration of one year and three months from the filing date of that earlier application. However, where that earlier application has been abandoned, withdrawn or dismissed, where the examiner's decision or trial decision on that earlier application has become final and conclusive, where the registration of establishment referred to in Section 14(2) of the Utility Model Law with respect to the earlier application has been effected, or where all of the priority claims based on that earlier application have been withdrawn, this provision shall not apply.

(2) The applicant of a patent application containing a priority claim under Section 41(1) shall not withdraw the priority claim after the expiration of one year and three months from the filing date of the earlier application.

(3) Where the patent application containing a priority claim under Section 41(1) is withdrawn within one year and

three months from the filing date of the earlier application, the priority claim shall be deemed to have been withdrawn simultaneously.

**(Priority claim under the Paris Convention)**

**43.--(1) A person desiring to declare a priority claim in respect of a patent application under D(1) of Article 4 of the Paris Convention shall, simultaneously with the patent application, submit to the Commissioner of the Patent Office a document setting forth a statement to that effect and specifying the country party to the Paris Convention in which the application was first filed, or considered under C(4) of the said Article to have been first filed, or recognized under A(2) of the said Article to have been first filed, as well as the filing date of such application.**

**(2) A person who has declared a priority claim or priority claims by virtue of the preceding subsection shall submit a written statement to the Commissioner of the Patent Office setting forth the filing date or dates of the application or applications, certified by the country party to the Paris Convention in which the application or applications were first filed, or considered under C(4) of Article 4 of the Paris Convention to have been first filed, or recognized under A(2) of the said Article to have been first filed, as well as a certified copy of each of the specifications and drawings of the inventions or a copy of each of the official gazettes or certificates having the same contents which have been issued by the government of the member country concerned, within one year and four months from the earliest of the following filing dates:**

**(i) the filing date of said application first filed, or of the said application considered under C(4) of Article 4 of the Paris Convention to have been first filed or of the said application recognized under A(2) of the said Article to have been first filed;**

**(ii) the filing date or dates of the said application or applications whose priority or priorities are claimed in the case where the patent application contains a priority claim or priority claims under Section 41(1);**

**(iii) the filing date or dates of the application whose priority is so claimed, where the patent application concerned contains other priority claim under Subsection (1) or Section 43bis(1) or (2).**

**(3) A person who has declared a priority claim by virtue of Subsection (1) shall, together with the documents referred to in the preceding subsection, submit a document to the Commissioner of the Patent Office specifying the number of the first application, or the application considered under C(4) of Article 4 the Paris Convention or recognized under A(2) of the said Article to be the first application. However, when the number is not available before the submission of the documents referred to in that subsection, he shall submit a document setting forth the reason therefor instead of the document referred to and shall submit a document specifying the number as soon as it becomes available.**

**(4) Where a person who has declared a priority claim by virtue of Subsection (1) fails to submit the documents referred to in Subsection (2) within the time limit prescribed therein, the priority claim concerned shall lose its effect.**

**(Priority claim declared as governed by the Paris Convention)**

**43bis.--(1) A priority claim based on an application which a person specified in the left-hand column of the following table has filed in or for any country specified in the right-hand column of the following table may be declared as governed by the provision in Article 4 of the Paris Convention for an patent application:**

Japanese nationals or nationals of a country party to the Paris Convention (including nationals deemed to be the nationals of the country party in accordance with Article 3 of the Paris Convention -- hereinafter the same in Subsection (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 in Subsection (2)).	Country party to the Paris Convention or Member of the World Trade Organization

**(2) A priority claim based on an application which the nationals of a country which is neither a party to the Paris Convention nor a Member of the World Trade Organization (limited to the country which allows Japanese nationals to declare a priority claim under the same condition as in Japan and which the Commissioner of the Patent Office designates -- hereinafter referred to as the "specified country" in this subsection) and a priority claim based on an application which Japanese nationals or the nationals of a country party to the Paris Convention or a Member of the World Trade Organization have filed in or for any specified country may be declared as governed by the provisions in Article 4 of the Paris Convention for a patent application.**

**(3) Section 43 shall apply mutatis mutandis to the declaration of a priority claim under Subsection (1) or (2).**

**(Division of patent applications)**

**44.--(1) An applicant for a patent may divide a patent application comprising two or more inventions into one or more new patent applications only within the time limit by which the specification or drawings attached to the request may be amended.**

**(2) In such a case, the new patent application shall be deemed to have been filed at the time of filing of the original application. However, this provision shall not apply, where the new patent application is either another application for a patent as referred to in Section 29bis of this Law or an application for a patent as referred to in Section 3bis of the Utility Model Law for the purposes of those sections and of Sections 30(4), 36bis(2), 41(4) and 43(1) and (2) (including its application under Section 43bis(3)).**

**45.-- Deleted.**

**(Conversion of applications)**

**46.--(1) An application for a utility model registration may convert his application into a patent application.**

**(2) An applicant for a design registration may convert his application into a patent application. However, this provision shall not apply after 30 days from the transmittal of the examiner's first decision that the design application is to be refused or after seven years from the filing date of the design application (excluding the 30-day period counted from the transmittal of the examiner's first decision that the design application is to be refused).**

**(3) The 30-day period prescribed in the proviso to Subsection (2) shall, when the time limit prescribed in Section 46(1) of the Design Law has been extended in accordance with Section 4 of this Law as applied under Section 68(1) of the Design Law, be deemed to have been extended only for that period as extended.**

**(4) Where the conversion of an application under Subsection (1) or (2) has been made, the original application shall be deemed to have been withdrawn.**

**(5) Section 44(2) shall apply mutatis mutandis to the conversion of an application under Subsection (1) or (2).**

## **Chapter III The Examination**

**(Examination by examiner)**

**47.--(1) The Commissioner of the Patent Office shall have applications for patent examined by an examiner.**

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

**(Exclusion of examiners)**

**48.-- Section 139(i) to (v) and (vii) shall apply mutatis mutandis to examiners.**

**(Examination of patent applications)**

**48bis.-- The examination of patent applications shall be carried out upon a request for examination.**

**(Requests for examination)**

**48ter.--(1) When a patent application has been filed, any person may, within seven years from the date thereof, make a request for examination to the Commissioner of the Patent Office.**

**(2) With respect to a new patent application resulting from the division of a patent application under Section 44(1) or a patent application resulting from the conversion of an application under Section 46(1) or (2), a request for examination may be made even after the period prescribed in the preceding Subsection (1), but only within 30 days from the division of the patent application, or the conversion of the application.**

**(3) A request for examination may not be withdrawn.**

**(4) When a request for examination has not been made within the time limit prescribed therefor in Subsection (1) or (2), the patent application concerned shall be deemed withdrawn.**

**(Requests for examination)**

**48quater.-- Any person desiring to make a request for examination shall submit a written request to the Commissioner of the Patent Office stating the following:**

- (i) the name and the domicile or residence of the person making the request;**
- (ii) the patent application in respect of which the request for examination is made.**

**(Requests for examination)**

**48quinquies.--(1) The Commissioner of the Patent Office shall, where a request for examination has been made before the laying open of the application, publish such fact in the Patent Gazette at the time when the application is laid open or as soon as possible thereafter; where a request for examination has been made after the laying open of the application, he shall publish such fact in the Patent Gazette without delay.**

**(2) Where a request for examination has been made by a person other than the applicant, the Commissioner of the Patent Office shall notify the applicant accordingly.**

**(Preferential examination)**

**48sexies.-- When the Commissioner of the Patent Office recognizes that a person other than the applicant is commercially working the invention claimed in a patent application after the laying open of the application, he may, if necessary, direct the examiner to examine the application in preference to other patent applications.**

**(Examiner's decision of refusal)**

**49.-- The examiner shall make a decision that a patent application is to be refused where it falls under any of the following paragraphs:**

- (i) the amendment to the specification or drawings attached to the request does not comply with the requirements under Section 17bis(3);**
- (ii) the invention claimed in the patent application is not patentable under Section 25, 29, 29bis, 32, 38 or 39(1) to (4);**
- (iii) the invention claimed in the patent application is not patentable in accordance with the provisions of a treaty;**
- (iv) the patent application does not comply with the requirements under Section 36(4) or (6), or Section 37;**
- (v) when the patent application concerned is a foreign language file application, the features disclosed in the specification or drawings attached to the request of the patent application do not remain within the scope of the features disclosed in the foreign language document;**
- (vi) the applicant for a patent who is not the inventor has not succeeded to the right to obtain a patent for the invention concerned.**

**(Notification of reasons for refusal)**



**50.--** When the examiner intends to render a decision that an application is to be refused, he shall notify the applicant for the patent of the reasons for refusal and give him an opportunity to submit a statement of his arguments, designating an adequate time limit. However, in the case of Section 17bis(1)(ii), this provision shall not apply to the case of a ruling to decline an application under Section 53(1).

(Examiner's decision that a patent is to be granted)

**51.--** When the examiner finds no reasons for refusal with respect to the patent application, he shall render a decision that a patent is to be granted.

(Formal requirements of decision)

**52.--(1)** The examiner's decision shall be in writing and shall state the reasons therefor.

(2) When the examiner's decision has been rendered, the Commissioner of the Patent Office shall transmit a copy of the decision to the applicant.

**52bis.--** Deleted.

(Declining of amendments)

**53.--(1)** In the case of Section 17bis(1)(ii), where, prior to the transmittal of the examiner's decision that a patent is to be granted, it is found that an amendment to the specification or drawings attached to the request does not comply with Section 17bis(3) to (5), the examiner shall decline the amendment by a ruling.

(2) The ruling to decline an amendment under the preceding subsection shall be in writing and shall state the reasons therefor.

(3) No appeal shall lie from a ruling to decline an amendment under Subsection (1). However, this provision shall not apply to the examination in a trial demanded under Section 121(1).

(Relationship with litigation)

**54.--(1)** The examination procedure may, if necessary, be suspended, until the ruling on the opposition to the patent or the trial decision has become final and conclusive or litigation procedure has been concluded.

(2) Where a suit or motion for provisional attachment or provisional disposal has been filed, the court may, if necessary, suspend the litigation procedure until the examiner's decision or the trial decision becomes final and conclusive.

**55.--** Deleted (to 63).

## **Chapter IIIbis Laying Open of Applications**

(Laying open of applications)

**64.--(1)** After one year and six months from the filing date of an application, the Commissioner of the Patent Office shall lay the patent application open for public inspection, unless the Gazette containing the Patent has already been published.

(2) The laying open for public inspection of a patent application shall be effected by publishing the following particulars in the Patent Gazette. However, this provision shall not apply to the particulars referred to in Paragraphs (iv) to (vi) where the Commissioner of the Patent Office recognizes that the publication of those particulars in the Patent Gazette is liable to contravene public order or morality:

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

(ii) the number and date of the application;

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

(iv) the particulars of the specification and the contents of the drawings attached to the request;

- (v) the particulars stated in the abstract attached to the request;**
- (vi) in the case of a foreign language file application, the particulars stated in the foreign language file and foreign language abstract;**
- (vii) the number and the date of the laying open;**
- (viii) other necessary particulars.**

**(3) In the case where the Commissioner of the Patent Office recognizes that a statement of the abstract attached to the request does not comply with Section 36(7) or, in other cases where he recognizes it necessary, he may, in lieu of the particulars stated in the abstract under Subsection (2)(v), publish those prepared by himself.**

**(Effects of laying open of applications)**

**65.--(1) When an applicant for a patent has, after the laying open of his patent application, given a warning with a written statement setting forth the contents of the invention claimed in the application, he may claim, against a person who has commercially worked the invention, after the warning but before the registration of the establishment of the patent right, the payment of compensation in a sum of money equivalent to what he would normally be entitled to receive for the working of the invention if the invention were patented. Even in the absence of the warning, the same shall apply to a person who commercially worked the invention before the registration of the establishment of the patent right, knowing that the invention was claimed in the patent application laid open for public inspection.**

**(2) The right to claim the compensation under Subsection (1) may not be exercised until after the establishment of the patent right is registered.**

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

**(4) Where a patent application has been abandoned, withdrawn or dismissed after the laying open of the patent application, or where the examiner's decision or a trial decision that the patent application is to be refused has become final and conclusive, or where the patent right has been deemed never to have existed under Section 112(6) (except where, thereafter, the patent right has been deemed to have existed from the beginning under Section 121bis(2)), or where the ruling to revoke the patent under Section 114(2) has become final and conclusive, or where, with exception of the cases coming within the proviso to Section 125, a trial decision that the patent is to be invalidated has become final and conclusive, the right under Subsection (1) shall be deemed never to have arisen.**

**(5) Sections 101, 104 and 105 of this Law and Sections 719 and 724 (tort) of the Civil Code (Law No. 89 of 1896) shall apply mutatis mutandis to the exercise of the right to claim the compensation under Subsection (1). In such a case, where a person having the right to claim the compensation has become aware, before the registration of the establishment of the patent right, of the fact that the invention claimed in the patent application was being worked and of the person working the invention, "the time when the injured party or his legal representative became aware of such damage and of the person causing it" in Section 724 of the said Code shall read "the date of the registration of the establishment of the patent right".**

## **Chapter IV The Patent Right**

### **Part 1. The Patent Right**

**(Registration of establishment of patent right)**

**66.--(1) A patent right shall come into force upon registration of its establishment.**

**(2) The establishment of a patent right shall be registered when the annual fees for the first to the third years under Section 107(1) have been paid or exemption or deferment of such payment has been granted.**

**(3) Upon registration under the preceding subsection, the following particulars shall be published in the Patent Gazette. However, this provision shall not apply to the particulars listed in Paragraph (v) where the patent application**

**has already been laid open for public inspection:**

- (i) the name and the domicile or residence of the patentee;**
- (ii) the number and the filing date of the patent application;**
- (iii) the name and the domicile or residence of the inventor;**
- (iv) the particulars stated in the specification and the contents of the drawings attached to the request of the application;**
- (v) the particulars stated in the abstract attached to the request;**
- (vi) the patent number and the date of registration of the establishment;**
- (vii) other necessary particulars.**

**(4) Section 64(3) shall apply mutatis mutandis where the particulars stated in the abstract listed in Section 64(3)(v) are published in the Patent Gazette under Subsection (3).**

**(5) During five months after the date of the publication of the Gazette containing the Patent, the Commissioner of the Patent Office shall make the application files and their attachments available for public inspection at the Patent Office.**

**(Term of patent right)**

**67.--(1) The term of the patent right shall be 20 years from the filing date of the patent application.**

**(2) The term of the patent right may be extended, upon application for registration of an extension, by a period not exceeding five years if, because of the necessity of obtaining an approval or other disposition which is governed by provisions in laws intended to ensure safety, etc. in the working of the patented invention, and which is provided for in Cabinet Order as being such that, in view of the object of the relevant disposition, proceedings, etc., a considerable period of time is required for the proper action for the disposition, it was not possible to work the patented invention for two years or more.**

**(Registration of extension of term of patent right)**

**67bis.--(1) A person desiring to apply for registration of an extension of the term of a patent right shall submit to the Commissioner of the Patent Office an application stating the following matters:**

- (i) the name and the domicile or residence of the applicant;**
- (ii) the Patent Number;**
- (iii) the term of the extension applied for (limited to a period of two years or more but not exceeding five years);**
- (iv) particulars of the disposition as provided for in Cabinet Order referred to in Section 67(2).**

**(2) The application under the preceding subsection shall be accompanied by materials which give reasons for the extension, as provided for in an ordinance of the Ministry of International Trade and Industry.**

**(3) The application for registration of an extension of the term of a patent right shall be made within the time limit prescribed by Cabinet Order counting from the date of obtaining the disposition provided for in Cabinet Order referred to in Section 67(2). However, the application shall not be made after six months prior to the date of expiration of the term of a patent right provided for in Section 67(1).**

**(4) Where a patent is owned jointly, each of the joint owners may not, except jointly with the other owners, apply for registration of an extension of the term of a patent right.**

**(5) Where an application for registration of an extension of the term of a patent right is filed, the term of the patent right shall be deemed to have been extended. However, this provision shall not apply when the examiner's decision that the application is to be refused has become final and conclusive or when an extension of the term of the patent right has been registered.**

**(6) When an application for registration of an extension of the term of a patent right is filed, the matters as set forth under each of the paragraphs in Subsection (1) shall be published in the Patent Gazette.**

**(Registration of extension of term of patent right)**

**67ter.--(1) The examiner shall make a decision that an application for registration of an extension of a patent right is to be refused where it falls under any of the following paragraphs:**

**(i) where it is not deemed that the obtaining of the disposition as provided for in Cabinet Order referred to in Section 67(2) was necessary for the working of the patented invention;**

**(ii) where the disposition as provided for in Cabinet Order referred to in Section 67(2) was not obtained by the patentee, or an exclusive licensee or a registered non-exclusive licensee under the patent;**

**(iii) where the period of time during which the patented invention could not be worked falls short of two years;**

**(iv) where the term for which an extension is applied exceeds the period of time during which the patented invention could not be worked;**

**(v) where the person applying for an extension is not the patentee concerned;**

**(vi) where the application does not comply with the requirements of Section 67bis(4).**

**(2) When the examiner finds no reasons for refusing an application for registration of an extension of the term of a patent right, he shall render a decision that the registration of the extension is to be made.**

**(3) When the decision under the preceding paragraph is rendered, the registration is made to the effect that the term of the patent right has been extended.**

**(4) When the registration under the preceding paragraph is made, the following particulars shall be published in the Patent Gazette:**

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

**(ii) the Patent Number;**

**(iii) the date of the registration of the extension;**

**(iv) the term of the extension;**

**(v) particulars of the disposition as provided for in Cabinet Order referred to in Section 67(2).**

**(Registration of extension of term of patent right)**

**67quater.-- Sections 47(1), 48, 50 and 52 shall apply mutatis mutandis to the examination of an application for registration of an extension of the term of a patent right.**

**(Effects of patent right)**

**68.-- A patentee shall have an exclusive right to commercially work the patented invention. However, where the patent right is the subject of an exclusive license, this provision shall not apply to the extent that the exclusive licensee exclusively possesses the right to work the patented invention.**

**(Effects of the term extended patent right)**

**68bis.-- The effects of the patent right of which the term has been extended (including cases in which the term is deemed to be extended under Section 67bis(5)) shall not extend to acts other than the working of the patented invention concerned in respect of the product (where, in the disposition concerned, any specific use of such product to be used was specified, the product used for such specific use) which was the subject of the disposition as provided for in Cabinet Order referred to in Section 67(2) and as being the ground for the registration of the extension.**

**(Limits of patent right)**

**69.--(1) The effects of the patent right shall not extend to the working of the patent right for the purposes of experiment or research.**

**(2) The effects of the patent right shall not extend to the following:**

**(i) vessels or aircraft merely passing through Japan or machines, instruments, equipment or other accessories used therein;**

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

**(3) The effects of the patent right for inventions of medicines (namely, products used for the diagnosis, cure, medical treatment or prevention of human diseases -- hereinafter referred to as "medicines" in this subsection) to be manufactured by mixing two or more medicines or for inventions of processes for manufacturing medicines by mixing two or more medicines shall not extend to acts of preparing medicines in accordance with the prescriptions of physicians or dentists or to medicines prepared in accordance with the prescriptions of physicians or dentists.**

**(Technical scope of patented inventions)**

**70.--(1) The technical scope of a patented invention shall be determined on the basis of the statements of the patent claim(s) in the specification attached to the request.**

**(2) In the case of the preceding subsection, the meaning of a term or terms of the patent claim(s) shall be interpreted in the light of the specification excluding the patent claim(s) and the drawings.**

**(3) In the case of Subsections (1) and (2), no statements of the abstract attached to the request shall be taken into account for such purpose.**

**(Technical scope of patented inventions)**

**71.--(1) A request for interpretation may be made to the Patent Office with respect to the technical scope of a patented invention.**

**(2) Where such a request is made, the Commissioner of the Patent Office shall designate three trial examiners to give the requested interpretation.**

**(3) Proceedings concerning an interpretation other than those provided for in the preceding subsection shall be prescribed by Cabinet Order.**

**(Relationship with another's patented invention, etc.)**

**72.-- When a patented invention would utilize another person's patented invention, registered utility model or registered design or design similar thereto under an application filed prior to the filing date of the patent application concerned, or when the patent right conflicts with another person's design right or trademark right under an application for registration of a design filed prior to the filing date of the patent application concerned, the patentee, exclusive licensee or non-exclusive licensee shall not commercially work the patented invention.**

**(Joint patent rights)**

**73.--(1) Each of the joint owners of a patent right may neither transfer his share nor establish a pledge upon it without the consent of all the other joint owners.**

**(2) Each of the joint owners may, except as otherwise prescribed by contract, work the patented invention without the consent of the other joint owners.**

**(3) Each of the joint owners may grant neither an exclusive license nor a non-exclusive license without the consent of all the other joint owners.**

**74.-- Deleted.**

**75.-- Deleted.**

**(Extinguishment of patent right in absence of heir)**

**76.-- A patent right shall be extinguished when there is no person claiming to be an heir within the period prescribed by Section 958 of the Civil Code.**

**(Exclusive licenses)**

**77.--(1) A patentee may grant an exclusive license on his patent right.**

**(2) An exclusive licensee shall have an exclusive right to commercially work the patented invention to the extent laid down in the license contract.**

**(3) An exclusive license may be transferred only together with the business in which it is worked, or only with the consent of the patentee or in the case of inheritance or other general succession.**

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

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

**(Non-exclusive licenses)**

**78.--(1) A patentee may grant a non-exclusive license on his patent right.**

**(2) A non-exclusive licensee shall have the right to commercially work the patented invention to the extent prescribed in this Law or laid down by the license contract.**

**(Non-exclusive license by virtue of prior use)**

**79.-- Where, at the time of filing of a patent application, a person who has made an invention by himself without knowledge of the contents of an invention claimed in the patent application or has learned the invention from a person just referred to, has been commercially working the invention in Japan or has been making preparations therefor, such person shall have a non-exclusive license on the patent right under the patent application. Such license shall be limited to the invention which is being worked or for which preparations for working are being made and to the purpose of such working or the preparations therefor.**

**(Non-exclusive license due to working prior to registration of demand for invalidation trial)**

**80.--(1) A person who falls under any of the following paragraphs and who is running a business working an invention in Japan or preparing the business before the registration of a demand for a trial under Section 123(1) without knowing that the patent falls under the requirements of any of the paragraphs of that section, shall have a non-exclusive license on the invalidated patent right or on the exclusive license existing at the time of the invalidation within the scope of the invention which is worked or prepared to be worked and within the scope of the purposes of the business:**

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

**(ii) where his patent has been invalidated and a patent for the same invention has been granted to the person entitled to obtain the patent, the original patentee;**

**(iii) in the case referred to in Paragraphs (i) and (ii), a person who, at the time of the registration of the demand for a trial under Section 123(1), has an exclusive license on the patent that has been invalidated or a non-exclusive license which is effective under Section 99(1) on the patent or exclusive right.**

**(2) The patentee or the exclusive licensee shall have a right to receive a reasonable remuneration as consideration for the non-exclusive license under the preceding subsection.**

**(Non-exclusive license after expiration of design right)**

**81.-- Where a design right under an application for a design registration filed prior to or on the filing date of a patent application conflicts with the patent right under the patent application and the term of the design right has expired, the owner of the expired design right shall, to the extent of such design right, have a non-exclusive license on the patent right or the exclusive license existing at the time when the design right expired.**

**(Non-exclusive license after expiration of design right)**

**82.--(1) Where a design right under an application for a design registration filed prior to or on the filing date of a patent application conflicts with the patent right under the patent application and the term of the design right has expired, a person who, at the time of expiration, has an exclusive license on the expired design right or a non-exclusive license which is effective under Section 99(1), as applied under Section 28(3) of the Design Law, against the design right or the exclusive license, shall, to the extent of the expired right, have a non-exclusive license on the patent right concerned or on the exclusive license existing at the time when the design right expired.**

**(2) The patentee or the exclusive licensee shall have a right to a reasonable remuneration as consideration for the non-exclusive license under the preceding subsection.**

**(Arbitration decision on grant of non-exclusive license in case of non-working)**

**83.--(1) Where a patented invention has not been sufficiently and continuously worked during a period of three years or more in Japan, a person who intends to work the patented invention may request the patentee or the exclusive licensee to hold consultations on the grant of a non-exclusive license thereon. However, this provision shall not apply unless four years have elapsed since the filing date of the application corresponding to the patented invention.**

**(2) If no agreement is reached or no consultation is possible under the preceding subsection, a person who intends to work the patented invention may request the Commissioner of the Patent Office for an arbitration decision.**

**(Submission of written reply)**

**84.-- Where a request has been made for arbitration under Section 83(2), the Commissioner of the Patent Office shall transmit a copy of the written request to the patentee or exclusive licensee mentioned in the request or to other persons having any registered rights relating to the patent and shall give them an opportunity to submit a written reply, designating an adequate time limit.**

**(Hearing of Industrial Property Council, etc.)**

**85.--(1) Before rendering an arbitration decision under Section 83(2), the Commissioner of the Patent Office shall hear the views of the Council to be set up by Cabinet Order.**

**(2) Where there is a legitimate reason for the failure to sufficiently work the patented invention, the Commissioner of the Patent Office shall not render an arbitration decision ordering a non-exclusive license to be granted.**

**(Formal requirements of arbitration)**

**86.--(1) The arbitration decision under Section 83(2) shall be in writing and shall state the reasons therefor.**

**(2) An arbitration decision ordering a non-exclusive license to be granted shall set forth the following:**

**(i) the scope of the non-exclusive license;**

**(ii) the consideration for the license and the method and time of payment.**

**(Transmittal of copy of arbitration decision)**

**87.--(1) A copy of an arbitration decision rendered under Section 83(2) shall be transmitted by the Commissioner of the Patent Office to the parties and other persons having any registered rights relating to the patent.**

**(2) When a copy of an arbitration decision ordering a non-exclusive license to be granted has been transmitted to the parties under the preceding subsection, an agreement in the terms of the arbitration decision shall be deemed to have been reached by the parties.**

**(Deposit of consideration)**

**88.-- A person who is to pay a remuneration as consideration under Section 86(2)(ii) shall make a deposit of it in the following case:**

**(i) where the person to receive the remuneration is unwilling or unable to receive it;**

**(ii) where an action under Section 183(1) has been instituted with respect to the remuneration;**

(iii) where the patent right or the exclusive license is the subject of a pledge. However, this provision shall not apply where the consent of the pledgee has been obtained.

(Lapse of arbitration decision)

89.-- Where a person who desires a non-exclusive license fails to pay or deposit the remuneration (or the first instalment thereof where payment is to be made periodically or by instalments) within the time prescribed in the arbitration decision under Section 83(2), the arbitration decision ordering the non-exclusive license to be granted shall lose its effect.

(Cancellation of arbitration decision)

90.--(1) After rendering an arbitration decision ordering a non-exclusive license to be granted, when the reason for the arbitration decision is no longer applicable or circumstances have otherwise changed and it has become to be impossible to sufficiently support the arbitration decision or a person who has obtained a non-exclusive license under the arbitration decision fails to work the patented invention sufficiently, the Commissioner of the Patent Office may cancel the arbitration decision upon the request of the interested person or ex officio.

(2) Sections 84, 85(1), 86 and 87 shall apply mutatis mutandis to the cancellation of the arbitration decision under the preceding subsection and Section 85(2) shall apply mutatis mutandis to the cancellation of the arbitration decision under the preceding subsection when the person who has obtained a non-exclusive license under the arbitration decision fails to work the patented invention sufficiently.

(Cancellation of arbitration decision)

91.-- When an arbitration decision has been cancelled under Section 90(1), the non-exclusive license shall be extinguished.

(Restriction on objections to arbitration decision)

91bis.-- Objections to the remuneration fixed in an arbitration decision under Section 83(2) may not be made a ground for a request for reconsideration of the decision under the Administrative Appeal Law (Law No. 160 of 1962).

(Arbitration decision on grant of non-exclusive license on one's own patented invention)

92.--(1) Where a patented invention falls under any of the cases provided for in Section 72, the patentee or the exclusive licensee may request the other person referred to in that section to hold consultations on the grant of a non-exclusive license to work the patented invention or of a non-exclusive license on the utility model right or the design right.

(2) The other person referred to in Section 72 who has been requested to hold the consultations under the preceding subsection may request the patentee or the exclusive licensee having requested the consultations to hold consultations on the grant of a non-exclusive license within the scope of the patented invention which the patentee or exclusive licensee desires to work by obtaining the non-exclusive license on the patent right, the utility model right or the design right through the consultations requested by the patentee or the exclusive licensee.

(3) If no agreement is reached or no consultation is possible under Subsection (1), the patentee or the exclusive licensee may request the Commissioner of the Patent Office for an arbitration decision.

(4) If no agreement is reached or no consultation is possible under Subsection (2) and an arbitration under the preceding subsection is requested, the other person referred to in Section 72 may request the Commissioner of the Patent Office for an arbitration decision only within the time limit which the Commissioner of the Patent Office designates as the time limit for the other person to submit a written reply in accordance with Section 84 as applied under Subsection (7).

(5) If, in the case of Subsection (3) or the preceding subsection, the grant of a non-exclusive license would unduly injure the interests of the other person referred to in Section 72 or the patentee or exclusive licensee, the Commissioner of the Patent Office shall not render an arbitration decision ordering a non-exclusive license to be granted.

(6) In the case of Subsection (4) in addition to the case provided for in the preceding subsection, the Commissioner of the Patent Office shall not render an arbitration decision ordering a non-exclusive license to be granted if an



arbitration decision ordering a non-exclusive license to be granted is not rendered with respect to the request for the arbitration decision under Subsection (3).

(7) Sections 84, 85(1) and 86 to 91bis shall apply mutatis mutandis to the arbitration under Subsection (3) or (4).

(Arbitration decision on grant of non-exclusive license in public interest)

**93.--(1) Where the working of a patented invention is particularly necessary in the public interest, a person who intends to work the invention may request the patentee or the exclusive licensee to hold consultations on the grant of a non-exclusive license.**

(2) If no agreement is reached or no consultation is possible under the preceding subsection, a person who intends to work the patented invention may request the Minister for International Trade and Industry for an arbitration decision.

(3) Sections 84, 85(1) and 86 to 91bis shall apply mutatis mutandis to the arbitration under the preceding subsection.

(Transfer, etc. of non-exclusive license)

**94.--(1) A non-exclusive license, with the exception of one which results from an arbitration decision under Section 83(2), 92(3) or (4) or Section 93(2) of this Law, Section 22(3) of the Utility Model Law or Section 33(3) of the Design Law, may be transferred, but only together with the business in which it is worked or only with the consent of the patentee (or the patentee and the exclusive licensee in the case of a non-exclusive license on an exclusive license).**

(2) A non-exclusive licensee may, except in the case of a non-exclusive license resulting from an arbitration decision under Section 83(2), 92(3) or (4) or 93(2) of this Law, Section 22(3) of the Utility Model Law or Section 33(3) of the Design Law, establish a pledge on the non-exclusive license, but only with the consent of the patentee (or the patentee and exclusive licensee in the case of a non-exclusive license on an exclusive license).

(3) A non-exclusive license resulting from an arbitration decision under Section 83(2) or 93(2) may be transferred only together with the business in which it is worked.

(4) A non-exclusive license resulting from an arbitration decision under Section 92(3) of this Law, Section 22(3) of the Utility Model Law or Section 33(3) of the Design Law shall be transferred together with the patent, utility model or design right to which the non-exclusive license is entitled, and if such right has been transferred independently from the business in which it is worked or extinguished, the non-exclusive license shall be extinguished simultaneously.

(5) A non-exclusive license resulting from an arbitration decision under Section 92(4) shall be transferred together with the patent, utility model or design right to which the non-exclusive license is entitled and shall be extinguished at the same time as the patent, utility model right or design right.

(6) Section 73(1) shall apply mutatis mutandis to non-exclusive license.

(Pledges)

**95.-- Where a patent right or an exclusive or non-exclusive license is the subject of a pledge, the pledgee may not work the patented invention unless otherwise prescribed by contract.**

(Pledges)

**96.-- A pledge on a patent right or an exclusive or non-exclusive license may be exercised against the remuneration received as consideration for the patent right or the license or against money or goods that the patentee or exclusive licensee would be entitled to receive for the working of the patented invention. However, an attachment order shall be obtained prior to the payment or delivery of the money or property.**

(Surrender of patent right, etc.)

**97.--(1) Where there is an exclusive licensee, pledgee or non-exclusive licensee under Section 35(1), 77(4) or 78(1), a patentee may surrender his patent right only with the consent of such person.**

**(2) Where there is a pledgee or non-exclusive licensee under Section 77(4), an exclusive licensee may surrender his license only with the consent of such person.**

**(3) Where there is a pledgee, a non-exclusive licensee may surrender his license only with the pledgee's consent.**

**(Effects of registration)**

**98.--(1) The following shall be of no effect unless they are registered:**

**(i) transfers (except those by inheritance or other general succession), extinguishment by surrender or restrictions on disposal of a patent right;**

**(ii) the grant, transfer (except those by inheritance or other general succession), modification or extinguishment (except those resulting from a merger or the extinguishment of the patent right) of an exclusive license, or a restriction on the disposal thereof;**

**(iii) the grant, transfer (except those by inheritance or other general succession), modification or extinguishment (except those resulting from a merger or the extinguishment of a secured credit) of a pledge on a patent right or exclusive license, or a restriction on the disposal thereof.**

**(2) Inheritance or other general succession under any of the preceding paragraphs shall be notified to the Commissioner of the Patent Office without delay.**

**(Effects of registration)**

**99.--(1) Once a non-exclusive license has been registered, it shall also be effective against anyone subsequently acquiring the patent right or the exclusive license or an exclusive license on such a patent right.**

**(2) A non-exclusive license under Section 35(1), 79, 80(1), 81, 82(1) or 176 shall be effective as under the preceding subsection without registration.**

**(3) The transfer, modification, extinguishment or restriction on disposal of a non-exclusive license or the grant, transfer, modification, extinguishment or restriction on disposal of a pledge relating to a non-exclusive license shall not be effective against any third party unless it is registered.**

## **Part 2. Infringement**

**(Injunction)**

**100.--(1) A patentee or exclusive licensee may require a person who is infringing or is likely to infringe the patent right or exclusive license to discontinue or refrain from such infringement.**

**(2) A patentee or an exclusive licensee who is acting under the preceding subsection may demand the destruction of the articles by which the act of infringement was committed (including the articles manufactured by the act of infringement in the case of a patented invention of a process of manufacture), the removal of the facilities used for the act of infringement, or other measures necessary to prevent the infringement.**

**(Acts deemed to be infringement)**

**101.-- The following acts shall be deemed to be an infringement of a patent right or exclusive license:**

**(i) in the case of a patent for an invention of product, acts of manufacturing, assigning, leasing, importing or offering for assignment or lease of, in the course of trade, articles to be used exclusively for the manufacture of the product;**

**(ii) in the case of a patent for an invention of a process, acts of manufacturing, assigning, leasing, importing or offering for assignment or lease of, in the course of trade, articles to be used exclusively for the working of such invention.**

**(Presumption, etc. of amount of damage)**

**102.--(1) Where a patentee or exclusive licensee claims, from a person who has intentionally or negligently infringed the patent right or exclusive license, compensation for damage caused to him by the infringement, the profits gained by the infringer through the infringement shall be presumed to be the amount of damage suffered by the patentee or**

exclusive licensee.

(2) A patentee or exclusive licensee may claim, from a person who has intentionally or negligently infringed the patent right or exclusive license, an amount of money which he would normally be entitled to receive for the working of the patented invention, as the amount of damage suffered by him.

(3) The preceding subsection shall not preclude a claim to damages exceeding the amount referred to therein. In such a case, where there has been neither wilfulness nor gross negligence on the part of the person who has infringed the patent right or the exclusive license, the court may take this into consideration when awarding damages.

(Presumption of negligence)

103.-- A person who has infringed a patent right or exclusive license of another person shall be presumed to have been negligent as far as the act of infringement is concerned.

(Presumption of manufacture by patented process)

104.-- In the case of a patent for an invention of a process of manufacturing a product, where such product was not publicly known in Japan prior to the filing of the patent application concerned, any identical product shall be presumed to have been manufactured by that process.

(Production of documents)

105.-- In a litigation relating to the infringement of a patent right or exclusive license, the court may, upon the request of a party, order the other party to produce documents necessary for the assessment of the damage caused by the infringement. However, this provision shall not apply when the person possessing the documents has a legitimate reason for refusing to produce them.

(Measures for recovery of reputation)

106.-- Upon the request of a patentee or exclusive licensee, the court may, in lieu of damages or in addition thereto, order a person who has injured the business reputation of the patentee or exclusive licensee by infringing the patent right or exclusive license, whether intentionally or negligently, to take the measures necessary for the recovery of the business reputation.

### Part 3. Annual Fees

(Annual fees)

107.--(1) A person who obtains registration of the establishment of a patent right or a patentee shall pay, as annual 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 case and for each year from the date of the registration of the establishment of the patent right to the expiration of the term (where the term is extended by virtue of Section 67(2), the added extension term) under Section 67(1):

Division of year	Amounts
First to third year	Annually, ¥13,000 plus ¥1,400 per claim
Fourth to sixth year	Annually, ¥20,300 plus ¥2,100 per claim
Seventh to ninth year	Annually, ¥40,600 plus ¥4,200 per claim
Tenth to twenty-fifth year	Annually, ¥81,200 plus ¥8,400 per claim

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

(3) The payment of the annual fees under Subsection (1) shall be made by patent revenue stamps as prescribed by an ordinance of the Ministry of International Trade and Industry. However, wherever so prescribed by an ordinance of the Ministry of International Trade and Industry, such payment may be made in cash.

(Time limit for payment of annual fees)

**108.--(1) The annual fee for each year from the first to third years under Section 107(1) shall be paid in a lump sum within 30 days from the date of transmittal of the examiner's decision or the trial decision that the patent is to be granted.**

**(2) The annual fee for each year from the fourth and subsequent years under Section 107(1) shall be paid during the preceding year or prior thereto. However, where the date of transmittal of the examiner's decision or trial decision that the registration of an extension of the term of a patent right is to be made (hereinafter referred to in this subsection as the "date of transmittal") is later than a date which is thirty days prior to the last day of the year in which the day of the expiration of the patent right would fall if there had been no registration of an extension, the annual fee shall be paid in lump sum, for each year from the year following that year to the year in which the date of transmittal falls (where there are less than thirty days from the date of transmittal to the last day of the year in which the day of transmittal falls, to the year following that year in which the date of transmittal falls).**

**(3) Upon the request of a person liable to pay an annual fee, the Commissioner of the Patent Office may extend the period prescribed in Subsection (1) by a period not exceeding 30 days.**

**(Reduction or deferment of payment of annual fees or exemption therefrom)**

**109 .-- Where the Commissioner of the Patent Office recognizes that a person liable to pay an annual fee for each year from the first to the third years under Section 107(1) is the inventor of the patented invention or the inventor's heir and that he cannot afford to pay the annual fees, he may reduce such fees or grant an exemption from payment or deferment of payment as prescribed by Cabinet Order.**

**(Payment of annual fees by an interested person)**

**>110.--(1) An interested person may pay an annual fee even against the will of the person liable to pay.**

**(2) An interested person who has paid an annual fee in accordance with the preceding subsection may demand reimbursement of the expenditure to the extent that the person liable to pay is actually making a profit.**

**(Refund of annual fees)**

**111.--(1) Annual fees shall be refunded, upon the request of the person who paid them, only in the following cases:**

**(i) annual fees paid by mistake or in excess;**

**(ii) the annual fees for the year following the year in which a ruling to revoke the patent under Section 114(2) or a trial decision that the patent is to be invalidated became final and conclusive and subsequent years;**

**(iii) The annual fee for the year following the year in which the trial decision that the registration of an extension of the term of a patent right is to be invalidated became final and conclusive, and subsequent years (limited to that for the year following the year in which the day of the expiration of the term of the patent right would fall if there had been no registration of the extension and subsequent years).**

**(2) No refund of annual fees under the preceding subsection may be requested after one year from the date of payment in the case of annual fees under Paragraph (i) above, or after six months from the date on which a ruling to revoke the patent under Section 114(2) or a trial decision became final and conclusive in the case of annual fees under Paragraphs (ii) and (iii) above.**

**(Late payment of annual fees)**

**112.--(1) Where a patentee is unable to pay an annual fee within the time limit prescribed in Section 108(2) or within the time limit for deferred payment under Section 109, he may pay the annual fee belatedly within six months from the expiration of that time limit.**

**(2) In the case of late payment of an annual fee in accordance with the preceding subsection, the patentee shall, in addition to the annual fee provided for in Section 107(1), pay a surcharge of the same amount as the annual fee.**

**(3) The payment of the surcharge under the preceding subsection shall be made by patent revenue stamps as prescribed by an ordinance of the Ministry of International Trade and Industry. However, wherever so prescribed by**

an ordinance of the Ministry of International Trade and Industry, such payment may be made in cash.

(4) Where a patentee fails to pay within the time limit for late payment under Subsection (1) an annual fee due by the time limit prescribed in the principal sentence of Section 108(2) as well as the surcharge under Subsection (2), the patent right shall be deemed to have been extinguished retroactively from the time of the expiration of the time limit prescribed in the principal sentence of Section 108(2).

(5) Where a patentee fails to pay an annual fee under Section 108(2) and the surcharge under Subsection (2) within the time limit for late payment under Subsection (1), the patent right shall be deemed to have been extinguished retroactively from the time of the lapsing of the year in which the day of the expiration of the term of the patent right would fall if there had been no registration of the extension.

(6) Where a patentee fails to pay an annual fee whose payment has been deferred under Section 109, and the surcharge under Subsection (2), within the time limit for late payment under Subsection (1), the patent right shall be deemed never to have existed.

(Restoration of patent right by late payment of annual fees)

112bis.--(1) Where the patent right is one which was deemed to have been extinguished under Section 112(4) or (5) or which was deemed never to have existed under Section 112(6) and the owner of the extinguished patent right is unable to pay an annual fee and surcharge belatedly within the time limit for late payment under Section 112(1) due to reasons outside his control, he may pay the annual fee and surcharge referred to in Section 112(4) to (6) within 14 days (where he is a resident abroad, 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.

(2) Where the annual fee and surcharge have been paid in accordance with the preceding subsection, the patent right shall be deemed to have been maintained retroactively from the time of the expiration of the time limit prescribed in the principal sentence of Section 108(2) or the lapse of the year in which the day of the expiration of the term of the patent right falls or existed from the beginning.

(Restriction on effects of patent right restored)

112ter.--(1) Where a patent right has been restored under the preceding Section (2), if the patent has been granted for the invention of a product, the effects of the patent right shall not extend to the product which was imported into, or manufactured or acquired in Japan after the expiration of the time limit for late payment under Section 112(1) but before the registration of the restoration of the patent right.

(2) The effects of patent right restored under the preceding Section (2) shall not extend to the following acts after the expiration of the time limit for late payment under Section 112(1) but before the registration of the restoration of the patent right:

(i) the working of the invention;

(ii) in the case of a patent for an invention of product, acts of manufacturing, assigning, leasing, importing or offering for assignment or lease of, articles to be used exclusively for the manufacture of the product;

(iii) in the case of a patent for an invention of a process, acts of manufacturing, assigning, leasing, importing or offering for assignment or lease of, articles to be used exclusively for the working of the invention.

## Chapter V Opposition to the Patent

(Opposition to the patent)

113.-- Only within six months from the publication of the Gazette containing the patent, any person may file with the Commissioner of the Patent Office an opposition to the patent on the grounds that the patent falls under any of the undermentioned paragraphs. In this context, if there are two or more claims, the opposition may be filed for each claim. That is:

(i) where the patent has been granted on a patent application (excluding any foreign language file application) with an amendment which does not comply with the requirements of

**Section 17bis(3);**

- (ii) where the patent has been granted contrary to Section 25, 29, 29bis, 32 or 39 (1) to (4);**
- (iii) where the patent has been granted contrary to the provisions of a treaty;**
- (iv) where the patent has been granted on a patent application which does not comply with the requirements of Section 36(4) or (6) [excluding Paragraph (iv)];**
- (v) where the features disclosed in the specification or drawings attached to a request with respect to the patent under a foreign language file application do not remain within the scope of the features disclosed in the foreign language file.**

**(Ruling)**

**114.--(1) A trial concerning an opposition and ruling thereon shall be conducted by a collegial body of three or five trial examiners.**

**(2) Where it is found that a patent concerned in the opposition falls under any of the paragraphs in the preceding section, the trial examiners shall render a ruling that the patent is to be revoked (hereinafter referred to as "ruling to revoke").**

**(3) Where a ruling to revoke has become final and conclusive, the patent right shall be deemed never to have existed.**

**(4) Where it is not found that a patent concerned in the opposition falls under any of the paragraphs in the preceding section, the trial examiners shall render a ruling that the patent is to be maintained.**

**(5) No appeal shall lie from a ruling under Subsection (4).**

**(Formal requirements of a written opposition, etc.)**

**115.--(1) A person filing an opposition shall submit a written opposition to the Commissioner of the Patent Office stating the following:**

- (i) the name and the domicile or residence of the opponent and his representative;**
- (ii) an identification of the patent concerned in the opposition;**
- (iii) the grounds of the opposition and an indication of the supporting evidence.**

**(2) An amendment of the written opposition submitted under the preceding subsection shall not change the gist thereof. However, this provision shall not apply to an amendment made to the matter prescribed in Paragraph (iii) of the preceding subsection before the expiration of the time limit prescribed in Section 113.**

**(3) The trial examiner-in-chief shall transmit a copy of the written opposition to the patentee.**

**(4) Section 123(3) shall apply mutatis mutandis where the opposition has been filed.**

**(Designation of trial examiners, etc.)**

**116.-- Sections 136(2) and 137 to 144 shall apply mutatis mutandis to the collegial body and trial examiners constituting thereof under Section 114(1).**

**(Conduct of trial examination, etc.)**

**117.--(1) The trial examination of the opposition shall be conducted by documentary examination. However, the trial examiner-in-chief may decide to conduct the trial by oral trial on a motion by the patentee, opponent or intervenor or ex officio.**

**(2) Sections 145(3) to (5), 146 and 147 shall apply mutatis mutandis to the oral examination in accordance with the proviso to the preceding subsection.**

**(3) Where there is a ground for interruption or suspension of the trial proceedings of an opposition and ruling thereon on the part of one of the joint owners of a patent right, the interruption or suspension shall have effect on all of them.**

**(Intervention)**

**118.--(1) Any person who has a right with respect to the patent right or any other person who has an interest in the patent right may intervene in the trial examination, in order to assist the patentee, until the ruling on the opposition.**

**(2) Sections 148(4) and (5) and 149 shall apply mutatis mutandis to the intervenor under the preceding subsection.**

**(Taking of evidence and preservation thereof)**

**119.-- Sections 150 and 151 shall apply mutatis mutandis to the examination and preservation of evidence in a trial examination of opposition.**

**(Trial examination ex officio)**

**120.--(1) In a trial examination of an opposition, even the grounds that have not been pleaded by a patentee, an opponent or an intervenor may be examined.**

**(2) In a trial examination of an opposition, only the claims sought by the opponent may be considered in the trial examination.**

**(Combination or separation of trial examination)**

**120bis.--(1) The trial examinations of two or more oppositions concerning the same patent right shall be combined, unless the special circumstances exist.**

**(2) Trial examinations that have been combined under the preceding subsection may later be conducted separately.**

**(Withdrawal of oppositions)**

**120ter.--(1) An opposition to the patent may not be withdrawn after the notification under Section 120quater(1).**

**(2) Section 155(3) shall apply mutatis mutandis to the withdrawal of the opposition.**

**(Submission of arguments, etc.)**

**120quater.--(1) When the trial examiner-in-chief intends to render a ruling to revoke, he shall notify the patentee and intervenor of the reasons for revocation of the patent and give them an opportunity to submit a statement of their arguments designating an adequate time limit.**

**(2) The patentee may demand a correction of the specification or drawings attached to the request only within the time limit designated under the preceding subsection. However, such correction is limited to the following:**

- (i) the restriction of a claim or claims;**
- (ii) the correction of errors in the description or incorrect translations;**
- (iii) the clarification of an ambiguous description.**

**(3) Sections 126(2) to (4), 127, 128, 131, 132(3) and (4) and 165 shall apply mutatis mutandis to the case of the preceding subsection.**

**(Formal requirements of ruling)**

**120quinquies.--(1) The ruling on the opposition shall be in writing and shall state the particulars mentioned below:**

- (i) the number of the opposition case;**
- (ii) the name and the domicile or residence of the patentee, opponent and intervenor as well as of their representatives;**
- (iii) the identification of the patent relating to the ruling;**

(iv) the conclusion of the ruling and the reasons therefor;

(v) the date of the ruling.

(2) Once the ruling has been rendered, the Commissioner of the Patent Office shall transmit it to the patentee, opponent, intervenor and persons whose demand to intervene has been refused.

(Application mutatis mutandis of provisions on trial)

120sexies.--(1) Sections 133, 133bis, 134(4), 135, 152, 168, 169(3) to (6) and 170 shall apply mutatis mutandis to the trial examination of the opposition and the ruling thereon.

(2) Section 114(5) shall apply mutatis mutandis to the ruling under Section 135 as applied under the preceding subsection.

## Chapter VI Trial

(Trial against examiner's decision of refusal)

121.--(1) A person who has received the examiner's decision that his application is to be refused and is dissatisfied may demand a trial thereon within 30 days from the transmittal of the examiner's decision.

(2) Where, due to reasons outside his control, a person is unable to demand a trial under the preceding subsection within the time limit prescribed therein, he may, notwithstanding that subsection, make the demand within 14 days (where he is a resident abroad, within two months) from the date when the reasons ceased to be applicable but not later than six months, following the expiration of the said time limit.

122.-- Deleted.

(Trial for invalidation of patent)

123.--(1) In the following cases, a trial may be demanded for the invalidation of a patent. In this context, if there are two or more claims, a trial may be demanded for each claim. The cases referred to are:

(i) where the patent has been granted on a patent application (excluding a foreign language file application) with an amendment which does not comply with the requirements of Section 17bis(3);

(ii) where the patent has been granted contrary to Section 25, 29, 29bis, 32, 38 or 39(1) to (4);

(iii) where the patent has been granted contrary to the provisions of a treaty;

(iv) where the patent has been granted on a patent application which does not comply with the requirements of Section 36(4) or (6) (excluding Paragraph (iv));

(v) where the features disclosed in the specification or drawings attached to the request with respect to the patent under a foreign language file application does not remain within the scope of the features disclosed in the foreign language file;

(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 invention concerned;

(vii) where, after the grant of the patent, the patentee has become a person who can no longer enjoy a patent right under Section 25 or the patent no longer complies with a treaty;

(viii) where the correction of the specification or drawings attached to the request with respect to the patent has been made contrary to the proviso to Section 126(1), Section 126(2) to (4) (including its application under Section 120quater(3) or Section 134(5)), the proviso to Section 120quater(2) or the proviso to Section 134(2).

(2) Even after the extinguishment of a patent right, a trial under the preceding subsection may be demanded.

(3) Where a trial under Subsection (1) has been demanded, the trial examiner-in-chief shall notify the exclusive licensee with respect to the patent right and other persons who have any registered rights relating to the patent.



**124.-- Deleted.**

(Trial for invalidation of patent)

**125.--** Where a trial decision that a patent is to be invalidated has become final and conclusive, the patent right shall be deemed never to have existed. However, where a patent falls under Paragraph (vii) of Section 123(1) and a trial decision that the patent is to be invalidated has become final and conclusive, the patent right shall be deemed not to have existed from the time when the patent first fell under that paragraph.

(Trial for invalidation of registration of extension of term)

**125bis.--(1)** A trial for invalidation of the registration of an extension of the term of a patent right may be demanded if the registration falls under any of the following paragraphs:

(i) where the registration of an extension has been effected in respect of an application filed in the case when it is not deemed that the obtaining of the disposition as provided for in Cabinet Order referred to in Section 67(2) was necessary for the working of the patented invention;

(ii) where the registration of an extension has been effected in respect of an application filed in the case when the disposition as provided for in Cabinet Order referred to in Section 67(2) was not obtained by the patentee, or an exclusive licensee or a registered non-exclusive licensee relating to the patent;

(iii) where the term of an extension through the registration of the extension exceeds the period of time during which the patented invention could not be worked;

(iv) where the registration of an extension has been effected on an application by a person who is not the patentee concerned;

(v) where the registration of an extension has been effected on an application which did not comply with requirements under Section 67bis(4).

(2) Section 123(2) and (3) shall apply mutatis mutandis to the demand for a trial under the preceding subsection.

(3) Where a trial decision that the registration of an extension is to be invalidated has become final and conclusive, the extension of the term through the registration of the extension shall be deemed never to have existed. However, where the registration of the extension falls under Paragraph (iii) of Subsection (1) and the trial decision that the registration of the extension of the term exceeding the period of time during which the patented invention could not be worked has become final and conclusive, the extension of the term exceeding the said period of time shall be deemed not to have existed.

(Trial for correction)

**126.--(1)** The patentee, except in the case where an opposition or a trial under Section 123(1) is pending at the Patent Office, may demand a correction of the specification or drawings attached to the request. However, such correction shall be limited to the following:

(i) the restriction of a claim or claims;

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

(iii) the clarification of an ambiguous description.

(2) The correction of the specification or drawings under the preceding subsection shall remain within the scope of the features disclosed in the specification or drawings originally attached to the request [in the case of the proviso (ii) to the preceding subsection, the specification and drawings originally attached to the request (in the case of a patent granted on a foreign language file application, the foreign language file)].

(3) The correction of the specification or drawings under Subsection (1) may not be such as to substantially enlarge or modify the claim or claims.

(4) In the case of Paragraphs (i) and (ii) of the proviso to Subsection (1), an invention constituted by the features described in the corrected claim must be one which could have been patented independently at the time of filing of the

**patent application.**

**(5) A trial under Subsection (1) may be demanded even after the extinguishment of the patent right. However, this provision shall not apply after the patent has been revoked by a ruling or invalidated on a trial under Section 123(1).**

**(Trial for correction)**

**127.-- Where there is an exclusive licensee, a pledgee or a non-exclusive licensee under Section 35(1), 77(4) or 78(1), the patentee may demand a trial under Section 126(1) only with the consent of such person.**

**(Trial for correction)**

**128.-- Where a trial decision that the specification or drawings attached to the request are to be corrected has become final and conclusive, the patent application, the laying open of the application, the examiner's decision or the trial decision that the patent is to be granted, or the registration of establishment of the patent right shall be deemed to have been made on the basis of the corrected specification or drawings.**

**129.-- Deleted.**

**130.-- Deleted.**

**(Formal requirements of demands for trial)**

**131.--(1) A person demanding a trial shall submit a written demand to the Commissioner of the Patent Office stating the following:**

- (i) the name and the domicile or residence of the demandant and his representative;**
- (ii) an identification of the trial case;**
- (iii) the relief sought in the demand and the grounds therefor.**

**(2) An amendment of the written demand submitted under the preceding subsection shall not change the gist thereof. However, this provision shall not apply with respect to the grounds for the demand under Paragraph (iii) of the preceding subsection.**

**(3) When a trial is demanded under Section 126(1), the corrected specification or drawings shall be attached to the written demand.**

**(Joint trial)**

**132.--(1) Where two or more persons demand a trial concerning the same patent right under Section 123(1) or 125bis(1), the demand may be made jointly.**

**(2) Where a trial is demanded against any of the joint owners of a patent right, all the joint owners shall be made defendants.**

**(3) Where the joint owners of a patent right or a right to obtain a patent demand a trial concerning the right under joint ownership, the demand shall be made jointly by all the joint owners.**

**(4) Where there is a ground for interruption or suspension of the trial proceedings on the part of one of the demandants under Subsection (1) or the preceding subsection or one of the defendants under Subsection (2), the interruption or suspension shall have effect on all of them.**

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

**133.--(1) Where a demand does not comply with Section 131(1) or (3), the trial examiner-in-chief shall invite the demandant to amend the demand, designating an adequate time limit.**

**(2) Subject to the preceding subsection, the trial examiner-in-chief may invite an amendment to a procedure relating to a trial, designating an adequate time limit in the following cases:**

- (i) when the requirements of Section 7(1) to (3) or 9 have not been complied with;
- (ii) when the formal requirements specified in this Law or in an order or ordinance thereunder have not been complied with;
- (iii) when the fees due to be paid under Section 195(1) to (3) have not been paid with respect to a procedure.

(3) The trial examiner-in-chief shall dismiss the procedure by a ruling where a person whom he has invited to make an amendment to a procedure relating to a trial fails to make the amendment within the time limit designated under the preceding subsections.

(4) A ruling under the preceding subsection shall be in writing and shall state the reasons therefor.

(Dismissal of Improper Procedure)

133bis.--(1) The trial examiner-in-chief may dismiss a irregular procedure relating to a trial (excluding a demand for a trial) by a ruling which cannot be amended.

(2) When the trial examiner-in-chief intends to dismiss the procedure in accordance with the preceding subsection, he shall notify the person who is proceeding of the reasons for dismissal and give him an opportunity to submit a statement of explanation, designating an adequate time limit.

(3) A ruling under Subsection (1) shall be in writing and state the reasons therefor.

(Submission of written reply, etc.)

134.--(1) When a trial has been demanded, the trial examiner-in-chief shall transmit a copy of the written demand to the defendant, and shall give him an opportunity to submit a written reply, designating an adequate time limit.

(2) The defendant in the trial under Section 123(1) may demand a correction of the specification or drawings attached to the request only within the time limit designated under the preceding subsection or Section 153(2). However, such correction is limited to the following:

- (i) the restriction of a claim or claims;
- (ii) the correction of errors in the description or of incorrect translations;
- (iii) the clarification of an ambiguous description.

(3) Upon receipt thereof, the trial examiner-in-chief shall transmit to the demandant a copy of the written reply or the corrected specification or drawings attached to the written demand under the preceding subsection.

(4) The trial examiner-in-chief may examine the parties and intervenors with respect to the trial.

(5) Sections 126(2) to (5), 127, 128, 131, 132(3) and (4) and Section 165 shall apply mutatis mutandis to the case of Subsection (2).

(Dismissal of irregular demand by trial decision)

135.-- An irregular demand for a trial which cannot be amended may be dismissed by a trial decision without giving the defendant an opportunity to submit a written reply.

(Collegial system in trial)

136.--(1) A trial shall be conducted by a collegial body of three or five trial examiners.

(2) The collegial body referred to in Subsection (1) shall take its decisions by a majority vote.

(3) The qualification of trial examiners shall be prescribed by Cabinet Order.

**(Designation of trial examiners)**

**137.--(1) For each trial (but in the case of a trial where the examiner examines a demand in accordance with Section 162, only when a report under Section 164(3) has been made), the Commissioner of the Patent Office shall designate the trial examiners constituting the collegial body under Section 136(1).**

**(2) When any trial examiner designated in accordance with the preceding subsection is unable to participate in the trial, the Commissioner of the Patent Office shall relieve him of such designation and appoint another trial examiner to take his place.**

**(Trial examiner-in-chief)**

**138.--(1) The Commissioner of the Patent Office shall designate one of the trial examiners designated under Section 137(1) as the trial examiner-in-chief.**

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

**(Exclusion of trial examiners)**

**139.-- In the following cases, trial examiners shall be precluded from performing their functions:**

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

**(ii) where the trial examiner is or was a relative by blood within the fourth degree, a relative by affinity within the third degree or a relative cohabiting with a party, an intervenor or an opponent in the case;**

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

**(vi) where the trial examiner participated as an examiner in the examiner's decision which is challenged in the case;**

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

**(Exclusion of trial examiners)**

**140.-- Where there is a ground for exclusion under Section 139, a party or an intervenor may present a motion of exclusion.**

**(Challenge of trial examiner)**

**141.--(1) Where there are circumstances preventing a fair trial on the part of a trial examiner, a party or an intervenor may challenge him.**

**(2) After he has made a written or oral statement to a trial examiner with regard to the case, a party or an intervenor may not challenge him. However, this provision shall not apply where the party or intervenor did not know that there was a ground for challenge or where a ground for challenge arose subsequently.**

**(Formal requirements of motion of exclusion or challenge)**

**142.--(1) A person who presents a motion of exclusion or challenge shall submit a document to the Commissioner of the Patent Office setting forth the grounds therefor. However, in the oral trial examination, this procedure may be carried out orally.**

**(2) The ground for exclusion or challenge shall be substantiated within three days from the date on which the motion under the preceding subsection was presented. This provision shall also apply in the case of the proviso to Section 141(2).**

**(Ruling on motion of exclusion or challenge)**

**143.--(1) When a motion of exclusion or challenge has been made, the trial examiners other than the trial examiner concerned in the motion shall render a ruling thereon through a trial. However, the trial examiner concerned in the**

**motion may state his opinion.**

**(2) The ruling under the preceding subsection shall be in writing and state the reasons therefor.**

**(3) No appeal shall lie from the ruling under Subsection (1).**

**(Ruling on motion of exclusion or challenge)**

**144.-- When a motion of exclusion or challenge has been presented, the trial proceedings shall be suspended until a ruling thereon. However, this provision shall not apply to matters requiring urgent attention.**

**(Conduct of trial examination)**

**145.--(1) The trial under Section 123(1) or 125bis(1) shall be conducted by oral trial examination. However, the trial examiner-in-chief may decide to conduct the trial by documentary examination on a motion by a party or an intervenor or ex officio.**

**(2) Trials other than the trial under the preceding subsection shall be conducted by documentary examination. However, the trial examiner-in-chief may decide to conduct the trials by oral examination on a motion by a party or ex officio.**

**(3) Where a trial is conducted by oral examination in accordance with Subsection (1) or the proviso to the preceding subsection, the trial examiner-in-chief shall fix the date and place thereof and notify the parties and the intervenor of the date.**

**(4) Sections 94 (notification of the date) of the Code of Civil Procedure shall apply mutatis mutandis to the notification of the date under the previous Subsection.**

**(5) The oral examination under Subsection (1) or the proviso to Subsection (2) shall be conducted in public. However, this provision shall not apply where public order or morality is liable to be injured thereby.**

**(Conduct of trial examination)**

**146.-- Section 154 (interpreters) of the Code of Civil Procedure shall apply mutatis mutandis to the trial.**

**(Records)**

**147.--(1) With respect to a trial by oral examination under Section 145(1) or the proviso to Section 145(2), the official designated by the Commissioner of the Patent Office shall, under the direction of the trial examiner-in-chief, prepare the record setting forth the gist of the trial examination and other necessary matters whenever a trial takes place.**

**(2) Sections 160(2) and (3) (records) of the Code of Civil Procedure shall apply mutatis mutandis to the record under the previous Subsection.**

**(Intervention)**

**148.--(1) Any person who may demand a trial under Section 132(1) may intervene in the trial as a demandant until the conclusion of the trial.**

**(2) An intervenor under the preceding subsection may continue the trial proceedings even after the demand for the trial has been withdrawn by the original party.**

**(3) Any person who has an interest in the result of the trial may intervene in the trial, in order to assist one of the parties, until the conclusion of the trial.**

**(4) An intervenor under the preceding subsection may initiate and take part in any procedure relating to the trial.**

**(5) Where there is a ground for interruption or suspension of the trial proceedings on behalf of the intervenor under Subsection (1) or (3), the interruption or suspension shall also be effective against the original party.**

**(Intervention)**

**149.--(1) A person desiring to intervene shall submit a written demand to intervene to the trial examiner-in-chief.**

**(2) The trial examiner-in-chief shall transmit the demand to intervene to the parties and the intervenors and give them an opportunity to express their opinions, designating an adequate time limit.**

**(3) Where a demand to intervene is made, the trial examiner in the trial concerned shall render a ruling thereon through a trial.**

**(4) The ruling under the preceding subsection shall be in writing and state the reasons therefor.**

**(5) No appeal shall lie from the ruling under Subsection (3).**

**(Taking of evidence and preservation thereof)**

**150.--(1) With respect to a trial, evidence may be taken on a motion by a party or an intervenor, or ex officio.**

**(2) With respect to a trial, evidence may be preserved on a motion by an interested person, before the demand for the trial is made, and on a motion by any party or intervenor, or ex officio, during the pendency of the trial.**

**(3) The motion before the demand for a trial under the preceding subsection shall be presented to the Commissioner of the Patent Office.**

**(4) Where a motion has been presented under Subsection (2) before the demand for a trial, the Commissioner of the Patent Office shall designate the trial examiner to be in charge of preserving the evidence.**

**(5) Where evidence has been taken or preserved ex officio under Subsection (1) or (2), the trial examiner-in-chief shall notify the parties and the intervenors of the result thereof and shall give them an opportunity to state their opinion, designating an adequate time limit.**

**(6) The taking or preservation of evidence under Subsection (1) or (2) may be entrusted to a local court or a court with summary jurisdiction in the place where the case is to be handled.**

**(Taking of evidence and preservation thereof)**

**151.-- Section 147 of this Law and Section 93(1) (appointment of the date), Sections 94 (notification of the 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 (3), 215 to 222, 223(1) to (3), 226 to 228, 229(1) to (3), 231, 232(1), 233, 234, 236 to 238, 240 to 242 (evidence) and 278 (production of documents in place of interrogation) of the Code of Civil Procedure shall apply mutatis mutandis to the examination and preservation of evidence under Section 150. In such a case, "the facts that the party admitted in court and the obvious facts therein" in Section 179 and "rules of the Supreme Court" in Section 204 of the said code shall read, respectively, "the obvious facts" and "an ordinance of the Ministry of International Trade and Industry".**

**(Trial examination ex officio)**

**152.-- Even where a party or an intervenor fails to initiate a procedure within the time limit prescribed by law or designated in accordance with the law or fails to appear in accordance with Section 145(3), the trial examiner-in-chief may proceed with the trial proceedings.**

**(Trial examination ex officio)**

**153.--(1) In a trial, even grounds that have not been pleaded by a party or an intervenor may be examined.**

**(2) Where in the trial examination grounds that have not been pleaded by a party or an intervenor are being examined**

**in accordance with the preceding subsection, the trial examiner-in-chief shall notify the parties and the intervenors of the result of the trial examination and give them an opportunity to state their opinion thereon, designating an adequate time limit.**

**(3) In a trial, only the relief sought by the demandant may be considered in the trial examination.**

**(Combination or separation of trials)**

**154.--(1) When one or both of the parties to two or more trials are the same, the trial examinations may be combined.**

**(2) Trial examinations that have been combined under the preceding subsection may later be conducted separately.**

**(Withdrawal of demand for trial)**

**155 .--(1) A demand for a trial may be withdrawn before a trial decision becomes final and conclusive.**

**(2) A demand for a trial may not be withdrawn, without the consent of the adverse party, after the written reply under Section 134(1) has been submitted.**

**(3) When a demand for a trial under Section 123(1) has been made with regard to two or more claims covered by a patent which has two or more claims, the demand may be withdrawn for any of the claims.**

**(Notification of conclusion of trial examination)**

**156.--(1) When a case is ready for the rendering of a trial decision, the trial examiner-in-chief shall notify the parties and the intervenors of the conclusion of the trial examination.**

**(2) The trial examiner-in-chief may, if necessary, reopen a trial examination, upon a motion by a party or an intervenor, or ex officio, even after the notification under the preceding subsection.**

**(3) The trial decision shall be rendered within 20 days from the notification under Subsection (1). However, this provision shall not apply where the case is complicated or where there are unavoidable circumstances.**

**(Trial decision)**

**157 .--(1) When a trial decision has been rendered, the trial shall be closed.**

**(2) The trial decision shall be in writing and state the particulars mentioned below:**

**(i) the number of the trial;**

**(ii) the name and the domicile or residence of the parties and the intervenors as well as of their representatives;**

**(iii) an identification of the trial case;**

**(iv) the conclusions of the trial decision and the reasons therefor;**

**(v) the date of the trial decision.**

**(3) Once it has been rendered, the Commissioner of the Patent Office shall transmit the trial decision to the parties, the intervenors and persons whose demand to intervene has been refused.**

**(Special provisions for trials against examiner's decision of refusal)**

**158.-- Any action taken during the examination procedure shall also be relevant in the trial under Section 121(1).**

**(Special provisions for trials against examiner's decision of refusal)**

**159.--(1) Section 53 shall apply mutatis mutandis to the trial under Section 121(1). In such a case, "Section 17bis(1)(ii)" in Section 53(1) shall read "Section 17bis(1)(ii) or (iii)," and "an amendment" in Section 53(1) shall read "an amendment (in the case of Section 17bis(1)(ii), excluding the amendment made prior to the demand for the trial under Section 121(1))".**

**(2) Section 50 shall apply mutatis mutandis where a reason for refusal which was not contained in the examiner's decision is found in the trial under Section 121(1). In such a case, "in the case of Section 17bis(1)(ii)" in the provisions of the proviso to Section 50 shall read "in the case of Section 17bis(1)(ii) or (iii) (in the case of Section 17bis(1)(ii), excluding the amendment made prior to the demand for the trial under Section 121(1))".**

**(3) Section 51 shall apply mutatis mutandis where a demand for a trial under Section 121(1) is to be allowed.**

**(Special provisions for trials against examiner's decision of refusal)**

**160.--(1) Where an examiner's decision has been cancelled in a trial under Section 121(1), a trial decision may be made to order a further examination to be carried out.**

**(2) The adjudication in the trial decision under the preceding subsection shall be binding on the examiner with respect to the case concerned.**

**(3) Section 159(3) shall not apply where a trial decision under Subsection (1) is rendered.**

**(Special provisions for trials against examiner's decision of refusal)**

**161.-- Sections 134(1) to (3) and (5), 148 and 149 shall not apply to a trial under Section 121(1).**

**(Special provisions for trials against examiner's decision of refusal)**

**162.-- Where, in the case of a demand for a trial under Section 121(1), an amendment has been made to the specification or drawings attached to the request in the patent application concerned within 30 days of such demand, the Commissioner of the Patent Office shall cause the examiner to examine the demand.**

**(Special provisions for trials against examiner's decision of refusal)**

**163.--(1) Sections 48, 53, and 54 shall apply mutatis mutandis to the examination under Section 162. In such a case, "Section 17bis(1)(ii)" in Section 53(1) shall read "Section 17bis(1)(ii) or (iii)," and "an amendment" in Section 53(1) shall read "an amendment (in the case of Section 17bis(1)(ii), excluding the amendment made prior to the demand for the trial under Section 121(1))".**

**(2) Section 50 shall apply mutatis mutandis where a reason for refusal which was not contained in the examiner's decision concerned in the demand for a trial is found in the examination under Section 162. In such a case, "in the case of Section 17bis(1)(ii)" in the provisions of the proviso to Section 50 shall read "in the case of Section 17bis(1)(ii) or (iii) (in the case of Section 17bis(1)(ii), excluding the amendment made prior to the demand for the trial under Section 121(1))".**

**(3) Sections 51 and 52 shall apply mutatis mutandis where a demand for a trial is to be allowed in the examination under Section 162.**

**(Special provisions for trials against examiner's decision of refusal)**

**164.--(1) When the examiner renders a decision that a patent is to be granted in the examination under Section 162, he shall cancel his decision of refusal concerned in the demand for the trial.**

**(2) Except in the case provided for in the preceding subsection, the examiner shall not render a ruling to decline an amendment under Section 53(1) as applied under Section 163(1).**

**(3) Except in the case provided for in Subsection (1), the examiner shall make a report to the Commissioner of the Patent Office on the result of the examination without rendering a decision with respect to the demand for a trial.**

**(Special provisions for trials for correction)**

**165.-- Where a demand for a trial under Section 126(1) does not relate to any of the matters in the proviso to that subsection or does not comply with Section 126(2) to (4) of that section, the trial examiner-in-chief shall notify the**



**demandant of the reasons therefor and shall designate an adequate time limit and give him an opportunity to submit his views in writing, designating an adequate time limit.**

**(Special provisions for trials for correction)**

**166.-- Sections 134(1) to (3) and (5), 148 and 149 shall not apply to the trial under Section 126(1).**

**(Effects of trial decision)**

**167.-- When a final and conclusive trial decision in a trial under Section 123(1) or 125bis(1) has been registered, no one may demand a trial on the basis of the same facts and the same evidence.**

**(Relationship with litigation)**

**168.--(1) The trial proceedings may, if it is deemed necessary in the trial, be suspended until the ruling on the opposition to the patent or the trial decision in another trial has become final and conclusive or litigation proceedings have been concluded.**

**(2) Where a suit or an application for provisional attachment or provisional disposal has been filed, if the court deems it necessary, it may suspend the proceedings until a trial decision has become final and conclusive.**

**(Costs of trial)**

**169.--(1) The bearing of the costs in connection with a trial under Section 123(1) or 125bis(1) shall be decided ex officio by way of the trial decision where the trial is terminated by a trial decision or by a ruling in the trial where the trial is terminated otherwise by a trial decision.**

**(2) Sections 61 to 66, 69(1) and (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 subsection. In such a case, "rules of the Supreme Court" in Section 71(2) of the said code shall read "an ordinance of the Ministry of International Trade and Industry".**

**(3) The costs in connection with the trial under Section 121(1) or 126(1) shall be borne by the demandant or the opponent.**

**(4) Section 65 (costs of joint litigation) of the Code of Civil Procedure shall apply mutatis mutandis to the costs borne by the demandant or the opponent under the preceding subsection.**

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

**(6) The extent, amount and payment of the costs of a trial as well as the payment necessary for procedural acts for the trial to be effected shall be governed by the provisions in the Law on Civil Procedure Costs, etc. (Law No. 40 of 1971) which relate to these matters, unless they are incompatible with their nature (with the exception of the proportions laid down in Chapter II, Parts 1 and 3 of that Law).**

**(Executory force of ruling on amount of costs)**

**170 .-- A final and conclusive ruling on the costs in connection with a trial shall have the same effect as an enforceable title of liability.**

## **Chapter VII Retrial**

**(Demand for retrial)**

**171.--(1) Any party or an intervenor may demand a retrial against a final and conclusive ruling to revoke a patent or trial decision.**

**(2) Sections 338(1) and (2) and 339 (grounds for retrial) of the Code of Civil Procedure shall apply mutatis mutandis to**

**the demand for a retrial under the preceding subsection.**

**(Demand for retrial)**

**172.--(1) Where the demandant and the defendant in a trial have in collusion caused a trial decision to be rendered, with the purpose of injuring the rights or interests of a third person, such person may demand a retrial against the final and conclusive trial decision.**

**(2) In such a retrial, the demandant and the defendant shall be made joint defendants.**

**(Time limit for demand for retrial)**

**173.--(1) A retrial must be demanded within 30 days from the date on which the demandant became aware of the grounds for the retrial after the ruling to revoke a patent or trial decision became final and conclusive.**

**(2) Where, due to reasons outside his control, a person is unable to demand a retrial within the time limit prescribed in the preceding subsection, he may, notwithstanding that subsection, make the demand within 14 days (where he is a resident abroad, within two months) from the date when the reasons ceased to be applicable but not later than six months following the expiration of the said time limit.**

**(3) Where a retrial is demanded on the ground that the demandant was not represented in accordance with the legal provisions applicable, the time limit provided for in Subsection (1) shall be counted from the day following the date on which the demandant or his legal representative became aware that the ruling to revoke a patent or trial decision had been rendered due to the transmittal of a copy thereof.**

**(4) No demand for a retrial may be made after the expiration of three years from the date on which the ruling to revoke a patent or trial decision became final and conclusive.**

**(5) Where a ground for a retrial has arisen after the ruling to revoke a patent or trial decision became final and conclusive, the time limit prescribed in the preceding subsection shall be counted from the day following the date on which the ground first arose.**

**(6) Subsections (1) and (4) shall not apply to a demand for a retrial made on the ground that the trial decision conflicts with a final and conclusive trial decision previously rendered.**

**(Application mutatis mutandis of provisions on trial, etc.)**

**174.--(1) Sections 114, 116 to 120, 120quater to 120sexies, 131, 132(3), 154, 155(1) and (3), and 156 shall apply mutatis mutandis to a retrial against a final and conclusive ruling to revoke a patent.**

**(2) Sections 131, 132(3) and (4), 133, 133bis, 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 conclusive trial decision in a trial under Section 121(1).**

**(3) Sections 131, 132(1), (2) and (4), 133, 133bis, 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 conclusive trial decision in a trial under Section 123(1) or 125bis(1).**

**(4) Sections 131, 132(3) and (4), 133, 133bis, 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 conclusive trial decision in a trial under Section 126(1).**

**(5) Section 348(1) (scope of examination) of the Code of Civil Procedure shall apply mutatis mutandis to retrials.**

**(Restriction on effects of patent right restored by retrial)**

**175.--(1) Where a patent right relating to a revoked or invalidated patent or a patent right relating to the invalidated**

registration of an extension of the term thereof has been restored through a retrial or where the establishment of a patent right or the extension of the term of a patent right with respect to a patent application or an application for registration of an extension of the term of a patent right which was refused by a trial decision has been registered through a retrial, and where the patent has been granted for the invention of a product, the effects of the patent right shall not extend to any product imported into, or manufactured or acquired in Japan, in good faith after the time when the trial decision became final and conclusive but before the demand for a retrial was registered.

(2) Where a patent right relating to a revoked or invalidated patent or a patent right relating to the invalidated registration of an extension of the term thereof has been restored through a retrial or where the establishment of a patent right or the extension of the term of a patent right with respect to a patent application or an application for registration of an extension of the term of a patent right which was refused by a trial decision has been registered through a retrial, the effects of the patent right shall not extend to the following acts:

(i) the working of the invention in good faith;

(ii) in the case of a patent for an invention of product, acts of manufacturing, assigning, leasing, importing or offering for assignment or lease of, in good faith, articles to be used exclusively for the manufacture of the product;

(iii) in the case of a patent for an invention of a process, acts of manufacturing, assigning, leasing, importing or offering for assignment or lease of, in good faith, articles to be used exclusively for the working of such invention.

(Restriction on effects of patent right restored by retrial)

176.-- Where a patent right relating to a revoked or invalidated patent or a patent right relating to the invalidated registration of an extension of the term thereof has been restored through a retrial or where the establishment of a patent right or the extension of the term of a patent right with respect to a patent application or an application for registration of an extension of the term of a patent right which was refused by a trial decision has been registered through a retrial, and where a person has, in good faith, been commercially working the invention in Japan or has, in good faith, been making preparations therefor, after the ruling to revoke the patent trial decision became final and conclusive but before the registration of the demand for a retrial, such person shall have a non-exclusive license on the patent right, the license being limited to the invention which is being worked or for which preparations for working are being made and to the purpose of such working or the preparations therefor.

177.-- Deleted.

## **Chapter VIII** Litigation

(Actions against trial decisions, etc.)

178.--(1) An action against a ruling to revoke a patent, a trial decision, or a ruling to dismiss a written opposition or a demand for a trial or retrial shall come under the exclusive jurisdiction of the Tokyo High Court.

(2) An action under Subsection (1) may be instituted only by a party, an intervenor, or a person whose application for intervention in the examination of the opposition to the grant of the patent, in the trial, or in the retrial has been refused.

(3) An action under Subsection (1) may not be instituted after 30 days from the date of transmittal of the trial decision or the ruling.

(4) The time limit prescribed in the preceding subsection shall be invariable.

(5) The trial examiner-in-chief may ex officio designate a period additional to the invariable period under the preceding subsection for the benefit of a person residing in a place that is remote or difficult of access.

(6) An action with regard to the matters on which a trial may be demanded may be instituted only against a trial decision.

(Defendant in the action)

**179.-- In an action under Section 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 under Section 123(1) or 125bis(1) or in a retrial under Section 171(1) against a final and conclusive trial decision in such trial, the demandant or the defendant in the trial or retrial shall be the defendant.**

**(Notification of institution of action)**

**180.-- When an action referred to in the proviso to Section 179 has been instituted, the court shall, without delay, notify the Commissioner of the Patent Office accordingly.**

**(Annulment of the trial decision or ruling)**

**181.--(1) Where the court finds for the plaintiff in an action instituted under Section 178(1), it shall annul the trial decision or ruling.**

**(2) When the court's decision annulling a trial decision or ruling under the preceding subsection has become final and conclusive, the trial examiner shall carry out a further trial examination and render a trial decision or ruling.**

**(Sending of certified copy of the judgment)**

**182.-- At the end of the proceedings initiated by the action referred to in the proviso to Section 179, the court shall send a certified copy of the judgment of the court concerned to the Commissioner of the Patent Office without delay.**

**(Action on amount of remuneration)**

**183.--(1) Where a person who is concerned in an arbitration decision under Section 83(2), 92(3) or (4) or 93(2) is dissatisfied with the amount of remuneration fixed in the decision, he may institute an action for the increase or decrease of the remuneration.**

**(2) An action under the preceding subsection shall not be instituted after three months from the transmittal of the arbitration decision.**

**(Defendant in the action)**

**184.-- In an action under Section 183(1), the following person shall be made the defendant:**

**(i) in the case of an arbitration under Section 83(2), 92(4) or 93(2), the non-exclusive licensee, patentee or exclusive licensee;**

**(ii) in the case of an arbitration under Section 92(3), the non-exclusive licensee or the other person referred to in Section 72.**

**(Relationship between administrative appeal and litigation)**

**184bis.-- An action for the annulment of measures (with the exception of measures referred to in Section 195quater) taken under this Law or an order or ordinance thereunder may be instituted only after a request for reconsideration or a request for administrative appeal or an arbitration decision against the measure has been dealt with by a decision or a ruling.**

## **Chapter IX Special Provisions concerning International Applications under the Patent Cooperation Treaty**

**(Patent application based on international application)**

**184ter.--(1) An international application (a patent application only) for which the international filing date has been accorded in accordance with Article 11(1) or (2)(b) or Article 14(2) of the Patent Cooperation Treaty done at Washington on June 19, 1970 (hereinafter referred to as "Treaty" in this Chapter) and which contains the designation of Japan as a designated State referred to in Article 4(1)(ii) of the Treaty shall be considered to be a patent application having been filed on its international filing date.**

**(2) Section 43 shall not apply to the international application considered to be a patent application by virtue of the provision of the preceding subsection (hereinafter referred to as "international patent application").**

**(Translation of international patent application in foreign language)**

**184quater.--(1) The applicant of an international patent application made in a foreign language (hereinafter referred to as "foreign language patent application") shall furnish to the Commissioner of the Patent Office a translation into Japanese of the description, the claims and the drawings (limited to any text matter of the drawings) and the abstract referred to in Article 3(2) of the Treaty as of the international filing date referred to in Section 184ter(1) (hereinafter referred to as "international filing date"), within one year and eight months (to as "priority date") [in the case of an international patent application in which an international preliminary examination referred to in Article 33 of the Treaty had been demanded within one year and seven months from the priority date and, further, Japan has been elected as an elected State under Article 31(4)(a) of the Treaty -- within two years and six months from the priority date (hereinafter referred to as "time limit for the submission of the national form paper")] from the priority date referred to in Article 2(xi) of the Treaty (hereinafter referred to as "priority date").**

**(2) In the case of preceding subsection, the applicant of a foreign language patent application may, where he has made an amendment under Article 19(1) of the Treaty, furnish a translation of the amended claims in lieu of the translation of the claims referred to in the preceding subsection.**

**(3) When the translation of the description referred to in Subsection (1) and the translation of the claims referred to in the preceding two subsections have not been furnished within the time limit for the submission of the national form paper, the international patent application shall be deemed withdrawn.**

**(4) The applicant who has furnished the translation referred to in Subsection (1) may, where he has made an amendment under Article 19(1) of the Treaty, further furnish a translation into Japanese of the amended claims not only later than the date on which the expiration of the time limit for the submission of the national form paper [or where the applicant has made a request for examination within the time limit for the submission of the national form paper, the time when the said request was made (hereinafter referred to as "relevant time for the national processing")] occurs.**

**(5) The principal sentence of Section 184septies(3) shall apply mutatis mutandis where the translation referred to in Subsection (2) or (4) has not been furnished.**

**(Submission of papers and invitation to correction)**

**184quinquies.--(1) The applicant of an international patent application shall, within the time limit for the submission of the national form paper, submit to the Commissioner of the Patent Office a paper stating the following:**

- (i) the name and the domicile or residence of the applicant;**
- (ii) the title of the invention;**
- (iii) the name and the domicile or residence of the inventor;**
- (iv) the international filing date and other matters provided for in an ordinance of the Ministry of International Trade and Industry.**

**(2) The Commissioner of the Patent Office may invite correction, designating an adequate time limit, in the following cases:**

- (i) when the national form paper to be submitted under the preceding subsection has not been filed within the time limit for the submission of the national form paper;**
- (ii) when any proceeding under the preceding subsection does not comply with Section 7(1) to (3) and Section 9;**
- (iii) when any proceeding under the preceding subsection does not comply with the formality requirements provided for in an ordinance of the Ministry of International Trade and Industry;**
- (iv) when the translation of the abstract to be submitted under Section 184quater(1) has not been filed within the time limit for the submission of the national form paper;**
- (v) when the fee to be paid under Section 195(2) has not been paid within the time limit for the submission of the national form paper.**

**(3) Where a person who was invited to make an amendment under the preceding subsection fails to do so within the time limit designated under that subsection, the Commissioner of the Patent Office may dismiss the international patent application concerned.**

**(Effect, etc. of request, description, etc., of international application)**

**184sexies.--(1) The request of an international patent application as of the international filing date shall be deemed to be the request submitted under Section 36(1).**

**(2) The description and claims of an international patent application made in the Japanese language (hereinafter referred to as "a Japanese language patent application") as of the international filing date and the translation of the description and claims of a foreign language patent application as of the international filing date shall be deemed to be the specification as submitted attached to the request under Section 36(2), the claims of Japanese language patent application as of the international filing date and the translation of the claims of a foreign language patent application as of the international filing date shall be deemed to be the patent claims set forth in the specification as submitted attached to the request under Section 36(2), and the drawings in a Japanese language patent application as of the international filing date and the drawings (excluding any text matter of the drawings) and the translation of the text matter of the drawings in a foreign language patent application as of the international filing date shall be deemed to be the drawings as submitted attached to the request under Section 36(2), and the abstract of a Japanese language patent application and the translation of the abstract of a foreign language patent application shall be deemed to be the abstract as submitted attached to the request under Section 36(2).**

**(3) Where the translation of the amended claims under Article 19(1) of the Treaty has been furnished in accordance with Section 184quater(2) or (4), the translation of the description as of the international filing date and the translation of the amended claims shall be deemed to be the specification as submitted attached to the request under Section 36(2), and the translation of the amended claims shall be deemed to be the patent claims set forth in the specification as submitted attached to the request under Section 36(2) notwithstanding Subsection (2).**

**(Amendment under Article 19 of the Treaty of the Japanese language patent application)**

**184septies.--(1) The applicant of a Japanese language patent application shall, where he has made an amendment under Article 19(1) of the Treaty, furnish to the Commissioner of the Patent Office, no later than date on which the relevant time limit for the national processing occurs, a copy of the amendment furnished under Article 19(1) of the Treaty.**

**(2) Where a copy of the amendment has been furnished under the preceding subsection, the patent claim set forth in the specification as submitted attached to the request shall be deemed to have been amended under Section 17bis(1) by virtue of the copy of the amendment. However, where the amendment has been communicated to the Patent Office under Article 20 of the Treaty within the time limit prescribed in the preceding subsection, the patent claim shall be deemed to have been amended under Section 17bis(1) by virtue of that amendment.**

**(3) When the proceeding under Subsection (1) has not been taken by the applicant of a Japanese language patent application within the time limit prescribed in the said subsection, no amendment under Article 19(1) of the Treaty shall be deemed to have been made. However, this shall not apply to the case in the proviso to the preceding subsection.**

**(Amendment under Article 34 of the Treaty)**

**184octies.--(1) The applicant of an international patent application shall, where he has made an amendment under Article 34(2)(b) of the Treaty, furnish to the Commissioner of the Patent Office, no later than the date on which the relevant time for the national processing occurs, a copy of the amendment furnished under Article 34(2)(b) of the Treaty in the case of the amendment in respect of a Japanese language patent application or a translation into Japanese of the amendment in the case of the amendment in respect of a foreign language patent application.**

**(2) Where a copy of the amendment or a translation of the amendment has been furnished under the preceding subsection, the specification or drawings attached to the request shall be deemed to have been amended under Section 17bis(1) by virtue of the copy of the amendment or the translation of the amendment. However, if, in respect of the amendment concerning a Japanese language patent application, the amendment has been communicated to the Patent Office under Article 36(3)(b) of the Treaty within the time limit prescribed in the preceding subsection, the specification or drawings attached to the request shall be deemed to have been amended by virtue of that amendment.**

**(3) When the proceeding under Subsection (1) has not been taken by the applicant of an international patent application within the time limit prescribed in the said subsection, no amendment under Article 34(2)(b) of the Treaty shall be deemed to have been made. However, this shall not apply to the case in the proviso to the preceding subsection.**

**(4) Where the specification or drawings attached to the request of the foreign language patent application are deemed to have been amended under Section 17(1) in the case of Subsection (1), the amendment shall be deemed to have been made by virtue of the submission of a written correction of incorrect translation under Section 17bis(2).**

**(National publication of translation, etc.)**

**184novies.--(1) In respect of a foreign language patent application for which a translation has been furnished under Section 184quater(1), the Commissioner of the Patent Office shall, except where the Gazette containing the Patent has already been published, effect the national publication of the translation as soon as possible after the expiration of the time limit for the submission of the national form paper [or -- where the application is an international patent application for which a request for examination by the applicant has been made within the time limit for the submission of the national form paper and for which the international publication referred to in Article 21 of the Treaty (hereinafter referred to as "international publication") has been effected -- after the time of expiration of one year and six months from the priority date or from the time of making a request for examination, whichever is later].**

**(2) The national publication of the translation shall be effected by publishing the following in the Patent Gazette:**

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

**(ii) the number of the patent application;**

**(iii) the international filing date;**

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

**(v) the matters appearing in the translation of the description and the text matter of the drawings referred to in Section 184quater(1), the matters appearing in the translation of the claims prescribed therein (in the case where a translation has been submitted under Section 184quater(2), the said translation) and the matters appearing in the translation referred to in Section 184quater(4), the contents of the drawings (excluding the text matter of the drawings) as well as the matters appearing in the translation of the abstract (with the exception of those matters the publication of which in the Patent Gazette is, in the view of the Commissioner of the Patent Office, liable to contravene public order or morality);**

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

**(vii) other necessary particulars.**

**(3) Section 64(3) shall apply mutatis mutandis to the publication of the matters appearing in the translation of the abstract under Subsection (2)(v), in the Patent Gazette in accordance with Subsection (2).**

**(4) Section 64 shall not apply to an international patent application.**

**(5) For the purpose of an international patent application, "laying open" or "laid open" in Section 48quinquies(1), Section 48sexies, the proviso to Section 66(3), Section 128, Section 186(i) and (ii), and Section 193(2)(i) and (ii) shall be considered to have been replaced by "the international publication under Section 184novies(1)" in the case of a Japanese language patent application and shall be considered to have been replaced by "the national publication of a translation under Section 184novies(1)" in the case of a foreign language patent application.**

**(6) For the purposes of a request for a certificate, etc. concerning a foreign language patent application, "or the materials referred to in Section 67bis(2)" in Section 186(i) shall be considered to have been replaced by "a request, a description, claims, drawings or an abstract of the international application referred to in Article 3(2) of the Patent Cooperation Treaty done at Washington, June 19, 1970 (excluding such documents concerning an international patent application for which the establishment of the patent has been registered or such documents for which the international publication has been effected)".**

**(7) In respect of the matters to be published in the Patent Gazette concerning the international patent application, "attached to a request after the application has been laid open" in Section 193(2)(iii) shall be considered to have been replaced by "... attached to a request of an international application for which the international publication has been effected".**

**(Effects, etc. of international publication and national publication)**

**184decies.--(1) The applicant of an international patent application may, after the international publication (or -- if the international publication has been effected prior to the expiration of one year and six months from the priority date -- after the expiration of one year and six months from the priority date) in the case of a Japanese language patent application and after the national publication of the translation in the case of a foreign language patent application, and following a warning by the applicant in the form of a document describing the contents of the invention claimed in the international patent application, demand of a person who has commercially worked the invention, after the warning but before the registration of the establishment of the patent right, the payment of compensation in a sum of money equivalent to what he would normally be entitled to receive for the working of the invention if it were a patented invention. Even in the absence of the warning, in the case of a Japanese language patent application, the same shall apply to a person who commercially worked the invention before the registration of the establishment of the patent right (or -- in the case of an international patent application for which the international publication has been effected prior to the expiration of one year and six months from the priority date -- after the expiration of one year and six months from the priority date and before the registration of the establishment of the patent right), knowing that the invention was the one claimed in the international patent application for which the international publication has been effected, and in the case of a foreign language patent application, the same shall apply to a person who commercially worked the invention before the registration of the establishment of the patent right, knowing that the invention was the one claimed in the international patent application for which the national publication of the translation has been effected.**

**(2) Section 65(2) to (5) shall apply mutatis mutandis to the exercise of the right to demand compensation under the preceding subsection.**

**(Special provisions concerning patent administrator for residents abroad)**

**184undecies.--(1) Notwithstanding Section 8(1), an applicant of an international patent application who is a resident abroad may proceed before the Patent Office without being represented by a patent administrator until the relevant time for the national processing.**

**(2) The person under the preceding subsection shall appoint a patent administrator and notify the Commissioner of the Patent Office after the date on which the relevant time for the national processing occurs and within the time limit prescribed in an ordinance of the Ministry of International Trade and Industry.**

**(3) Where the notification of the appointment of a patent administrator has not been made within the time limit under the preceding subsection, the international patent application shall be considered to have been withdrawn.**

**(Special provisions concerning amendment)**

**184duodecies.--(1) Notwithstanding the principal sentence of Section 17(1), no amendment (except the amendment under Sections 184septies(2) and 184octies(2)) may be made until, in respect of a Japanese language patent application, after the proceeding has been taken under Section 184quinquies(1) and the fee to be paid under Section 195(2) has been paid, and, in the case of a foreign language patent application, after the proceeding under Sections 184quater(1) and 184quinquies(1) and the fee to be paid under Section 195(2) and after the relevant time for the national processing has occurred.**

**(2) For the purposes of the scope of amendments of the specification or drawings concerning a foreign language patent application, "foreign language file application under Section 36bis(2)" in Section 17bis(2) shall be considered to have been replaced by "foreign language patent application referred to in Section 184quater(1)," "the specification or drawings originally attached to the request [in the case of a foreign language file application under Section 36bis(2), the translation of the foreign language file referred to in Section 36(2) considered to be a specification and drawings by virtue of the provisions of Section 36(4) (in the case where the specification or drawings were amended by virtue of the submission of a written correction of incorrect translation, said translation or the specification or drawings as amended)]" in Section 17bis(3) shall be considered to have been replaced by "the translation referred to in Section**



**184quater(1) of the specification or drawings (limited to any text matter of the drawings) of the international patent application referred to in Section 184ter(2) (hereinafter referred to as "international patent application" in this subsection) as of the international filing date referred to in Section 184quater(1) (hereinafter referred to as the "international filing date" in this subsection)," the translation referred to in Section 184quater(1) of the claims of the international patent application as of the international filing date (in the case where a translation of the amended claims under Article 19(1) of the Patent Cooperation Treaty done at Washington on June 19, 1970 has been furnished under Section 184quater(2) or (4), such translation), or the drawings (excluding the text matter of the drawings) of the international patent application as of the international filing date (hereinafter referred to as "translation, etc." in this subsection) (in the case where the specification or drawings were amended by virtue of the submission of the written correction of incorrect translation, the translation, etc. or such specification or drawings as amended).**

**(3) The applicant of an international patent application may, notwithstanding Section 17quater, amend the abstract attached to the request only within one year and three months from the priority date.**

**(Special provisions concerning patentability)**

**184terdecies.-- For the purposes of Section 29bis of this Law, where an international patent application referred to in Section 184ter(2) of this Law or an international utility model application referred to in Section 48ter(2) of the Utility Model Law is another application for a patent or an application for a utility model registration as referred to in Section 29bis of this Law, the passage reading "the specification or drawings originally attached to the request" in Section 29bis of this Law shall be considered to have been replaced by "the description, claims or drawings of the international application as of the international filing date referred to in Section 184quater(1) of this Law or Section 48quater(4) of the Utility Model Law," and the passage reading "another application for a patent or of an application for a utility model registration which was" shall be considered to have been replaced by "another application for a patent or of an application for a utility model registration (excluding the foreign patent application referred to in Section 184quater(1) of the Patent Law which was deemed to have been withdrawn under said Section (3) or the foreign language utility model application referred to in Section 48quater(1) of the Utility Model Law which was deemed to have been withdrawn under said Section (3)), " and the passage reading "the laying open for public inspection (Kokai) was effected or" in Section 29bis of this Law shall be considered to have been replaced by "the laying open for public inspection (Kokai) was effected," and the passage reading "was published under said subsection after the filing of the patent application" in Section 29bis of this Law shall be considered to have been replaced by "was published under said subsection or the international publication referred to in Article 21 of the Patent Cooperation Treaty done at Washington on June 19, 1970 was effected after the filing of the patent application".**

**(Special provisions concerning exceptions to lack of novelty of invention)**

**184quater decies.-- Notwithstanding Section 30(4), any person who desires the application of Section 30(1) or (3) with respect to the invention claimed in an international patent application may submit to the Commissioner of the Patent Office a written statement to that effect and a document proving that the invention claimed in the international patent application is an invention falling under Section 30(1) or (3) after the date on which the relevant time for the national processing occurs (or -- where the applicant had made a request for examination within the time limit -- after the date of the request) and within the time limit prescribed in an ordinance of the Ministry of International Trade and Industry.**

**(Special provisions concerning priority claim based on patent applications, etc.)**

**184quindecies.--(1) Sections 41(4) and Section 42(2) shall not apply to an international patent application.**

**(2) For the purposes of Section 41(3) for a Japanese language patent application, "or the laying open for public inspection" in Section 41(3) shall be considered to have been replaced by "or the international publication referred to in Article 21 of the Patent Cooperation Treaty done at Washington on June 19, 1970".**

**(3) For the purposes of Section 41(3) for a foreign language patent application, "the specification or drawings originally attached to the request of a patent application" in Section 41(3) shall be considered to have been replaced by "the description, the claims or the drawings of an international application as of the international filing date referred to in Section 184quater(1)" and "or the laying open for public inspection" in Section 41(3) shall be considered to have been replaced by "or the international publication referred to in Article 21 of the Patent Cooperation Treaty done at Washington on June 19, 1970".**

**(4) For the purposes of Sections 41(1) to (3) and 42(1) of this Law in the case where the earlier application under**

**Section 41(1) of this Law is an international patent application or an international utility model application referred to in Section 48ter(2) of the Utility Model Law, "the specification or drawings originally attached to the request" in Section 41(1) and (2) shall be considered to have been replaced by "the description, the claims or the drawings of an international application as of the international filing date referred to in Section 184quater(1) of this Law or Section 48quater(1) of the Utility Model Law," "the specification or drawings originally attached to the request of the earlier application" and "the laying open for public inspection" in Section 41(3) shall be considered to have been replaced by "the description, the claims or the drawings of an international application as of the international filing date referred to in Section 184quater(1) of this Law or Section 48quater(1) of the Utility Model Law of the earlier application" and "the international publication referred to in Article 21 of the Patent Cooperation Treaty done at Washington on June 19, 1970," and "at the expiration of one year and three months from the filing date" in Section 42(1) shall be considered to have been replaced by "at the expiration of the time limit for the national processing under Section 184quater(4) of this Law or Section 48quater(4) of the Utility Model Law or one year and three months from the international filing date referred to in Section 184quater(1) of this Law or Section 48quater(1) of the Utility Model Law, whichever is later)".**

**(Special provisions concerning conversion of applications)**

**184sedecies.-- Conversion into a patent application of an international application having been considered or recognized to be a utility model application under Section 48ter(1) or 48sedecies(4) of the Utility Model Law may not be made until, in respect of a Japanese language utility model application referred to in Section 48quinquies(4) of the Utility Model Law, after the proceedings under Section 48quinquies(1) of the Utility Model Law has been taken, and in respect of a foreign language utility model application referred to in Section 48quater(1) of the Utility Model Law, after the proceedings under Sections 48quater(1) and 48quinquies(1) of the Utility Model Law have been taken and, further, after the fee to be paid under Section 54(2) of the Utility Model Law has been paid (or -- in respect of an international application having been recognized as a utility model application under Section 48sedecies(4) of the Utility Model Law -- after the decision referred to in the said subsection has been made).**

**(Time limit for making request for examination)**

**184septies decies.-- The applicant of an international patent application may not make a request for examination for his international patent application until, in respect of a Japanese language patent application, after the proceeding under Section 184quinquies(1) has been taken, and in respect of a foreign language patent application, after the proceedings under Sections 184quater(1) and 184quinquies(1) and have been taken and, further, after the fee to be paid under Section 195(2) has been paid, whereas, a person other than the applicant of the international patent application may not make a request for examination of the international patent application until after the expiration of the time limit for the submission of the national form paper.**

**(Special provisions for reasons for refusal, etc.)**

**184duodevicies.-- For the purpose of the examiner's decision of refusal, with respect to the foreign language patent application, the opposition to the patent and trial under Section 123(1), "foreign language file application" in Sections 49(v), 113(i) and (v), and 123(i) and (v) shall be replaced by "foreign language patent application referred to in Section 184quater(1)," and "foreign language file" in Section 49(v), 113(v), and 123(1)(v) shall be replaced by "the specification or drawings of the international application as of the international filing date referred to in Section 184quater(1)".**

**(Special provisions concerning correction)**

**184undevicies.-- For the purpose of the demand for the correction under Sections 120quater(2) and 134(2) and the demand for a trial under Section 126(1) with respect to a foreign language patent application, "foreign language file application" in Section 126(2) shall be replaced by "foreign language patent application referred to in Section 184quater(1)" and "foreign language file" in that Section (2) shall be replaced by "the specification or drawings of the international application as of the international filing date referred to in Section 184quater(1)".**

**(International application recognized as patent application by decision)**

**184vicies.--(1) The applicant of an international application defined in Article 2(vii) of the Treaty may, where the receiving Office defined in Article 2(xv) of the Treaty has made a refusal referred to in Article 25(1)(a) of the Treaty or has made a declaration referred to in Article 25(1)(a) or (b) of the Treaty or the International Bureau defined in Article 2(xix) of the Treaty has made a finding referred to in Article 25(1)(a) of the Treaty in respect of the international application (only a patent application) which contains the designation of Japan as a designated State referred to in Article 4(1)(ii) of the Treaty, request the Commissioner of the Patent Office as provided in an ordinance of the Ministry of International Trade and Industry to make a decision referred to in Article 25(2)(a) of the Treaty within the time limit prescribed in an ordinance of the Ministry of International Trade and Industry.**

(2) A person who makes a request under the preceding subsection in respect of the international application made in a foreign language shall furnish to the Commissioner of the Patent Office at the time of making such a request a translation into Japanese of the description, the claims, the drawings (limited to any text matter of the drawings) and the abstract as well as other documents relating to the international application provided for in an ordinance of the Ministry of Trade and Industry.

(3) Where the request under Subsection (1) has been made, the Commissioner of the Patent Office shall decide whether the refusal, declaration, or finding referred to therein 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 made a decision under the preceding subsection to the effect that the refusal, declaration, or finding referred to in the said subsection was not justified under the provisions of the Treaty and the Regulations under the Patent Cooperation Treaty, the international application concerned shall be recognized as a patent application filed on the date which would be accorded as the international filing date if said refusal, declaration, or finding were not made in respect of the said international application.

(5) For the purpose of the laying open for public inspection of an international application recognized as a patent application under the preceding subsection, "date of the application" in Section 64 shall be replaced by "priority date referred to in Section 184quater(1)," "foreign language file application" in Section 64(2)(iv) shall be replaced by "international application made in the foreign language," and "foreign language file and foreign language abstract" in Section 64(2)(iv) shall be replaced by "the description, the claims, drawings and abstract of the international application as of the date which would be accorded as the international filing date under Section referred to in Section 184vicies(4)".

(6) Sections 184ter(2), 184sexies(1) and (2), 184novies(6), 184duodecies to 184quater decies, 184quindecies(1), (3) and (4), and 184septies decies to 184undevicies shall apply mutatis mutandis to the international application deemed as a patent application under Subsection (4). In such a case, the details necessary for the application of those provisions shall be prescribed by Cabinet Order.

## Chapter X Miscellaneous Provisions

(Special provisions for patent or patent right covering two or more claims)

185.-- For the purposes of the provisions of Section 27(1)(i) or Section 65(4) (including its application under Section 184decies(2)), 80(1), 97(1), 98(1)(i), 111(1)(ii), 114(3) (including its application under Section 174(1)), Section 123(2), 125, 126(5) (including its application under Section 134(5)), Section 132(1) (including its application under Section 174(3)) or Section 175, 176 or 193(2)(iv) of this Law, or of Section 20(1) of the Utility Model Law, relating to the patent or patent right covering two or more claims, the patent shall be deemed to have been granted, or the patent right shall be deemed to exist, for each claim.

(Request for certification, etc.)

186.-- Anyone may request the Commissioner of the Patent Office to issue a certificate, a copy or an extract of documents, to allow the inspection or copying of documents or to issue documents whose contents are recorded in the part of the Patent Register prepared by magnetic tapes, where such documents relate to patents. However, this provision shall not apply in the case of the following documents if the Commissioner of the Patent Office considers it necessary to keep them secret:

(i) a request or the specification, drawings or abstract attached to a request, or a foreign language file or foreign language abstract (except where the establishment of the patent right has been registered or where such documents have been laid open), or the materials referred to in Section 67bis;

(ii) documents concerning a trial under Section 121(1) (except where the establishment of the patent right has been registered or where the patent application concerned has been laid open);

(iii) documents liable to contravene public order or morality.

(Indication of existence of patent)

**187.--** A patentee or an exclusive or non-exclusive licensee shall take steps, as prescribed in an ordinance of the Ministry of International Trade and Industry, to mark the patented product or a product produced by the patented process (hereinafter referred to as a "patented product"), or the packaging thereof, with a statement to the effect that the invention of the product or the process has been patented (hereinafter referred to as an "indication of a patent").

**(Prohibition of false marking)**

**188.--** The following acts shall be unlawful:

- (i)** the marking of anything other than a patented product or its packaging with an indication of a patent or confusingly similar indication;
- (ii)** the assignment, lease or display for the purpose of assignment or lease of a product other than a patented product, where such product or its packaging is marked with an indication of a patent or confusingly similar indication;
- (iii)** the inclusion in an advertisement of an indication that an invention of a product has been patented or a confusingly similar indication, for the purpose of causing others to produce or use the product or of assigning or leasing the product, where it is not a patented product;
- (iv)** the inclusion in an advertisement of an indication that an invention of a process has been patented or a confusingly similar indication, for the purpose of causing others to use the process or of assigning or leasing the process, where it is not a patented process.

**(Transmittal of documents)**

**189.--** An ordinance of the Ministry of International Trade and Industry shall prescribe the documents to be transmitted in addition to those provided for in this Law.

**(Transmittal of documents)**

**190.--** Sections 98(2), 99 to 103, 105, 106, 107(1) (excluding (ii) and (iii)) and 109 (service) of the Code of Civil Procedure shall apply mutatis mutandis to the transmittal of documents provided for in this Law or in an ordinance of the Ministry of International Trade and Industry under Section 189. In such a case, "court clerk" in Sections 98(2) and 100 of said Code shall read "official designated by the Commissioner of the Patent Office;" "bailiff or post" in Section 99(1) of said Code shall read "post," "in the case...", the court clerk" in Section 107(1) of said Code shall read "in the case ... and in the case where documents relating to an examination are to be transmitted, the official designated by the Commissioner of the Patent Office".

**(Transmittal of documents)**

**191.--(1)** Where the domicile or residence of a person to whom transmittal is to be made or any other place to which transmittal is to be made is unknown or transmittal in accordance with Section 107(1) (excluding (ii) and (iii)) of the Code of Civil Procedure applied under Section 190 of this Law is not possible, transmittal may instead be effected by public notice.

**(2)** The transmittal by public notice shall be made by publishing a notice in the Official Gazette and the Patent Gazette to the effect that the documents to be transmitted are ready to be delivered at any time to the person entitled to receive them and by posting such notice on the bulletin board of the Patent Office.

**(3)** The transmittal by public notice shall take effect after the expiration of 20 days from the date on which the notice was published in the Official Gazette.

**(Transmittal of documents)**

**192.--(1)** Where a resident abroad has a patent administrator, the transmittal shall be made to the patent administrator.

**(2)** Where a resident abroad has no patent administrator, the documents may be dispatched by registered airmail.

**(3)** Where documents have been sent by post under the preceding subsection, the transmittal shall be deemed to have been made at the time of dispatch.

**(Patent Gazette)**

**193.--(1) The Patent Office shall publish the Patent Gazette (Tokkyo Koho).**

**(2) In addition to the matters provided for in this Law, the Patent Gazette shall contain:**

- (i) decisions of refusal, or abandonment, withdrawal or dismissal of a patent application after its laying open or withdrawal of an application for the registration of an extension of the term of a patent right;**
- (ii) successions to the right to obtain a patent after the laying open;**
- (iii) amendments of the specification or drawings attached to the request under Section 17bis(1) after the application has been laid open (in the case of an amendment under each paragraph of the proviso to Section 17bis(1), limited to one by submitting a written correction of mistranslation);**
- (iv) extinguishment of patent rights (excluding that due to the expiration of a term and that under Section 112(4) or (5)) or the restoration (limited to that under Section 112bis(2));**
- (v) oppositions to the patents or demands for trials or retrials, or withdrawal thereof;**
- (vi) final and conclusive rulings on the oppositions to the patents, trial decisions, or rulings of retrials or retrial decisions;**
- (vii) particulars stated in the corrected specification and the contents of the drawings (limited to those which a final and conclusive ruling or trial decision to correct has been rendered);**
- (viii) requests for an arbitration decision or withdrawals thereof and arbitration decisions;**
- (ix) final judgments in an action under Section 178(1).**

**(Production of documents, etc.)**

**194.--(1) The Commissioner of the Patent Office or the examiner may require a party to produce documents or other evidence necessary for a procedure other than one relating to an opposition to the patent, a trial, or a retrial.**

**(2) The Commissioner of the Patent Office or the examiner may entrust a related administrative organization or an educational establishment or other body with the search necessary for an examination.**

**(Fees)**

**195.--(1) The person specified hereunder shall pay the fees the amount of which shall be prescribed by Cabinet Order with the actual costs taken into consideration:**

- (i) person requesting an extension of the time limit under Section 4, 5(1) or 108(3), or change of date under Section 5(2);**
- (ii) person requesting re-issuance of Letters Patent;**
- (iii) person making notification of succession in accordance with Section 34(4);**
- (iv) person requesting issuance of certificate in accordance with Section 186;**
- (v) person requesting issuance of copy or extract of documents in accordance with Section 186;**
- (vi) person requesting inspection or copying of documents in accordance with Section 186;**
- (vii) person requesting issuance of documents containing matters recorded in that part of the Patent Register as prepared on magnetic tapes, in accordance with Section 186.**

**(2) The persons specified in the left-hand column of the attached table shall pay the fees the amount of which shall be prescribed by Cabinet Order within the limit of the amounts specified in the right-hand column of the table.**

**(3) Where, after a person other than the applicant has made a request for examination, the number of claims is increased because of an amendment with respect to the specification attached to the request, the fees for the request for examination to be paid under the preceding subsection shall be paid by the applicant for the increased number of claims, notwithstanding the preceding subsection.**

**(4) The three preceding subsections shall not apply where the person to pay the fee in accordance with the subsections**

is the State.

(5) The payment of the fees under Subsections (1) to (3) shall be made by patent revenue stamps as prescribed by an ordinance of the Ministry of International Trade and Industry. However, wherever so prescribed by an ordinance of the Ministry of International Trade and Industry, such payment may be made in cash.

(6) A fee paid by mistake or in excess shall be refunded upon the request of the person making the payment.

(7) No request for a refund of a fee under the preceding subsection may be made after one year from the date of payment.

(Reduction of fee for request for examination, or exemption therefrom)

**195bis.--** Where a person making a request for examination with respect to his own patent application is the inventor of the invention claimed in the application or his heir and is recognized as having no means to pay the fee for the request under Section 195(2), the Commissioner of the Patent Office may reduce such fee or exempt him from payment as prescribed by Cabinet Order.

(Exemption of application of Administrative Procedure Law)

**195ter.--** The second and third chapters of the Administrative Procedure Law (Law No. 88 in 1993) shall not apply to the measures under this Law or an order or ordinance thereunder this Law.

(Restriction on appeals under Administrative Appeal Law)

**195quater.--** No appeal under the Administrative Appeal Law shall lie from an examiner's decision or a ruling to revoke a patent, a trial decision, and a ruling to dismiss a written opposition to the patent, or a demand for a trial or retrial nor from measures against which no appeal lies in accordance with this Law.

## **Chapter XI Penal Provisions**

(Offense of infringement)

**196.--(1)** Any person who has infringed a patent right or an exclusive license shall be liable to imprisonment with labor not exceeding five years or to a fine not exceeding 5,000,000 yen.

(2) The prosecution for the offenses under the preceding subsection shall be initiated upon complaint.

(Offense of fraud)

**197.--** Any person who has obtained a patent, a registration of an extension of the term of a patent right, a ruling on the opposition to the patent, or a trial decision by means of a fraudulent act shall be liable to imprisonment with labor not exceeding three years or to a fine not exceeding 3,000,000 yen.

(Offense of false marking)

**198.--** Any person infringing Section 188 shall be liable to imprisonment with labor not exceeding three years or to a fine not exceeding 3,000,000 yen.

(Offense of perjury, etc.)

**199.--(1)** A witness, expert witness or interpreter who, having taken an oath under this Law, has made a false statement or has given a false expert opinion or has interpreted falsely before the Patent Office or a court commissioned thereby shall be liable to imprisonment with labor for a term not less than three months nor more than ten years.

(2) Where a person committing the offense in the preceding subsection has made a voluntary confession before the ruling on the opposition to the patent or trial decision concerning the case has become final and conclusive, his sentence may be reduced or suppressed.

(Offense of divulging secrets)

**200.-- Where any present or former official of the Patent Office has divulged or made surreptitious use of the secrets relating to an invention in a patent application to which he had access in the course of his duties, he shall be liable to imprisonment with labor not exceeding one year or a fine not exceeding 500,000 yen.**

**(Dual liability)**

**201.-- Where an officer representing a legal entity or a representative, employee or any other servant of a legal entity or of a natural person has committed an act in violation of Section 196(1), 197 or 198, with regard to the business of the legal entity or natural person, the legal entity or the natural person shall, in addition to the offender, be liable to the fine prescribed in those sections.**

**(Administrative penalties)**

**202.-- Where a person who has taken an oath under Section 207(1) of the Code of Civil Procedure as applied under Section 151 [including its application under Section 119 (including its application under Sections 174(1)) and 174(2) to (4) of this Law] has made a false statement before the Patent Office or a court commissioned thereby, he shall be liable to an administrative penalty not exceeding 100,000 yen.**

**(Administrative penalties)**

**203.-- Where a person who has been summoned by the Patent Office or a court commissioned thereby in accordance with this Law has failed to appear or has refused to take an oath, to make a statement, to testify, to give an expert opinion or to interpret, without a legitimate reason, he shall be liable to an administrative penalty not exceeding 100,000 yen.**

**(Administrative penalties)**

**204.-- Where a person who has been ordered by the Patent Office or a court commissioned thereby to produce or show documents or other evidence in accordance with the provisions of this Law relating to the examination or preservation of evidence has failed to comply with the order, without a legitimate reason, he shall be liable to an administrative penalty not exceeding 100,000 yen.**

**Attached Table**

**(Related to Section 195)**

**Person liable to pay Amounts**

**1. Person filing patent ¥21,000 per case application (except those listed below)**

**2. Person filing foreign ¥35,000 per case language file application**

**3. Person taking proceeding ¥21,000 per case under Section 184quinquies(1)**

**4. Person making request ¥21,000 per case under Section 184vicies(1)**

**5. Person making request ¥74,000 per case for extension of term of patent right**

**6. Person making request ¥84,300 per case plus for examination ¥2,700 per claim**

**7. Person amending ¥19,000 per case specification or drawings by submitting written correction of incorrect translation**

**8. Person requesting ¥40,000 per case interpretation in accordance with Section 71(1)**

**9. Person requesting ¥55,000 per case arbitration decision**

**10. Person requesting ¥27,500 per case cancellation of arbitration decision**

11. Person filing opposition ¥8,700 per case plus to patent ¥1,000 per claim
12. Person applying to ¥11,000 per case intervene in examination of opposition to patent
13. Person demanding trial ¥49,500 per case plus retrial (except those ¥5,500 per claim listed below)
14. Person demanding trial ¥55,000 per case against examiner's decision of refusal of, or trial for invalidation of, registration of extension of term of patent right or retrial against any of these final and conclusive trial decisions
15. Person demanding ¥49,500 per case plus amendment of ¥5,500 per claim specification or drawings
16. Person demanding ¥55,000 per case intervention in trial or retrial

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## JAPAN

### [UTILITY MODEL LAW]

(Law No. 123 of April 13, 1959, as last amended on  
June 12, 1996)

ENTRY INTO FORCE: April 1, 1997

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## **Chapter I    General Provisions**

### **(Purpose)**

**1.-- The purpose of this Law shall be to encourage devices by promoting the protection and utilization of devices relating to the shape or construction of articles or a combination of articles, so as to contribute to the development of industry.**

### **(Definitions)**

**2.--(1) "Device" in this Law means the creation of technical ideas by which a law of nature is utilized.**

**(2) "Registered utility model" in this Law means a device for which a utility model registration has been effected.**

**(3) "Working" of a device in this Law means acts of manufacturing, using, assigning, leasing, importing or offering for assignment or lease (including displaying for the purpose of assignment or lease -- hereinafter the same) of, articles embodying the device.**

### **(Amendment)**

**2bis.--(1) A person who is proceeding on a utility model application or a demand or taking any other procedure relating to a utility model registration (hereinafter referred to as "procedure") may make amendments only during the pendency of the case before the Patent Office. However, he may not amend the specification, the drawings or the abstract attached to the request after the expiration of the time limit to be set by Cabinet Order from the filing date of the utility model application.**

**(2) An amendment of the specification or drawings under the principal sentence of the preceding subsection shall remain within the scope of the features disclosed in the specification or drawings originally attached to the request.**

**(3) The Commissioner of the Patent Office may invite amendment, designating an adequate time limit, in the following cases:**

- (i) when the requirements of Sections 7(1) to (3) or 9 of the Patent Law (Law No. 121 of 1959) as applied under Section 2quinquies of this Law have not been complied with;**
- (ii) when the formal requirements specified in this Law or in an order or ordinance thereunder have not been complied with;**
- (iii) when the fees to be paid under Section 32(1) have not been paid with respect to a procedure;**
- (iv) when the fees to be paid under Section 54(1) or (2) have not been paid with respect to a procedure.**

**(4) Any amendment (except in the case of the payment of the annual fee or fees) shall be submitted in writing.**

**(Dismissal of procedure)**

**2ter.-- The Commissioner of the Patent Office may dismiss a procedure when a person whom he has invited to make amendment in accordance with Section 2bis(3) or Section 6bis fails to do so within the time limit designated in accordance with that subsection or that Section.**

**(Capacity of associations, etc., which are not legal entities to proceed before the Office)**

**2quater.--(1) An association or foundation which is not a legal entity but for which an officer representing it or an administrator has been designated may, in its name:**

- (i) make a request for technical opinion as to registrability of a utility model referred to in Section 12(1);**
- (ii) demand a trial;**
- (iii) demand a retrial against a final and conclusive trial decision.**

**(2) An association or foundation which is not a legal entity but for which an officer representing it or an administrator has been designated may be made a party in its name to a retrial against a final and conclusive trial decision.**

**(Application mutatis mutandis of Patent Law)**

**2quinquies.--(1) Sections 3 and 5 of the Patent Law shall apply mutatis mutandis to the time limits and dates prescribed in this Law.**

**(2) Sections 7 to 9, 11 and Sections 18bis to 24 of the Patent Law shall apply mutatis mutandis to the procedure.**

**(3) Section 25 of the Patent Law shall apply mutatis mutandis to utility model rights and other rights relating to utility model registrations.**

**(4) Section 26 of the Patent Law shall apply mutatis mutandis to utility model registrations.**

## **Chapter II Utility Model Registration and Applications Therefor**

**(Registrability of utility models)**

**3.--(1) Any person who has made a device which is industrially applicable and which relates to the shape or**

construction of articles or a combination of articles may obtain a utility model registration therefor, except in the case of the following devices:

- (i) devices which were publicly known in Japan prior to the filing of the utility model application;
- (ii) devices which were publicly worked in Japan prior to the filing of the utility model application;
- (iii) devices which were described in a publication distributed in Japan or elsewhere prior to the filing of the utility model application.

(2) Where a device could very easily have been made, prior to the filing of the utility model application, by a person with ordinary skill in the art to which the device pertains, on the basis of a device or devices referred to in any of the paragraphs of the preceding subsection, a utility model registration shall not be effected for such a device notwithstanding the preceding subsection.

#### **(Registrability of utility models)**

3bis.-- Where a device claimed in a utility model application is identical with a device or invention (excluding a device or invention made by the same person as the creator of the device claimed in the utility model application) disclosed in the specification or drawings originally attached to the request of another application for a utility model registration or for a patent (in the case of the foreign language file referred to in Section 36bis(2) of the Patent Law, the foreign language file referred to in Section 36bis(1) of said Law) which was filed earlier than the utility model application and for which the Utility Model Gazette which states the matter referred to in each paragraph of Section 14(3) (hereinafter referred to as "the Gazette containing the Utility Model") was published under said subsection after the filing of the utility model application or for which the Patent Gazette which states the matter referred to in each paragraph of Section 66(3) of the Patent Law (hereinafter referred to "the Patent Gazette") was published under said subsection of said Law or the laying open for public inspection (Kokai) is effected, the utility model registration shall not be granted for the device notwithstanding Section 3(1). However, this provision shall not apply where, at the time of filing of the utility model application, the applicant of the utility model application and the applicant of the other application for a utility model registration or the application for a patent are the same person.

#### **(Unregistrable devices)**

4.-- Devices which are liable to contravene public order, morality or public health shall not be the subject of a utility model registration notwithstanding Section 3(1).

#### **(Applications for utility model registration)**

5.--(1) Any person desiring a utility model registration shall submit a request to the Commissioner of the Patent Office stating the following:

- (i) the name and the domicile or residence of the applicant for a utility model registration;
- (ii) the title of the device;
- (iii) the name and the domicile or residence of the creator.

(2) The request shall be accompanied by the specification, the drawings and the abstract.

(3) The specification under Subsection (2) shall state the following:

- (i) the title of the device;
- (ii) a brief explanation of the drawings;
- (iii) a detailed explanation of the device;
- (iv) utility model claim(s).

**(4) The detailed explanation of the device under Paragraph (ii) of the preceding subsection shall state in a manner sufficiently clear and complete for the invention to be carried out by a person having ordinary skill in the art to which the device pertains as provided for in an ordinance of the Ministry of International Trade and Industry.**

**(5) In the utility model claim under Subsection (3)(iv), there shall be set forth, by statements separated on a claim by claim basis, all matters which an applicant for a utility model registration considers necessary in defining a device for which a utility model registration is sought.**

**(6) The statements of the utility model registration claim under Subsection (3)(iv) shall comply with each of the following paragraphs as being:**

**(i) the device for which a utility model registration is sought shall be described in the detailed explanation of the device;**

**(ii) a device for which a utility model registration is sought shall be clear;**

**(iii) each claim shall be concise;**

**(iv) in addition, the utility model registration claim(s) shall comply with an ordinance of the Ministry of International Trade and Industry.**

**(7) The abstract under Subsection (2) shall state the summary of the device disclosed in the specification or drawings and other matters provided for in an ordinance of the Ministry of International Trade and Industry.**

**(Applications for utility model registration)**

**6.-- Where there are two or more devices, they may be the subject of a utility model application in the same request provided that these devices are of a device claimed in one claim (hereinafter referred to as "the specified device") and of another or other devices having the relationship as indicated below with respect to such specified device:**

**(i) devices of which the industrial applicability and the problem to be solved are the same as those of the specified device;**

**(ii) devices of which the industrial applicability and the substantial part of the features stated in the claim are the same as those of the specified device;**

**(iii) devices having a relationship as provided for in Cabinet Order.**

**(Invitation to amendment)**

**6bis.-- The Commissioner of the Patent Office may invite amendment, designating an adequate time limit, where a utility model application falls under any of the following paragraphs:**

**(i) the device claimed in the utility model application is not a device that relates to the shape or construction of articles or a combination of articles;**

**(ii) the device claimed in the utility model application is not registrable in accordance with Section 4;**

**(iii) the utility model application does not comply with the requirements of Section 5(6)(iv) or Section 6;**

**(iv) where the specification or drawings attached to the request does not contain the necessary matters or the description in the specification or drawings is very unclear.**

**(First-to-file rule)**

**7.--(1) Where two or more utility model applications relating to the same device are filed on different dates, only the first applicant may obtain a utility model registration for the device.**



**(2) Where two or more utility model applications relating to the same device are filed on the same date, none of the applicants shall obtain a utility model registration for the device.**

**(3) Where a device claimed in a utility model application is the same as an invention claimed in a patent application and the applications are filed on different dates, the applicant for a utility model registration may obtain registration only if his application was filed before the patent application.**

**(4) Where a utility model application or a patent application is withdrawn or dismissed, such application shall, for the purposes of the three preceding subsections, be deemed never to have been made.**

**(5) A utility model application or a patent application filed by a person who is neither the creator nor the inventor nor the successor in title to the right to obtain a utility model registration or patent shall, for the purposes of Subsections (1) to (3), be deemed not to be a utility model application or a patent application.**

**(6) If no agreement is reached or no consultations is possible under Section 39(4) of the Patent Law, the applicant for a utility model registration shall not obtain registration for such device.**

**(Priority claim based on utility model application)**

**8.--(1) Any person desiring a utility model registration may declare a priority claim for the device claimed in a utility model application on the basis of the device which has been disclosed in the specification or drawings originally attached to the request (in the case of a foreign language file application referred to in Section 36bis(2) of the Patent Law, in the foreign language file referred to in Section 36bis(1) of the Patent Law) of a utility model or a patent application in which he has the right to obtain a utility model registration or a patent and which has been filed earlier (hereinafter referred to as "earlier application") except in the following cases:**

**(i) the utility application concerned is not one filed within one year from the filing date of the earlier application;**

**(ii) the earlier application is a new utility model application divided out from a utility model application under Section 44(1) of the Patent Law as applied under Section 11(1) of the Utility Model Law, a utility model application converted from an application under Section 10(1) or (2) of the Utility Model Law, a new patent application divided out from a patent application under Section 44(1), or a patent application converted from an application under Section 46(1) or (2) of the Patent Law;**

**(iii) at the time when the utility model application concerned is filed, the earlier application has been abandoned, withdrawn or dismissed;**

**(iv) at the time when the utility model application concerned is filed, the examiner's decision or the trial decision on the earlier application has become final and conclusive;**

**(v) at the time when the utility model application concerned is filed, the registration of establishment referred to in Section 14(2) with respect to the earlier application has been effected.**

**(2) For devices which are amongst those claimed in a utility model application containing a priority claim under the preceding subsection and which are disclosed in the specifications or drawings originally attached to the request of an earlier application whose priority is so claimed [in the case where the earlier application contains a priority claim under that subsection or Section 41(1) of the Patent Law, or a priority claim under Section 43(1) or Section 43bis(1) or (2) of the Patent Law (including its application under Section 11(1) of this Law), excluding the devices disclosed in the file (limited to those equivalent to the specifications and drawings) submitted at the time of the filing of the application whose priority is claimed for the earlier application; in the case where the earlier application is a foreign language file application referred to in Section 36bis(2) of the Patent Law, in the foreign language file referred to in Section 36bis(1) of that Law], the utility model application shall be considered to have been filed at the time when the earlier application was filed for the purposes of Section 3, the principal sentence of Section 3bis, Section 7(1) to (3), Section 30(1) to (3) of the Patent Law as applied under Section 11(1) of this Law, Section 17 of this Law, Sections 69(2)(ii), 79, 81 and 82(1) of the Patent Law as applied under Section 26 of this Law, Sections 39(3) and (4) and 72 of the Patent Law, and Sections 26, 31(2) and 32(2) of the Design Law (Law No. 125 of 1959).**

**(3) For devices which are amongst those disclosed in the specification or drawings originally attached to the request of a utility model application containing a priority claim under subsection (1) and which are the devices [excluding those devices disclosed in the documents (limited to those equivalent to the specification and drawings) submitted at the time of the filing of an application whose priority is claimed for an earlier application in the case where that earlier application contains a priority claim under Subsection (1) of this Section or Section 41(1) or under 43(1) or 43bis(1) or (2) of the Patent Law (including its application under Section 11(1) of this Law)] disclosed in the specification or drawings originally attached to the request of the earlier application whose priority is so claimed (in the case where that earlier application is the foreign language file application under Section 36bis(2) of the Patent Law, the foreign language file referred to in Section 36bis(1)), the Gazette containing the Utility Model or the laying open for public inspection in respect of the earlier application shall be considered to have been published or effected at the time when the Gazette containing the Utility Model in respect of the utility model application was published, for the purposes of the principal sentence of Section 3bis of this Law or the principal sentence of Section 29bis of the Patent Law.**

**(4) A person desiring to declare a priority claim under Subsection (1) shall, simultaneously with the utility model application, submit to the Commissioner of the Patent Office a document setting forth a statement to that effect and an identification of the earlier application.**

**(Withdrawal of earlier application, etc.)**

**9.--(1) The earlier application whose priority is claimed under Section 8(1) shall be deemed withdrawn at the expiration of one year and three months from the filing date of that earlier application. However, where that earlier application has been abandoned, withdrawn or dismissed, where the examiner's decision or trial decision on that earlier application has become final and conclusive, where the registration of establishment referred to in Section 14(2) with respect to the earlier application has been effected, or where all of the priority claims based on that earlier application have been withdrawn, this provision shall not apply.**

**(2) The applicant of a utility model application containing a priority claim under Section 8 shall not withdraw the priority claim after the expiration of one year and three months from the filing date of the earlier application.**

**(3) Where the patent application containing a priority claim under Section 8 is withdrawn within one year and three months from the filing date of the earlier applications, the priority claim shall be deemed withdrawn simultaneously.**

**(Conversion of applications)**

**10.--(1) An applicant for a patent may convert his application into a utility model application. However, this provision shall not apply after 30 days from the transmittal of the examiner's first decision that the patent application is to be refused or after five years and six months from the filing date of the patent application.**

**(2) An applicant for a design registration may convert his application into a utility model application. However, this provision shall not apply after 30 days from transmittal of the examiner's first decision that the design application is to be refused or after five years and six months from the filing date of the design application.**

**(3) Where an application has been converted under the two preceding subsections, the utility model application shall be deemed to have been filed at the time of filing of the patent or design application. However, this provision shall not apply where the utility model application is either another application for a utility model registration as referred to in Section 3bis of this Law or an application for a utility model registration as referred to in Section 29bis of the Patent Law, for the purposes of those sections and Section 8(4) of this Law as well as Sections 30(4) and 43(1) and (2) of the Patent Law as applied under Section 11(1) of this Law (including its application under Section 43bis(3) of the Patent Law as applied under Section 11(1) of this Law).**

**(4) Where an application has been converted under Subsection (1) or (2), the patent or design application shall be deemed to have been withdrawn.**

**(5) The 30-day period prescribed in the proviso to Subsection (1) shall, when the time limit prescribed in Section 121(1) of the Patent Law has been extended in accordance with Section 4 of that Law, be deemed to have been extended only for that period as extended.**

**(6) The 30-day period prescribed in the proviso to Subsection (2) shall, when the time limit prescribed in Section 46(1) of the Design Law has been extended in accordance with Section 4 of the Patent Law as applied under Section 68(1) of the Design Law, be deemed to have been extended only for that period as extended.**

**(Application mutatis mutandis of Patent Law)**

**11.--(1) Section 30 (exceptions to lack of novelty of invention), Section 38 (joint applications), Sections 43 to 44 (priority claim under the Paris Convention and division of patent applications) of the Patent Law shall apply mutatis mutandis to utility model applications.**

**(2) Sections 33 and 34(1) and (2), and (4) to (7) (right to obtain patent) of the Patent Law shall apply mutatis mutandis to the right to obtain a utility model registration.**

**(3) Section 35 (employees' inventions) of the Patent Law shall apply mutatis mutandis to devices made by an employee, an executive officer of a legal entity or a national or local public official.**

### **Chapter III Technical Opinion as to Registrability of Utility Model**

**(Request for Technical Opinion as to Registrability of Utility Model)**

**12.--(1) Any person may make, to the Commissioner of the Patent Office, a request for a technical opinion as to registrability of a claimed device in a registered utility model or utility model application (hereinafter referred to as "a technical opinion as to registrability of a utility model") provided for in Section 3(1)(iii) and (2) (only on the basis of a device or devices referred to in Sections 3(1)(iii), 3bis and 7(1) to (3) and (6)). In such a case, if there are two or more claims, a request may be made for each claim.**

**(2) Where a request is made, the Commissioner of the Patent Office shall have an examiner establish a report of a technical opinion as to registrability of the utility model (hereinafter referred to as "Jitsuyoshinan Gijutsu Hyokasho") with respect to such a request.**

**(3) A request under Subsection (1) may be made even after the extinguishment of the utility model right. However, this provision shall not apply after the registration has been invalidated in a trial under Section 37(1).**

**(4) Section 47(2) of the Patent Law shall apply mutatis mutandis to the establishment of a report of a technical opinion as to registrability of a utility model.**

**(5) A request under Subsection (1) may not be withdrawn.**

**(Application mutatis mutandis of Patent Law)**

**13.-- The Commissioner of the Patent Office shall, where a request for a technical opinion as to registrability of a utility model has been made before the publication of the Gazette containing the Utility Model, publish such fact in said Gazette at the time said Gazette is published or as soon as possible thereafter and where a request for a technical opinion as to registrability of a utility model has been made after the publication of said Gazette, he shall publish such fact in said Gazette without delay.**

## **Chapter IV The Utility Model Right**

### **Part 1. The Utility Model Right**

#### **(Registration of establishment of utility model right)**

**14.--(1) A utility model right shall come into force upon registration of its establishment.**

**(2) The establishment of a utility model right shall be registered when the application for a utility model registration has been filed, unless the application has been abandoned, withdrawn or dismissed.**

**(3) Upon registration under the preceding subsection, the following items shall be published in the Utility Model Gazette:**

**(i) the name and the domicile or residence of the owner of the utility model right;**

**(ii) the number and the date of the application;**

**(iii) the name and the domicile or residence of the creator;**

**(iv) the title of the device, the brief explanation of the drawings and the claim contained in the specification as well as the contents of the drawings attached to the request;**

**(v) the matters appearing in the abstract attached to the request;**

**(vi) the number and the date of the registration;**

**(vii) other necessary particulars.**

**(4) Section 64(3) of the Patent Law shall apply mutatis mutandis to the publication of the matters appearing in the abstract under Subsection (3)(v) in the Utility Model Gazette in accordance with Subsection (3).**

#### **(Correction of specification or drawings)**

**14bis.--(1) The owner of a utility model right may correct the specification or drawings attached to a request only where such correction has as its object the cancellation of a claim or claims. However, where a trial under Section 37(1) of this Law is pending before the Office, he may not correct the specification or drawings attached to the request after the notification under Section 156(1) of the Patent Law as applied under Section 41 of this Law (in the case of trial examination reopened under Section 156(2), after the further notification under Section 156(1)).**

**(2) The correction under the preceding subsection may be made even after the extinguishment of the utility model right. However, this provision shall not apply after the registration has been invalidated in a trial under Section 37(1).**

**(3) Where the correction under Subsection (1) has been made, the utility model application and the registration of the utility model right shall be deemed to have been made on the basis of the corrected specification or drawings.**

**(4) Where the correction under Subsection (1) has been made, it shall be published in the Utility Model Gazette.**

**(5) Sections 127 and 132(3) of the Patent Law shall apply mutatis mutandis to the case under Subsection (1).**

**(Term of utility model right)**

**15.-- The term of the utility model right shall be six years from the filing date of the utility model application.**

**(Effects of utility model right)**

**16.-- The owner of a utility model right shall have an exclusive right to commercially work the registered utility model. However, where the utility model right is the subject of an exclusive license, this provision shall not apply to the extent that the exclusive licensee exclusively possesses the right to work the registered utility model.**

**(Relationship with another's registered utility model, etc.)**

**17.-- When a registered utility model would utilize another person's registered utility model, patented invention or registered design or design similar thereto under an application filed prior to the filing date of the utility model application concerned, or when the utility model right conflicts with another person's design right or trademark right under an application for registration of a design or a trademark filed prior to the filing date of the utility model application concerned, the owner of the utility model right, exclusive licensee or non-exclusive licensee shall not commercially work the registered utility model.**

**(Exclusive licenses)**

**18.--(1) The owner of a utility model right may grant an exclusive license on such right.**

**(2) An exclusive licensee shall have an exclusive right to commercially work the registered utility model, to the extent laid down in the license contract.**

**(3) Section 77(3) to (5) (transfer, etc.), Section 97(2) (surrender) and Section 98(1)(ii) and (2) (effects of registration) of the Patent Law shall apply mutatis mutandis to exclusive licenses.**

**(Non-exclusive licenses)**

**19.--(1) The owner of a utility model right may grant a non-exclusive license on such right.**

**(2) A non-exclusive licensee shall have the right to commercially work the registered utility model, to the extent prescribed in this Law or laid down in the license contract.**

**(3) Section 73(1) (joint ownership), Section 97(3) (surrender) and Section 99 (effects of registration) of the Patent Law shall apply mutatis mutandis to non-exclusive licenses.**

**(Non-exclusive license due to working prior to registration of demand for invalidation trial)**

**20.--(1) When a person coming within any of the paragraphs set out below has been commercially working a device or invention in Japan or has been making preparations therefor,**

**prior to the registration of a demand for a trial under Section 123(1) of the Patent Law, without knowing that the patent falls under any of the requirements of any of the paragraphs of Section 123(1) of the Patent Law, such person shall have a non-exclusive license on the utility model right or on the exclusive license existing at the time when the patent was invalidated, such non-exclusive license being limited to the invention which is being worked or for which preparations for working are being made and to the purpose of such working or the preparations therefor:**

**(i) the original patentee, where a device registered as a utility model and a patented invention are the same and the patent has been invalidated;**

(ii) the original patentee, where his patent has been invalidated and a utility model registration for the same device as the invention has been granted to the person entitled;

(iii) in the cases referred to in the two preceding paragraphs, a person, who, at the time of registration of the demand for a trial under Section 123(1) of the Patent Law, has either the exclusive license or an exclusive license on the patent that has been invalidated or a non-exclusive license that is effective under Section 99(1) of the Patent Law against the patent right or the exclusive license.

(2) The owner of the utility model right or the exclusive licensee shall have a right to a reasonable remuneration as consideration for the non-exclusive license under the preceding subsection.

(Arbitration decision on grant of non-exclusive license in case of non-working)

21.--(1) Where a registered utility model has not been sufficiently and continuously worked during a period of three years or more in Japan, a person who intends to work the registered utility model may request the owner of the utility model right or the exclusive licensee to hold consultations on the grant of a non-exclusive license thereon. However, this provision shall not apply unless four years have elapsed since the filing date of the application corresponding to the registered utility model.

(2) If no agreement is reached or no consultation is possible under the preceding subsection, a person who intends to work the registered utility model may request the Commissioner of the Patent Office for an arbitration decision.

(3) Sections 84 to 91bis (arbitration procedure, etc.) of the Patent Law shall apply mutatis mutandis to arbitrations under the preceding subsection.

(Arbitration decision on grant of non-exclusive license on one's own registered utility model)

22.--(1) Where a registered utility model falls under any of the cases provided for in Section 17, the owner of the utility model right or the exclusive licensee may request the other person referred to in that section to hold consultations on the grant of a non-exclusive license to work the registered utility model or of a non-exclusive license on the patent right or the design right.

(2) The other person referred to in Section 17 who has been requested to hold the consultations under the preceding subsection may request the owner of the utility model right or the exclusive licensee having requested the consultations to hold consultations on the grant of a non-exclusive license within the scope of the registered utility model which the owner of the utility model right or the exclusive licensee desires to work by obtaining the non-exclusive license on the utility model right, the patent right or the design right through the consultations requested by the owner of the utility model right or the exclusive licensee.

(3) If no agreement is reached or no consultation is possible under Subsection (1), the owner of the utility model right or the exclusive licensee may request the Commissioner of the Patent Office for an arbitration decision.

(4) If no agreement is reached or no consultation is possible under Subsection (2) and an arbitration under the preceding subsection is requested, the other person referred to in Section 17 may request the Commissioner of the Patent Office for an arbitration decision only within the time limit which the Commissioner of the Patent Office designates as the time limit for the other person to submit a written reply in accordance with Section 84 of the Patent Law as applied under Subsection (7).

(5) If, in the case of Subsection (3) or the preceding subsection, the grant of a non-exclusive license would unduly injure the interests of the other person referred to in Section 17 or the owner of the utility model right or the exclusive licensee, the Commissioner of the Patent Office shall not render an arbitration decision ordering a non-exclusive license to be granted.

(6) In the case of Subsection (4) in addition to the case provided for in the preceding subsection, the Commissioner of

**the Patent Office shall not render an arbitration decision ordering a non-exclusive license to be granted if an arbitration decision ordering a non-exclusive license to be granted is not rendered with respect to the request for the arbitration decision under Subsection (3).**

**(7) Sections 84, 85(1) and 86 to 91bis (arbitration procedure, etc.) of the Patent Law shall apply mutatis mutandis to arbitrations under Subsection (3) or (4).**

**(Arbitration decision on grant of non-exclusive license in public interest)**

**23.--(1) Where the working of a registered utility model is particularly necessary in the public interest, a person who intends to work the utility model may request the owner of the utility model right or the exclusive licensee to hold consultations on the grant of a non-exclusive license.**

**(2) If no agreement is reached or no consultation is possible under the preceding subsection, a person who intends to work the registered utility model may request the Minister of International Trade and Industry for an arbitration decision.**

**(3) Sections 84, 85(1) and 86 to 91bis (arbitration procedure, etc.) of the Patent Law shall apply mutatis mutandis to arbitrations under the preceding subsection.**

**(Transfer, etc. of non-exclusive license)**

**24.--(1) A non-exclusive license, with the exception of one which results from an arbitration decision under Section 21(2), 22(3) or (4), or 23(2) of this Law, Section 92(3) of the Patent Law or Section 33(3) of the Design Law, may be transferred, but only together with the business in which it is worked or only with the consent of the owner of the utility model right (or the owner and the exclusive licensee in the case of a non-exclusive license on an exclusive license) or in the case of inheritance or other general succession.**

**(2) A non-exclusive licensee may, except in the case of a non-exclusive license resulting from an arbitration decision under Section 21(2), 22(3) or (4), or 23(2) of this Law, Section 92(3) of the Patent Law or Section 33(3) of the Design Law, establish a pledge on the non-exclusive license, but only with the consent of the owner of the utility model right (or the owner and the exclusive licensee in the case of a non-exclusive license on an exclusive license).**

**(3) A non-exclusive license resulting from an arbitration decision under Section 21(2) or 23(2) may be transferred only together with the business in which it is worked.**

**(4) A non-exclusive license resulting from an arbitration decision under Section 22(3) of this Law, Section 92(3) of the Patent Law or Section 33(3) of the Design Law shall be transferred together with the utility model, patent or design right to which the non-exclusive licensee is entitled, and if such right has been transferred independently from the business in which it is worked or extinguished, the non-exclusive licensee shall be extinguished simultaneously.**

**(5) A non-exclusive license resulting from an arbitration decision under Section 22(4) of this Law shall be transferred together with the utility model, patent or design right to which the non-exclusive licensee is entitled and shall be extinguished at the same time as the utility model, patent or design right has been extinguished.**

**(Pledges)**

**25.--(1) Where a utility model right or an exclusive or non-exclusive license is the subject of a pledge, the pledgee may not work the registered utility model except as otherwise provided by contract.**

**(2) Section 96 (attachment) of the Patent Law shall apply mutatis mutandis to pledges on a utility model right, exclusive license or non-exclusive license.**

**(3) Section 98(1)(iii) and (2) (effects of registration) of the Patent Law shall apply mutatis mutandis to pledges on a utility model right or exclusive license.**

**(4) Section 99(3) (effects of registration) of the Patent Law shall apply mutatis mutandis to pledges on a non-exclusive license.**

**(Application mutatis mutandis of Patent Law)**

**26.-- Sections 69(1) and (2), 70 and 71 (limits of patent right, and technical scope of patented inventions), Section 73 (joint ownership), Section 76 (extinguishment of patent right in absence of heir), Section 79 (non-exclusive license by virtue of prior use), Sections 81 and 82 (non-exclusive license after expiration of design right), Section 97(1) (surrender) and Section 98(1)(i) and (2) (effects of registration) of the Patent Law shall apply mutatis mutandis to utility model rights.**

## **Part 2. Infringement**

**(Injunctions)**

**27.--(1) The owner of a utility model right or exclusive licensee may require a person who is infringing or is likely to infringe the utility model right or exclusive license (hereinafter referred to as "an infringer, etc.") to discontinue or refrain from such infringement.**

**(2) The owner of a utility model right or an exclusive licensee who is acting under the preceding subsection may demand the destruction of the articles by which the act of infringement was committed, the removal of the facilities used for the act of infringement, or other measures necessary to prevent the infringement.**

**(Acts deemed to be infringement)**

**28.-- Acts of manufacturing, assigning, leasing, importing or offering for assignment or lease of, in the course of trade, article to be used exclusively for the manufacture of the article covered by the registered utility model shall be deemed to be an infringement of the utility model right or exclusive license.**

**(Presumption, etc. of amount of damage)**

**29.--(1) Where the owner of a utility model right or exclusive licensee claims, from a person who has intentionally or negligently infringed the utility model right or exclusive license, compensation for damage caused to him by the infringement, the profits gained by the infringer through the infringement shall be presumed to be the amount of damage suffered by the owner or exclusive licensee.**

**(2) The owner of a utility model right or exclusive licensee may claim, from a person who has intentionally or negligently infringed the utility model right or exclusive license, an amount of money which he would normally be entitled to receive for the working of the registered utility model, as the amount of damage suffered by him.**

**(3) The preceding subsection shall not preclude a claim to damages exceeding the amount referred to therein. In such a case, where there has been neither willfulness nor gross negligence on the part of the person who has infringed the utility model right or the exclusive license, the court may take this into consideration when awarding damages.**

**(Warning in the form of report of technical opinion as to registrability of utility model)**

**29bis.-- The owner of a utility model right or the exclusive licensee may not exercise his rights pertaining to his utility model rights or exclusive rights against an infringer, etc., until he has given a warning in the form of a report of a technical opinion as to registrability of the utility model (Jitsuyoshinan Gijutsu Hyokasho).**



**(Responsibility of owner of utility model right, etc.)**

**29ter.--(1) Where the owner of a utility model right or the exclusive licensee has exercised his utility model right or exclusive license or given a warning to an infringer, etc. and a trial decision (other than a trial decision on the grounds set out in Section 37(1)(vi)) that the utility model registration is to be invalidated has become final and conclusive, such owner or exclusive licensee shall be liable to indemnify any other party in respect of any damage caused to that party by the exercise of that right or by the giving of the warning. However, this provision shall not apply where such exercise or warning was based on a technical opinion of the report of a technical opinion as to registrability of the Utility Model (Jitsuyoshinan Gijutsu Hyokasho) (other than a technical opinion that the device claimed in the utility model application or the registered utility model is not registrable in accordance with Section 3(1)(iii) and (2) (only with respect to the device in Sections 3(1)(iii)), 3bis and 7(1) to (3) and (6)) as to registrability of the utility model, and the owner or exclusive licensee has taken appropriate care in exercising the right or giving the warning.**

**(2) The preceding subsection shall apply where the right is exercised or the warning is given with respect to a device which, as a result of a correction under Section 14bis(1) to the specification or drawings attached to the request of the utility model application, no longer falls within the scope of the claim(s) as at the time of the registration of the utility model right.**

**(Application mutatis mutandis of Patent Law)**

**30.-- Section 105 (production of documents) and Section 106 (measures for recovery of reputation) of the Patent Law shall apply mutatis mutandis to the infringement of a utility model right or exclusive license.**

**Part 3. Annual Fees****(Annual fees)**

**31.--(1) A person who obtains registration of a utility model right or the owner of a utility model right shall pay, as annual 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 case and for each year up to the expiration of the term under Section 15(1) from the registration of a utility model right.**

<b>Division of year</b>	<b>Amounts</b>
<b>First to third year</b>	<b>Annually, ¥7,600 plus ¥900 per claim</b>
<b>Fourth to sixth year</b>	<b>Annually, ¥15,100 plus ¥1,800 per claim</b>

**(2) The preceding subsection shall not apply to utility model rights belonging to the State.**

**(3) The payment of the annual fees under Subsection (1) shall be made by patent revenue stamps as prescribed by an ordinance of the Ministry of International Trade and Industry. However, wherever so prescribed by an ordinance of the Ministry of International Trade and Industry, such payment may be made in cash.**

**(Time limit for payment of annual fees)**

**32.--(1) The annual fees for each year from the first to the third years under Section 31(1) shall be paid in a lump sum, simultaneously with the utility model application (in the case of the conversion of an application under Section 10(1) or (2) or the division of an application under Section 44(1) of the Patent Law as applied under Section 11(1) of this Law, simultaneously with that conversion or division).**

**(2) The annual fees for the fourth and subsequent years under Section 31(1) shall be paid during the preceding year or prior thereto.**

**(3) Upon the request of the person liable to pay an annual fee, the Commissioner of the Patent Office may extend the period prescribed in Subsection (1) by a period not exceeding 30 days.**

**(Late payment of annual fees)**

**33.--(1) Where the owner of a utility model right is unable to pay an annual fee within the time limit prescribed in Section 32(2) or within the time limit for deferred payment under Section 109 of the Patent Law as applied under Section 36 of this Law, he may pay the annual fee belatedly within six months from the expiration of that time limit.**

**(2) In the case of late payment of an annual fee in accordance with the preceding subsection, the owner of the utility model right shall, in addition to the annual fee provided for in Section 31(1), pay a surcharge of the same amount as the annual fee.**

**(3) The payment of the surcharge under the preceding subsection shall be made by patent revenue stamps as prescribed by an ordinance of the Ministry of International Trade and Industry. However, wherever so prescribed by an ordinance of the Ministry of International Trade and Industry, such payment may be made in cash.**

**(4) Where the owner of a utility model right fails to pay an annual fee for the fourth year or a subsequent year under Section 31(1) as well as the surcharge under the preceding subsection within the time limit for late payment under Subsection (1), the utility model right shall be deemed to have been extinguished retroactively from the moment that the time limit prescribed in Section 32(2) expired.**

**(5) Where the owner of a utility model right fails to pay an annual fee whose payment has been deferred under Section 109 of the Patent Law as applied under Section 36 of this Law and the surcharge under Subsection (2), within the time limit for late payment under the subsection (1), the utility model right shall be deemed never to have existed.**

**(Restoration of utility model right by late payment of annual fees)**

**33bis.--(1) Where the utility model right is one which was deemed to have been extinguished under Section 33(4) or which was deemed never to have existed under Section 33(5) and the owner of the extinguished utility model right is unable to pay an annual fee and surcharge belatedly within the time limit for late payment under Section 33(1) due to reasons outside his control, he may pay the annual fee and surcharge referred to in Section 33(4) or (5) within 14 days (where he is a resident abroad, within two months) from the date on which the reasons ceased to be applicable but not later than six months following the expiration of said time limit.**

**(2) Where the annual fee and surcharge have been paid in accordance with the preceding subsection, the utility model right shall be deemed to have been maintained retroactively from the time of the expiration of the time limit prescribed in Section 32(2) or existed from the beginning.**

**(Restriction on effects of utility model right restored)**

**33ter.--(1) Where a utility model right has been restored under Section 33bis(2), the effects of the utility model right shall not extend to the article covered by a registered utility model which was imported into, or manufactured or acquired in Japan after the expiration of the time limit for late payment under Section 33(1) but before the registration of the restoration of the utility model right.**

**(2) The effects of a utility model right restored under Section 33bis(2) shall not extend, after the expiration of the time limit for late payment under Section 33(1) but before the registration of restoration of the utility model right, to the following acts:**

**(i) the working of the device;**

**(ii) acts of manufacturing, assigning, leasing, importing or offering for assignment or lease of, articles to be used**

exclusively for the manufacture of the product covered by the registered utility model.

(Refund of annual fees)

**34.--(1) Annual fees shall be refunded, upon the request of the person who paid them, only in the following cases:**

- (i) the annual fees paid by mistake or in excess;**
- (ii) the annual fees in the case where the disposition that the utility model application is to be dismissed became final and conclusive;**
- (iii) the annual fees for the year following the year in which the trial decision that the utility model registration is to be invalidated became final and conclusive, and subsequent years;**
- (iv) the annual fees for the year following the year in which the date of expiration of the term of utility model right falls, and subsequent years.**

**(2) No refund of annual fees under the preceding subsection may be requested after one year from the date of payment in the case of annual fees under Paragraph (i), or after six months from the date on which the disposition or the trial decision became final and conclusive in the case of annual fees under Paragraph (ii) or (iii) or after one year from the date of the registration of establishment of a utility model right in the case of the annual fees under Paragraph (iv) of the preceding subsection.**

**35.-- Deleted.**

(Application mutatis mutandis of Patent Law)

**36.-- Section 109 (reduction or deferment of payment of annual fees or exemption therefrom) and Section 110 (payment of annual fees by an interested person) of the Patent Law shall apply mutatis mutandis to the annual fees under this Law.**

## **Chapter V Trial**

(Trial for invalidation of utility model registration)

**37.--(1) In the following cases, a trial may be demanded for the invalidation of a utility model registration. In this context, if there are two or more claims, a trial may be demanded for each claim. The cases referred to are:**

- (i) where the registration has been effected in respect of a utility model application with the amendment which does not comply with Section 2bis(2);**
- (ii) where the registration has been effected contrary to Section 25 of the Patent Law as applied under Section 2quinquies(3) of this Law, to Section 3, 3bis, 4 or 7(1) to (3) or (6) or to Section 38 of the Patent Law as applied under Section 11(1) of this Law;**
- (iii) where the registration has been effected contrary to the provisions of a treaty;**
- (iv) where the registration has been effected in respect of a utility model application which does not comply with the requirements of Section 5(4) or (6) [excluding (iv)] and (6);**
- (v) where the registration has been effected in respect of a utility model application filed by a person who is not the creator and has not succeeded to the right to obtain a utility model registration for the device concerned;**
- (vi) where, after the registration, the owner of the utility model right has become a person who can no longer enjoy such right under Section 25 of the Patent Law as applied under Section 2quinquies(3) of this Law or the registration no longer complies with a treaty.**

**(2) Even after the extinguishment of a utility model right, a trial under the preceding subsection may be demanded.**

**(3) Where a trial under Subsection (1) has been demanded, the trial examiner-in-chief shall notify the exclusive licensee with respect to the utility model right and other persons who have any registered rights relating to the utility model registration.**

**(Formal requirements of demands for trial)**

**38.--(1) A person demanding a trial shall submit a written demand to the Commissioner of the Patent Office stating the following:**

- (i) the name and the domicile or residence of the demandant and his representative;**
- (ii) an identification of the trial case;**
- (iii) the relief sought in the demand and the grounds therefor.**

**(2) An amendment of the written demand submitted under the preceding subsection shall not change the gist thereof.**

**(Submission of written reply, etc.)**

**39.--(1) When a trial has been demanded, the trial examiner-in-chief shall transmit a copy of the written demand to the defendant and shall give him an opportunity to submit a written reply, designating an adequate time limit.**

**(2) Upon receipt thereof or where, during the pendency of the trial under Section 37(1), a correction under Section 14bis(1) has been made, the trial examiner-in-chief shall transmit a copy of the written reply or the correction to the demandant.**

**(3) The trial examiner-in-chief may examine the parties and intervenors with respect to the trial.**

**(Relationship with litigation)**

**40.--(1) The trial proceedings may, if it is deemed necessary in the trial, be suspended until the trial decision in another trial has become final and conclusive or until litigation proceedings have been concluded.**

**(2) Where a suit or an application for provisional attachment or provisional disposal has been filed, if the court deems it necessary, it may suspend the litigation proceedings until the trial decision becomes final and conclusive.**

**(Relationship with litigation)**

**40bis.--(1) Subject to Section 40(2), where a suit or an application for provisional attachment or provisional disposal has been filed with respect to the infringement of the utility model right, and when a motion for the suspension of the litigation proceedings by the defendant or debtor is made for the reason that a trial for invalidation under Section 37(1) has been demanded, the court shall suspend such proceedings until after a trial decision has been given in respect of the trial for invalidation under Section 37(1), unless it is obviously deemed that such suspension is not necessary.**

**(2) No appeal shall lie from a ruling with respect to a motion under the preceding subsection.**

**(3) When the reason for the suspension is no longer applicable, or circumstances have otherwise changed, the court may revoke the ruling of suspension under Subsection (1).**

**(Application mutatis mutandis of Patent Law)**

**41.-- Sections 125, 132 to 133bis, 135 to 157, 167, 169(1), (2), (5) and (6) and 170 of the Patent Law shall apply mutatis mutandis to trials under this Law.**

## **Chapter VI Retrial and Litigation**

**(Demand for retrial)**

**42.--(1) Any party or intervenor may demand a retrial against a final and conclusive trial decision.**

**(2) Sections 338(1) and (2) and 339 (grounds for retrial) of the Code of Civil Procedure (Law No. 109 of 1996) shall apply mutatis mutandis to demands for a retrial under the preceding subsection.**

**(Demand for retrial)**

**43.--(1) Where the demandant and the defendant in a trial have in collusion caused a trial decision to be rendered, with the purpose of injuring the rights or interests of a third person, such person may demand a retrial against the final and conclusive trial decision.**

**(2) In such a retrial, the demandant and the defendant shall be made joint defendants.**

**(Restriction on effects of utility model right restored by retrial)**

**44.--(1) Where the utility model right relating to an invalidated utility model registration has been restored through a retrial, the effects of the utility model right shall not extend to the article covered by the registered utility model which was imported into Japan, or manufactured or acquired there, in good faith after the time when the trial decision became final and conclusive but before the trial demand for a retrial was registered.**

**(2) Where a utility model right relating to an invalidated utility model registration has been restored through a retrial, the effects of the utility model right shall not extend, after the trial decision became final and conclusive but before, the trial demand for a retrial was registered to the following acts:**

**(i) the working of the device in good faith;**

**(ii) act of manufacturing, assigning, leasing or importing or offering for assignment of lease of, in good faith, articles to be used exclusively for the manufacture of the article covered by the registered utility model.**

**(Application mutatis mutandis of Patent Law)**

**45.--(1) Section 173 (time limit for demand for retrial), Section 174(3) and (5) (application of provisions on trial, etc.) and Section 176 (non-exclusive license due to working before registration of demand for retrial) of the Patent Law shall apply mutatis mutandis to retrials under this Law. In such a case, "Section 131" in Section 174(3) of the Patent Law shall read "Sections 38 and 39 of the Utility Model Law" and "Section 168" in Section 174(2) of the Patent Law shall read "Sections 40 and 40bis of the Utility Model Law".**

**(2) Section 4 of the Patent Law shall apply mutatis mutandis to the time limits prescribed in Section 173(1) of the Patent Law as applied under Subsection (1).**

**46.-- Deleted.**

**(Actions against trial decisions, etc.)**

**47.--(1) An action against a trial decision or a ruling to decline an amendment under Section 53(1) of the Patent Law as applied under Section 159(1) of the Patent Law as applied either under Section 41 of this Law or under Section 174(1) of the Patent Law as applied under Section 45 of this Law or an action against a ruling of dismissal of a demand for a trial or retrial shall come under the exclusive jurisdiction of the Tokyo High Court.**

**(2) Section 178(2) to (6) (time limit for institution of action, etc.) and Sections 179 to 182 (defendant in the action, notification of institution of action, annulment of the trial decision or ruling, and sending of certified copy of the judgment) of the Patent Law shall apply mutatis mutandis to actions under the preceding subsection.**

**(Action on amount of remuneration)**

**48.--(1) Where a person who is concerned in an arbitration decision under Section 21(2), 22(3) or (4) or 23(2) is dissatisfied with the amount of remuneration fixed in the decision, he may institute an action for the increase or decrease of the remuneration.**

**(2) Section 183(2) (time limit for institution of action) and Section 184 (defendant in the action) of the Patent Law shall apply mutatis mutandis to actions under the preceding subsection.**

**(Relationship between administrative appeal and litigation)**

**48bis.-- Section 184bis (relationship between administrative appeal and litigation) of the Patent Law shall apply mutatis mutandis to actions for the annulment of measures (with the exception of measures under Section 55(5)) taken under this Law or an order or ordinance thereunder.**

## **Chapter VII Special Provisions Concerning International Applications under the Patent Cooperation Treaty**

**(Utility model application based on international application)**

**48ter.--(1) An international application (a utility model application only) for which the international filing date has been accorded in accordance with Article 11(1) or (2)(b) or Article 14(2) of the Patent Cooperation Treaty done at Washington on June 19, 1970 (hereinafter referred to as "Treaty" in this Chapter) and which contains the designation of Japan as a designated State referred to in Article 4(1)(ii) of the Treaty shall be considered to be a utility model application having been filed on its international filing date.**

**(2) Section 184ter(2) of the Patent Law (Patent application based on International Application) shall apply mutatis mutandis to the international application considered to be a utility model application by virtue of the provision of the preceding subsection (hereinafter referred to as "international utility model application").**

**(Translation of international utility model application in foreign language)**

**48quater.--(1) The applicant of an international utility model application made in a foreign language (hereinafter referred to as "foreign language utility model application" shall furnish to the Commissioner of the Patent Office a translation into Japanese of the description, the claims and the drawings (limited to any text matter of the drawings) referred to in Article 3(2) of the Treaty as of the international filing date referred to in Section 48ter(1) (hereinafter referred to as "international filing date"), within one year and eight months [in the case of an international utility model application in which an international preliminary examination referred to in Article 33 of the Treaty had been demanded within one year and seven months from the priority date and, further, Japan has been elected as an elected State under Article 31(4)(a) of the Treaty -- within two years and six months from the priority date (hereinafter**

referred to as "time limit for the submission of the national form paper" ]) from the priority date referred to in Article 2(xi) of the Treaty (hereinafter referred to as "priority date").

(2) In the case of the preceding subsection, the applicant of the foreign language utility model application may, where he has made an amendment under Article 19(1) of the Treaty, furnish a translation of the amended claims in lieu of the translation of the claims referred to in that subsection.

(3) When the translation of the description referred to in Subsection (1) and the translation of the claims referred to in Subsections (1) and (2) have not been furnished within the time limit for the submission of the national form paper, the international utility model application shall be deemed withdrawn.

(4) The applicant who has furnished the translation of the claims referred to in Subsection (1) may, where he has made an amendment under Article 19(1) of the Treaty, further furnish a translation into Japanese of the amended claims only no later than the date on which the expiration of the time limit for the submission of the national form paper [or where the applicant has made a request for the national processing within the time limit for the submission of the national form paper under Articles 23(2) and 40(2) of the Treaty (hereinafter referred to as "request for national processing"), the date on which the request for the national processing was made -- hereinafter referred to as "relevant time for the national processing" occurs].

(5) The principal sentence of Section 184septies(3) of the Patent Law shall apply mutatis mutandis where the translation referred to in Subsection (2) or (4) has not been furnished.

(Submission of paper and invitation to correction, etc.)

48quinquies.--(1) The applicant of an international utility model application shall, within the time limit for the submission of the national form paper, submit to the Commissioner of the Patent Office a paper stating the following:

- (i) the name and the domicile or residence of the applicant;
- (ii) the title of the device;
- (iii) the name and the domicile or residence of the creator;
- (iv) the international filing date and other matters provided for in an ordinance of the Ministry of International Trade and Industry.

(2) The Commissioner of the Patent Office may invite correction, designating an adequate time limit, in the following cases:

- (i) when the paper to be submitted under the preceding subsection has not been filed within the time limit for the submission of the national form paper or at the time prescribed in the said subsection;
- (ii) when any proceeding under the preceding subsection does not comply with Section 7(1) to (3) and Section 9 of the Patent Law as applied under Section 2quinquies(2) of this Law;
- (iii) when any proceeding under the preceding subsection does not comply with the formality requirements provided for in an ordinance of the Ministry of International Trade and Industry;
- (iv) when the translation of the abstract to be submitted under Section 48quater(1) has not been filed within the time limit for the submission of the national form paper;
- (v) When the annual fee to be paid under Section 32(1) has not been paid within the time limit for the submission of the national form paper;
- (vi) when the fee to be paid under Section 54(2) has not been paid within the time limit for the submission of the national form paper.

(3) Section 184quinquies(3) of the Patent Law applies mutatis mutandis to the correction to be made on an invitation under the preceding subsection.

**(4) The applicant of an international utility model application may not make a request for the national processing for his international utility model application until, in respect of an international utility model application made in the Japanese language (hereinafter referred to as a "Japanese language utility model application"), after the proceeding under Section 48quinquies(1) has been taken, and in respect of a foreign language utility model application, after the proceedings under Section 48quater(1) and Section 48quinquies(1) have been taken and, further, after the annual fees to be paid under Section 32(1) and the fees to be paid under Section 54(2) have been paid.**

**(Effect, etc., of request, description, etc., of international application)**

**48sexies.--(1) The request of an international utility model application as of the international filing date shall be deemed to be the request submitted under Section 5(1).**

**(2) The description and the claims of a Japanese language utility model application as of the international filing date and the translation of the description and the claims of a foreign language utility model application as of the international filing date shall be deemed to be the specification as submitted attached to the request under Section 5(2), the claims of a Japanese language utility model application as of the international filing date and the translation of the claims of a foreign language utility model application as of the international filing date shall be deemed to be the utility model claims set forth in the specification as submitted attached to the request under Section 5(2), and the drawings in a Japanese language utility model application as of the international filing date and the drawings (excluding any text matter of the drawings) and the translation of the text matter of the drawings in a foreign language utility model application as of the international filing date are deemed to be the drawings as submitted attached to the request under Section 5(2), and the abstract of a Japanese language utility model application and the translation of the abstract of a foreign language utility model application are deemed to be the abstract as submitted attached to the request under Section 5(2).**

**(3) Where the translation of the claims amended under Article 19(1) of the Treaty has been furnished under Section 48quater(2) or (4), the translation of the description as of the international filing date and the translation of the amended claims shall be deemed to be the translation of the specification as submitted attached to the request under Section 5(2), and the translation of the amended claims shall be deemed to be the utility model registration claims set forth in the specification as submitted attached to the request under Section 5(2) notwithstanding Subsection (2).**

**(Submission of drawings)**

**48septies.--(1) The applicant of an international utility model application shall submit drawings to the Commissioner of the Patent Office not later than the date on which the relevant time for the national processing occurs if the international application did not include the drawings on the international filing date.**

**(2) The Commissioner of the Patent Office may invite the applicant of the international utility model application to submit drawings, designating an adequate time limit when the drawings referred to in the preceding subsection have not been submitted by the date on which the relevant time for the national processing occurs.**

**(3) The Commissioner of the Patent Office may dismiss an international utility model application when a person whom he has invited to submit drawings under the preceding subsection fails to do so within the time limit designated in accordance with the said subsection.**

**(4) The submission of drawings under Subsection (1) or in compliance with the invitation under Subsection (2) (or -- when a brief explanation of the drawings was submitted attached to the drawings -- the submission of the drawings and the brief explanation of the drawings) shall be deemed the amendment under Section 2bis(2). In this case, the proviso to the said subsection shall not apply.**

**(Special provisions concerning amendment)**

**48octies.--(1) The proviso to Section 2bis(1) of this Law shall not apply to an amendment which is deemed to have been made under Section 2bis(1) of this Law in accordance with Sections 184septies(2) and 184octies(2) of the Patent Law as**



applied under Section 48quindecies(1) of the Patent Law.

(2) The proviso to Section 2bis(1) shall not apply to an amendment under Article 28(1) or 41(1) of the Treaty concerning an international utility model application.

(3) For the purposes of the scope of the amendment concerning the description or drawings of a foreign language utility model application, "the specification or drawings originally attached to the request" in Section 2bis(2) shall be replaced by "the description, the claims or the drawings of the international application as of the international filing date referred to in Section 48quater(1)".

(4) Section 184duodecies(1) of the Patent Law shall apply to an amendment under the principal sentence of Section 2bis(1) of this Law or under Articles 28(1) or 41(1) of the Treaty concerning an international utility model application. In such a case, "Section 195(2)" and "has been paid and the relevant time for the national processing has occurred" in Section 184duodecies(1) of the Patent Law shall read "annual fees to be paid under Section 32(1) and Section 54(2) of the Utility Model Law" and "has been paid," respectively.

(Special provisions concerning registrability of utility model)

48novies.-- For the purposes of Section 3bis of this Law where another application for a utility model registration or for a patent referred to in Section 3bis of this Law is an international utility model application or an international patent application referred to in Section 184ter(2) of the Patent Law, the passage reading "of another application for a utility model registration or for a patent" in Section 3bis of this Law shall be replaced by "of another application for a utility model registration or for a patent (excluding a foreign language utility model application referred to in Section 48quater(1) or a foreign language patent application referred to Section 184quater(1) of the Patent Law which is deemed to have been withdrawn under Section 48quater(3) of this Law or Section 184quater(3) of the Patent Law);" the passage reading "was published or" in that section shall be replaced by "was published;" the passage reading "or the laying open for public inspection (Kokai)" in that section shall be replaced by "or the laying open for public inspection (Kokai) or the international publication referred to in Article 21 of the Patent Cooperation Treaty done at Washington on June 19, 1970;" and the passage reading "the specification or drawings originally attached to the request" in that section shall be replaced by "the description, the claims and the drawings of the international application as of the international filing date referred to in Section 48quater(1) of this Law or Section 184quater(1) of the Patent Law".

(Special provisions concerning priority claim based on utility model application, etc.)

48decies.--(1) Section 8(4) and Section 9(2) shall not apply to an international utility model application.

(2) For the purposes of Section 8(3) for a Japanese language utility model application, "the Gazette containing the Utility Model was published" in Section 8(3) shall be considered to have been replaced by "the Gazette containing the Utility Model was published or the international publication referred to in Article 21 of the Patent Cooperation Treaty done at Washington on June 19, 1970".

(3) For the purposes of Section 8(3) for a foreign language utility model application, "the specification or drawings originally attached to the request of a utility model application" in Section 8(3) shall be considered to have been replaced by "the description, the claims or the drawings" and "the Gazette containing the Utility Model was published" in Section 8(3) shall be considered to have been replaced by "the Gazette containing the Utility Model was published or the international publication referred to in Article 21 of the Patent Cooperation Treaty done at Washington on June 19, 1970 was effected".

(4) For the purposes of Section 8(1) to (3) and Section 9(1) in the case where the earlier application under Section 8(1) is an international utility model application or an international patent application referred to in Section 184ter(2) of the Patent Law, "the specification or drawings originally attached to the request" in Section 8(1) and (2) shall be considered to have been replaced by "the description, the claims or the drawings of an international application as of the international filing date referred to in Section 48quater(1) of this Law or Section 184quater(1) of the Patent Law," "the specification or drawings originally attached to the request of the earlier application" and "the laying open for

public inspection" in Section 8(3) shall be considered to have been replaced by "the description, the claims or the drawings of an international application as of the international filing date referred to in Section 48quater(1) of this Law or Section 184quater(1) of the Patent Law of the earlier application" and "the international publication referred to in Article 21 of the Patent Cooperation Treaty done at Washington on June 19, 1970," and "at the expiration of one year and three months from the filing date of the application" in Section 9(1) shall be considered to have been replaced by "at the expiration of the relevant time for the national processing under Section 48quater(4) of this Law or Section 184quater(4) of the Patent Law at the expiration of one year and three months from the international filing date referred to in Section 48quater(1) of this Law or Section 184quater(1) of the Patent Law, whichever is later)".

(Special provisions concerning conversion of applications)

**48undecies.--** Conversion of an international application having been considered or recognized to be a patent application under Section 184ter(1) or 184vicies(4) of the Patent Law into a utility model application may not be made until, in respect of a Japanese language patent application referred to in Section 184sexies(2) of the Patent Law, after the proceeding under Section 184quinquies(1) of the Patent Law has been taken, and in respect of a foreign language patent application referred to in Section 184quater(1) of the Patent Law, after proceedings under the said subsection and Section 184quinquies(1) of the Patent Law have been taken and, further, after the fee to be paid under Section 195(2) of the Patent Law has been paid (or -- in respect of an international application having been recognized as a patent application under Section 184vicies(4) of the Patent Law -- after the decision referred to in the said subsection has been made).

(Special provisions concerning time limit for payment of annual fees)

**48duodecies.--** For the purposes of a payment of the annual fees for each year from the first to the third years with respect to an international utility model application, "simultaneously with the utility model application" in Section 32(1) shall be considered to have been replaced by "within the time limit for the submission of the national form paper referred to in Section 48quater(1) (in the case where a request for the national processing referred to in the proviso to Section 48quater(4) has been made, until the time of making that request for the national processing)".

(Time limit for making request for technical opinion as to registrability of utility model)

**48terdecies.--** For the purposes of a request for the opinion as to registrability of a utility model concerning an international utility model application, "any person" in Section 12(1) shall be considered to have been replaced by "after the expiration of the relevant time for the national processing, any person".

(Special provisions concerning grounds for invalidation)

**48quater decies.--** For the purposes of a trial for invalidation of utility model registration concerning a foreign language utility model application, "where the registration has been effected in respect of a utility model application with the amendment which does not comply with Section 2bis(2)" in Section 37(1)(i) shall be replaced by "where the features disclosed in the specification or drawings attached to the request of the utility model registration concerning a foreign language utility model application referred to in Section 48quater(1) does not remain within the scope of the features disclosed in the description, the claims or the drawings of the international application as of the international filing date referred to in Section 48quater(1)".

(Application mutatis mutandis of Patent Law)

**48quindecies.--**(1) Section 184septies (Amendment under Article 19 of the Treaty concerning the Japanese language patent application) and Section 184opties(1) to (3) (Amendment under Article 34 of the Treaty) of the Patent Law shall apply mutatis mutandis to the amendment of an international utility model application under the Treaty. In such a case, "Section 17bis(1)" in Sections 184septies(2) and 184opties(2) of the Patent Law shall read "Section 2bis(1) of the Utility Model Law".

(2) Section 184undecies of the Patent Law (Special provisions concerning patent administrator for residents abroad) shall apply mutatis mutandis to proceedings relating to an international utility model application.

**(3) Section 184novies(6) and Section 184quater decies of the Patent Law shall apply mutatis mutandis to an international utility model application.**

**(International application recognized as utility model application by decision)**

**48sedecies.--(1) The applicant of an international application defined in Article 2(vii) of the Treaty may, where the receiving Office defined in Article 2(xv) of the Treaty has made a refusal referred to in Article 25(1)(a) of the Treaty or has made a declaration referred to in Article 25(1)(a) or (b) of the Treaty or the International Bureau defined in Article 2(xix) of the Treaty has made a finding referred to in Article 25(1)(a) of the Treaty in respect of the international application (only a utility model application) which contains the designation of Japan as a designated State referred to in Article 4(1)(ii) of the Treaty, request the Commissioner of the Patent Office as provided in an ordinance of the Ministry of International Trade and Industry to make a decision referred to in Article 25(2)(a) of the Treaty within the time limit prescribed in an ordinance of the Ministry of International Trade and Industry.**

**(2) A person who makes a request under the preceding subsection in respect of the international application made in a foreign language shall furnish to the Commissioner of the Patent Office at the time of making such a request a translation into Japanese of the description, the claims, the drawings (limited to any text matter of the drawings) and the abstract as well as other documents relating to the international application provided for in an ordinance of the Ministry of International Trade and Industry.**

**(3) Where the request under Subsection (1) has been made, the Commissioner of the Patent Office shall decide whether the refusal, declaration, or finding referred to therein was justified under provisions of the Treaty and the Regulations under the Patent Cooperation Treaty.**

**(4) Where the Commissioner of the Patent Office has made a decision under the preceding subsection to the effect that the refusal, declaration, or finding referred to in the said subsection was not justified under the provisions of the Treaty and the Regulations under the Patent Cooperation Treaty, the international application concerned shall be recognized as a utility model application filed on the date which would be accorded as the international filing date if the said refusal, declaration, or finding were not made in respect of the said international application.**

**(5) For the purposes of the amendment of the international application having been recognized as a utility model application under the preceding subsection, "the filing date of the utility model application" in the proviso to Section 2bis(1) shall be replaced by "the date on which the decision under Section 48sedecies(4) has been made".**

**(6) Sections 48sexies(1) and (2), 48septies, 48octies(3), 48novies(3) and (4), 48duodecies to 48quater decies of this Law, and Section 184ter(2), 184novies(6), 184duodecies(1) and 184quater decies of the Patent Law shall apply mutatis mutandis to an international application having been recognized as a utility model application under Subsection (4). In such a case, the technical replacement of words necessary to apply mutatis mutandis to these provisions shall be prescribed by Cabinet Order.**

## **Chapter VIII Miscellaneous Provisions**

**(Registration in Utility Model Register)**

**49.--(1) The following matters shall be registered in the Utility Model Register kept in the Patent Office:**

- (i) the establishment, transfer, extinguishment, restoration or restriction on disposal of a utility model right;**
- (ii) the establishment, maintenance, transfer, modification, extinguishment or restriction on disposal of an exclusive or non-exclusive license;**
- (iii) the establishment, transfer, modification, extinguishment or restriction on disposal of rights in a pledge upon a utility model right or an exclusive or non-exclusive license.**

**(2) The Utility Model Register, either in whole or in part, may be prepared by means of magnetic tapes (including other materials on which matters can be accurately recorded by an equivalent method -- hereinafter referred to as "magnetic tapes").**

**(3) Other matters relating to registration that are not provided for in this Law shall be prescribed by Cabinet Order.**

**(Issuance of utility model registration certificate)**

**50.--(1) When the establishment of a utility model right has been registered the Commissioner of the Patent Office shall issue a utility model registration certificate to the owner of the utility model right.**

**(2) Re-issuance of the certificate shall be prescribed by an ordinance of the Ministry of International Trade and Industry.**

**(Special provisions for utility model registrations or utility model rights based on two or more claims)**

**50bis.-- For the purposes of the provisions of Sections 12(3) and 14bis(2) of this Law, Section 97(1) or Section 98(1)(i) of the Patent Law as applied under Section 26, Section 34(1)(iii), Section 37(2) of this Law, Section 125 of the Patent Law as applied under Section 41 of this Law, Section 132 of the Patent Law respectively as applied under Section 41 of this Law or under Section 174(3) of the Patent Law as applied under Section 45(1) of this Law, Section 44 of this Law, Section 176 of the Patent Law as applied under Section 45(1) of this Law, Section 193(2)(iv) of the Patent Law as applied under Section 49(1)(i) or Section 53(2) of this Law relating to the utility model registrations or the utility model rights covering two or more claims, the utility model registration shall be considered to have been granted, or the utility model right shall be deemed to exist, for each claim.**

**(Indication of existence of utility model registration)**

**51.-- The owner of a utility model right or an exclusive or non-exclusive license shall take steps, as prescribed in an ordinance of the Ministry of International Trade and Industry, to mark articles covered by a registered utility model or their packaging with a statement to the effect that the articles are covered by a registered utility model (hereinafter referred to as "indication of a utility model registration").**

**(Prohibition of false marking)**

**52.-- The following acts shall be unlawful:**

**(i) the marking of an article not covered by a registered utility model, or the packaging of such article, with an indication of a utility model registration or confusingly similar indication;**

**(ii) the assignment, lease or display for the purpose of assignment or lease of an article not covered by a registered utility model, where such article or its packaging is marked with an indication of a utility model registration or confusingly similar indication;**

**(iii) the inclusion in an advertisement of an indication that an article is covered by a registered utility model or a confusingly similar indication, for the purpose of causing others to manufacture or use the article or of assigning or leasing the article, where it is not covered by a registered utility model.**

**(Utility Model Gazette)**

**53.--(1) The Patent Office shall publish the Gazette containing the Utility Model.**

**(2) Section 193(2) (only (iv) to (vi), (viii) and (ix)) of the Patent Law shall apply mutatis mutandis to the Gazette containing the Utility Model.**

**(Fees)**

**54.--(1) The person specified hereunder shall pay the fee the amount of which shall be prescribed by Cabinet Order with the actual costs taken into consideration:**

- (i) person requesting extension of time limit under Section 5(1) of the Patent Law as applied under Section 2quinquies(1) of this Law, under Section 4 of the Patent Law applied under Section 32(3) or 45(2) of this Law, or change of date under Section 5(2) of the Patent Law as applied under Section 2quinquies(1) of this Law;**
- (ii) person making notification of succession in accordance with Section 34(4) of the Patent Law as applied under Section 11(2) of this Law;**
- (iii) person requesting re-issuance of utility model registration certificate;**
- (iv) person requesting issuance of certificate in accordance with Section 186 of the Patent Law as applied under Section 55(1) of this Law;**
- (v) person requesting issuance of copy or extract of documents in accordance with Section 186 of the Patent Law as applied under Section 55(1) of this Law;**
- (vi) person requesting inspection or copying of documents in accordance with Section 186 of the Patent Law as applied under Section 55(1) of this Law;**
- (vii) person requesting issuance of documents containing matters recorded in that part of the Utility Model Register as prepared on magnetic tape, in accordance with Section 186 of the Patent Law as applied under Section 55(1) of this Law.**

**(2) The persons specified in the left-hand column of the attached table shall pay the fee the amount of which shall be prescribed by Cabinet Order within the limit of the amounts specified in the right-hand column of the table.**

**(3) The two preceding subsections shall not apply where the person to pay the fee in accordance with the subsections is the State.**

**(4) The payment of the fee under Subsections (1) and (2) shall be made by patent revenue stamps as prescribed by an ordinance of the Ministry of International Trade and Industry. However, wherever so prescribed by an ordinance of the Ministry of International Trade and Industry, such payment may be made in cash.**

**(5) A fee paid by mistake or in excess shall be refunded upon the request of the person making the payment.**

**(6) No request for a refund of a fee under the preceding subsection may be made after one year from the date of payment.**

**(7) Section 195bis (reduction of fee for requests for examination or exemption therefrom) of the Patent Law shall apply mutatis mutandis to the fee for a request for a technical opinion as to registrability of a utility model.**

**(Application mutatis mutandis of Patent Law)**

**55.--(1) Section 186 (request for certification, etc.) of the Patent Law shall apply mutatis mutandis to utility model registrations.**

**(2) Section 189 to 192 (transmittal) of the Patent Law shall apply mutatis mutandis to transmittal under this Law.**

**(3) Section 194 of the Patent Law shall apply mutatis mutandis to the procedure. In such a case, "examination" in Section 194(2) shall read "the technical opinion as to registrability of a utility model".**

**(4) Section 195ter of the Patent Law shall apply mutatis mutandis to measures under this Law or an order or ordinance thereunder.**

**(5) Section 195quater (Restriction on appeals under Administrative Appeal Law) of the Patent Law shall apply mutatis mutandis to examiners' decisions, trial decisions and rulings of dismissal of a demand for trial or retrial under this Law as well as to measures from which no appeal lies under this Law.**

## **Chapter IX Penal Provisions**

### **(Offense of infringement)**

**56.--(1) Any person who has infringed a utility model right or an exclusive license shall be liable to imprisonment with labor not exceeding three years or to a fine not exceeding 3,000,000 yen.**

**(2) The prosecution for the offenses under the preceding subsection shall be initiated upon complaint.**

### **(Offense of fraud)**

**57.-- Any person who has obtained a utility model registration or a trial decision by means of a fraudulent act shall be liable to imprisonment with labor not exceeding one year or to a fine not exceeding 1,000,000 yen.**

### **(Offense of false marking)**

**58.-- Any person infringing Section 52 shall be liable to imprisonment with labor not exceeding one year or to a fine not exceeding 1,000,000 yen.**

### **(Offense of perjury, etc.)**

**59.--(1) A witness, expert witness or interpreter who, having taken an oath under this Law, has made a false statement or has given a false expert opinion or has interpreted falsely before the Patent Office or a court commissioned thereby shall be liable to imprisonment with labor for a term of not less than three months nor more than ten years.**

**(2) Where a person committing the offense in the preceding subsection has made a voluntary confession before the trial decision concerning the case has become final and conclusive, his sentence may be reduced or suppressed.**

### **(Offense of divulging secrets)**

**60.-- Where any present or former official of the Patent Office has divulged or made surreptitious use of the secrets relating to a device in a utility model application to which he had access in the course of his duties, he shall be liable to imprisonment with labor not exceeding one year or to a fine not exceeding 500,000 yen.**

### **(Dual liability)**

**61.-- Where an officer representing a legal entity or a representative, employee or any other servant of a legal entity or of a natural person has committed an act in violation of Section 56(1), 57 or 58, with regard to the business of the legal entity or natural person, the legal entity or the natural person shall, in addition to the offender, be liable to the fine prescribed in those sections.**

**(Administrative penalties)**

**62.-- Where a person who has taken an oath under Section 207(1) of the Code of Civil Procedure -- as applied under Section 151 of the Patent Law as applied under Section 41 of this Law or under Section 174(3) of the Patent Law as applied under Section 45(1) of this Law -- has made a false statement before the Patent Office or a court commissioned thereby, he shall be liable to an administrative penalty not exceeding 100,000 yen.**

**(Administrative penalties)**

**63.-- Where a person who has been summoned by the Patent Office or a court commissioned thereby in accordance with this Law has failed to appear or has refused to take an oath, to make a statement, to testify, to give an expert opinion or to interpret, without a legitimate reason, he shall be liable to an administrative penalty not exceeding 100,000 yen.**

**(Administrative penalties)**

**64.-- Where a person who has been ordered by the Patent Office or a court commissioned thereby to produce or show documents or other evidence in accordance with the provisions of this Law relating to the examination or preservation of evidence has failed to comply with the order, without a legitimate reason, he shall be liable to an administrative penalty not exceeding 100,000 yen.**

**Attached Table**

**(Related to Section 54)**

**Person liable to pay Amounts**

- 1. Person filing utility \14,000 per case model application**
- 2. Person taking proceeding \14,000 per case under Section 48quinquies(1)**
- 3. Person making request \14,000 per case under Section 48sedecies(1)**
- 4. Person making request \42,000 per case plus for technical opinion \1,300 per claim as to registrability of registrability of a utility model**
- 5. Person correcting \1,400 per case a specification or drawings**
- 6. Person requesting \40,000 per case interpretation in accordance with Section 71(1) of the Patent Law as applied under Section 26 of this Law**
- 7. Person requesting \55,000 per case arbitration decision**
- 8. Person requesting \27,500 per case cancellation of arbitration decision**
- 9. Person demanding trial \49,500 per case or retrial plus \5,500 per claim**
- 10. Person demanding \55,000 per case intervention in trial or retrial**

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## JAPAN

### [DESIGN LAW]

(Law No. 125 of April 13, 1959, as last amended on  
June 12, 1996)

ENTRY INTO FORCE: April 1, 1997

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### **Attached Table**

## **Chapter I General Provisions**

### **( Purpose )**

**1.-- The purpose of this Law shall be to encourage the creation of designs by promoting their protection and utilization so as to contribute to the development of industry.**

### **(Definitions)**

**2.--(1) "Design" in this Law means the shape, pattern or color or any combination thereof in an article which produces an aesthetic impression on the sense of sight.**

**(2) "Registered design" in this Law means a design for which a design registration has been effected.**

**(3) "Working" of a design in this Law means any act of manufacturing, using, assigning, leasing, importing or offering for assignment or lease (including displaying for the purpose of assignment or lease -- hereinafter the same) of, articles to which the design has been applied.**

## **Chapter II Design Registration and Applications Therefor**

### **(Registrability of designs)**

**3.--(1) Any person who has created a design capable of being used in industrial manufacture may obtain a design registration therefor, except in the case of the following designs:**

**(i) designs which were publicly known in Japan or elsewhere prior to the filing of the design application;**

**(ii) designs which were described in a publication distributed in Japan or elsewhere prior to the filing of the design application;**

**(iii) designs which are similar to those referred to in the two preceding paragraphs.**

**(2) Where a design could easily have been created, prior to the filing of the design application, by a person with ordinary skill in the art to which the design pertains, on the basis of a shape, pattern or color or any combination thereof widely known in Japan (other than a design referred to in any of the paragraphs of the preceding subsection), a design registration shall not be effected for such a design, notwithstanding the preceding subsection.**

### **(Exceptions to lack of novelty of design)**

**4.--(1) In the case of a design which has fallen under Paragraph (i) or (ii) of Section 3(1) against the will of the person having the right to obtain a design registration, such a design shall be deemed not to have fallen under said Paragraph (i) or (ii), provided that such person has filed a design application for the design within six months from the date on which the design first fell under those paragraphs.**

**(2) In the case of a design which has fallen under Paragraph (i) or (ii) of Section 3(1) due to an act on the part of the person having the right to obtain a design registration, the preceding subsection shall also apply, provided that such person has filed a design application for the**

**design within six months from the date on which the design first fell under those paragraphs.**

**(3) Any person who desires the application of the preceding subsection with respect to a design in a design application shall submit a written statement to that effect to the Commissioner of the Patent Office simultaneously with the design application. Within 14 days of the filing of the design application, he shall also submit to the Commissioner of the Patent Office a document proving that the design in the design application is a design falling under said subsection.**

**(Unregistrable designs)**

**5.-- A design registration shall not be effected for the following designs, notwithstanding Section 3:**

- (i) designs liable to contravene public order or morality;**
- (ii) designs liable to give rise to confusion with respect to articles connected with any other person's business.**

**(Applications for design registration)**

**6.--(1) Any person desiring a design registration shall submit a request to the Commissioner of the Patent Office, together with a drawing of the design for which registration is sought, stating the following:**

- (i) the name and the domicile or residence of the applicant for a design registration;**
- (ii) the name and the domicile or residence of the creator of the design;**
- (iii) the article or articles to which the design is applied.**

**(2) Whenever an ordinance of the Ministry of International Trade and Industry so prescribes, a photograph, model or sample of the design for which registration is sought may be submitted instead of the drawing referred to in the preceding subsection. In such a case, the fact that a photograph, model or sample has been submitted shall be noted in the request.**

**(3) Where a person desires a design registration for a design that is similar to one which has been registered in his name or registration of which he has applied for, the number of the relevant design registration or application shall be stated in the request.**

**(4) Where the statement referred to in Subsection 1(iii) concerning the article or articles to which the design is applied, or of which the drawing, photograph or model is attached to the request, is not such as to enable a person with ordinary skill in the art to which the design pertains to visualize the material or dimensions of the article or articles to which the design is applied, so that such a person is unable to recognize the design, the material or dimensions referred to shall be stated in the request.**

**(5) Where the shape, pattern or color of an article to which the design is applied varies according to the function that the article possesses and where registration is sought for the shape, pattern or color or a combination thereof as it appears before, during and after the variation referred to, the request shall contain a statement to that effect as well as an explanation concerning said function of the article.**

**(6) When the colors of the design are applied on the drawing, photograph or model submitted under Subsection (1) or (2), any parts that are white or black need not be colored.**

**(7) Where parts are not colored, in accordance with the preceding subsection, the request shall contain a statement to that effect.**

**(8) In the case of the drawing of a design submitted under Subsection (1) or the photograph or model submitted under Subsection (2), where the whole or part of the article to which the design has been applied is transparent, the request shall contain a statement to that effect.**

#### **(Unity of design)**

**7 .-- An application for design registration shall relate to a single design corresponding to an article in the classes of articles prescribed by an ordinance of the Ministry of International Trade and Industry.**

#### **(Design of a set of articles)**

**8 .--(1) In the case of a design of articles of two or more kinds that are customarily sold or used together as a set of articles, forming the articles prescribed by an ordinance of the Ministry of International Trade and Industry (hereinafter referred to as a "set of articles"), an application for design registration may be made as for one design, provided that the set of articles is a coordinated whole.**

**(2) In the case of the preceding subsection, design registration may be effected only where each of the designs of the articles forming the set of articles is eligible for registration under Sections 3, 5 and 9(1) and (2).**

#### **(First-to-file rule)**

**9 .--(1) Where two or more design applications relating to the same or a similar design are filed on different dates, only the first applicant may obtain a design registration for the design.**

**(2) Where two or more design applications relating to the same or a similar design are filed on**

**the same date, only one such applicant, agreed upon after mutual consultation among all the applicants, may obtain a design registration for the design. If no agreement is reached or no consultation is possible, none of the applicants shall obtain a design registration for the design.**

**(3) Where a design application is withdrawn or dismissed, such application shall, for the purposes of the two preceding subsections, be deemed never to have been made.**

**(4) A design application filed by a person who is neither the creator of the design nor the successor in title to the right to obtain a design registration shall, for the purposes of Subsections (1) and (2), be deemed not to be a design application.**

**(5) The Commissioner of the Patent Office shall, in the case of Subsection (2), order the applicants to hold consultations for an agreement under that subsection and to report the result thereof, within an adequate time limit.**

**(6) Where the report under the preceding subsection is not made within the time limit designated in accordance with that subsection, the Commissioner of the Patent Office may deem that no agreement under Subsection (2) has been reached.**

**(Amendment of statement in a request or of drawings, etc., and change of gist)**

**9bis .-- Where, after registration of the establishment of the design right, it is found that an amendment of the statement in the request (excluding matters listed in Section 6(1)(i) and (ii) and matters described under Section 6(2) and (3) -- referred to in Sections 17bis(1) and 24 as "the statement in the request") or of drawings, photographs, models or samples attached to the request has changed the gist thereof, the design application shall be deemed to have been filed at the time when the amendment in writing was submitted.**

**(Similar designs)**

**10 .--(1) The owner of a design right may obtain registration of a design which is similar only to his registered design (hereinafter referred to as a "similar design").**

**(2) The preceding subsection shall not apply in the case of a design that is similar only to a similar design registered under that subsection.**

**(Division of design applications)**

**10bis .--(1) An applicant for a design registration may divide a design application comprising two or more designs into one or more new design applications, only during the pendency of the application in examination, trial or retrial.**



**(2) Where a design application has been divided under the preceding subsection, the new design application shall be deemed to have been filed at the time of filing of the original application. However, this provision shall not apply for the purposes of Section 4(3) of this Law and Section 43(1) and (2) of the Patent Law (Law No. 121 of 1959) as applied under Section 15(1) of this Law (including its application under Section 43bis(3) of the Patent Law as applied under Section 15(1) of this Law).**

**(Division of design applications)**

**11.--(1) An applicant for a design registration may divide a design application under Section 8(1) so as to make applications for each of the designs of articles forming a set of articles, only during the pendency of the application in examination, trial or retrial.**

**(2) Where a design application has been divided under the preceding subsection, the application under Section 8(1) shall be deemed to have been withdrawn.**

**(3) Section 10bis(2) and (3) shall apply mutatis mutandis to the division of a design application under Subsection (1).**

**(Conversion of applications)**

**12.--(1) An applicant may convert his application for registration of a similar design into an application for registration of an independent design (meaning a design application other than an application for registration of a similar design -- hereinafter referred to as an "application for registration of an independent design").**

**(2) An applicant may convert his application for registration of an independent design into an application for registration of a similar design.**

**(3) A design application may not be converted under the two preceding subsections after the examiner's decision or the trial decision with respect to the application has become final and conclusive.**

**(4) Sections 10bis(2) and 11(2) shall apply mutatis mutandis to the conversion of a design application under Subsection (1) or (2).**

**(Conversion of applications)**

**13.--(1) An applicant for a patent may convert his application into a design application. However, this provision shall not apply after 30 days from the transmittal of the examiner's first**

**decision [including the transmittal thereof deemed to have been made under the provisions of the Law on Special Provisions for Procedures, etc. relating to Industrial Property (Law No. 30 of 1990)] that the patent application is to be refused.**

**(2) An applicant for a utility model registration may convert his application into a design application.**

**(3) The period prescribed in the proviso to Subsection (1) shall, when the time limit prescribed in Section 121(1) of the Patent Law has been extended in accordance with Section 4 of that Law, be deemed to have been extended only for that period as extended.**

**(4) Sections 10bis(2) and 11(2) shall apply mutatis mutandis to the conversion of an application under Subsection (1) or (2).**

**(Special provisions concerning conversion of applications under the Patent Cooperation Treaty)**

**13bis.--(1) Conversion of an international application having been deemed a patent application under Section 184ter(1) or 184vicies(4) of the Patent Law into a design application may not be made until, in respect of a Japanese language patent application referred to in Section 184sexies(2) of the Patent Law, after the proceeding under Section 184quinquies(1) of the Patent Law has been taken, and in respect of a foreign language patent application referred to in Section 184quater(1) of the Patent Law, after the proceedings under said subsection and Section 184quinquies(1) of the Patent Law have been taken and, further, after the fee to be paid under Section 195(2) of the Patent Law has been paid (or -- in respect of an international application having been deemed a patent application under Section 184vicies(4) of the Patent Law -- after the decision referred to in said subsection has been made).**

**(2) Conversion of an international application having been deemed a utility model application under Section 48ter(1) or 48sedecies(4) of the Utility Model Law (Law No. 123 of 1959) into a design application may not be made until, in respect of a Japanese language utility model application referred to in Section 48quinquies(4) of the Utility Model Law, after the proceeding under Section 48quinquies(1) of the Utility Model Law has been taken, and in respect of a foreign language utility model application referred to in Section 48quater(1) of the Utility Model Law, after the proceedings under said subsection and Section 48quinquies(1) of the Utility Model Law have been taken and, further, after the fee to be paid under Section 54(2) of the Utility Model Law has been paid (or -- in respect of an international application having been deemed a utility model application under Section 48sedecies(4) of the Utility Model Law -- after the decision referred to in said subsection has been made).**

**(Secret designs)**

**14.--(1) An applicant for a design registration may demand that the design be kept secret for a period which shall be designated in the demand and shall not exceed three years from the date**

**on which the establishment of the design right was registered.**

**(2) A person who desires to make that demand under the preceding subsection shall, at the time of filing the design application, submit to the Commissioner of the Patent Office a document stating the following:**

- (i) the name and the domicile or residence of the applicant for a design registration;**
- (ii) the period for which secrecy is demanded.**

**(3) An applicant for a design registration or the owner of a design right may extend or reduce the period for which secrecy is demanded under Subsection (1).**

**(4) In any of the following cases, the Commissioner of the Patent Office shall allow persons other than the owner of the design right to have access to a design for which secrecy has been demanded under Subsection (1):**

- (i) when the consent of the owner of the design right has been obtained;**
- (ii) when so requested by a party or an intervenor in the examination, trial, retrial or litigation relating to the design or any identical or similar design;**
- (iii) when so requested by a court;**
- (iv) when so requested by an interested person submitting to the Commissioner of the Patent Office a document stating the name of the owner of the design right and the registration number and other documents prescribed by an ordinance of the Ministry of International Trade and Industry.**

**(Application mutatis mutandis of Patent Law)**

**15 .--(1) Section 38 (joint applications), Section 43 (priority claim under the Paris Convention) and Section 43bis (such a priority claim as one under the Paris Convention) of the Patent Law shall apply mutatis mutandis to design applications. In such a case, "within one year and four months from the earliest date among the dates given in each of the following paragraphs" in Section 43(2) of the Patent Law shall read "within three months from the filing date of the design application".**

**(2) Sections 33 and 34(1) and (2) and (4) to (7) (right to obtain patent) of the Patent Law shall apply mutatis mutandis to the right to obtain a design registration.**

**(3) Section 35 (employees' inventions) of the Patent Law shall apply mutatis mutandis to the creation of a design by an employee, an executive officer of a legal entity or a national or local public official.**

## Chapter III The Examination

(Examination by examiner)

**16.--** The Commissioner of the Patent Office shall have applications for design registration examined by an examiner.

(Examiner's decision of refusal)

**17.--** The examiner shall make a decision that a design application is to be refused where it falls under any of the following paragraphs:

(i) the design in the design application is not registrable in accordance with Section 3, 5, 8(2), 9(1) or (2) or 10(1) of this Law, Section 38 of the Patent Law -- as applied under Section 15(1) of this Law -- or Section 25 of the Patent Law as applied under section 68(3) of this Law;

(ii) the design in the design application is not registrable in accordance with the provisions of a treaty;

(iii) the design application does not comply with the requirements of Section 7;

(iv) the applicant for a design registration who is not the creator of the design has not succeeded to the right to obtain registration for the design concerned.

(Declining of amendments)

**17bis.--(1)** Where an amendment of the statement in the request or of the drawings, the photographs, models or samples attached to the request would change the gist thereof, the examiner shall decline the amendment by a ruling.

**(2)** The ruling to decline an amendment under the preceding subsection shall be in writing and state the reasons therefor.

**(3)** Where a ruling to decline an amendment under Subsection (1) has been rendered, the examiner's decision with respect to the design application shall not be rendered before the expiration of 30 days from the transmittal of that ruling.

**(4)** Where an applicant has demanded a trial under Section 47(1) against a ruling to decline an amendment under Subsection (1), the examiner shall suspend the examination of the design application until the trial decision has become final and conclusive.

**(New application for design as amended)**

**17ter.--(1) Where an applicant for a design registration has filed a new design application for the design as amended within 30 days from the transmittal of a ruling to decline an amendment under Section 17bis(1), the design application shall be deemed to have been filed at the time of submission of that amendment.**

**(2) Where a new design application referred to in the preceding subsection has been filed, the original design application shall be deemed withdrawn.**

**(3) The two preceding subsections shall be applicable only where the applicant has submitted, at the same time as the new design application, a statement to the Commissioner of the Patent Office indicating his desire for the application of Subsection (1) to the new design application referred to in that subsection.**

**(New application for design as amended)**

**17quater.--(1) The Commissioner of the Patent Office may, for the benefit of a person residing in a place that is remote or difficult of access, extend upon request or ex officio the period prescribed in Section 17bis(1).**

**(2) The trial examiner-in-chief may, for the benefit of a person residing in a place that is remote or difficult of access, extend upon request or ex officio the period prescribed in Section 17ter(1) as applied under Section 50(1) (including its application under Section 57(1)).**

**(Decision to register design)**

**18.-- Where the examiner finds no reason for refusing a design application, he shall make a decision that the design is to be registered.**

**(Application mutatis mutandis of Patent Law)**

**19.-- Section 47(2) (qualifications of examiners), Section 48 (exclusion of examiners), Section 50 (notification of reasons for refusal), Section 52 (formal requirements of examiner's decision) and Section 54 (relationship with litigation) of the Patent Law shall apply mutatis mutandis to the examination of design applications.**

## **Chapter IV The Design Right**

## **Part 1. The Design Right**

**(Registration of establishment of design right)**

**20 .--(1) A design right shall come into force upon registration of its establishment.**

**(2) The establishment of a design right shall be registered when the annual fee for the first year under Section 42(1)(i) has been paid.**

**(3) When registration under the preceding subsection has been effected, the following shall be published in the Design Gazette (Isho Koho):**

**(i) the name and the domicile or residence of the owner of the design right;**

**(ii) the number and the date of the design application;**

**(iii) the registration number and the date of registration of the establishment;**

**(iv) the contents of the request and the drawing, photograph, model or sample attached to the request.**

**(4) In the case of a design for which secrecy has been demanded under Section 14(1), the matters referred to in Paragraph (iv) of the preceding subsection shall, notwithstanding Section 14(1), be published immediately after the period designated under Section 14(1) has expired.**

**(Term of design right)**

**21 .-- The term of a design right shall be 15 years from the date of registration of its establishment.**

**(Design right relating to similar design)**

**22 .-- The design right relating to a similar design shall be incorporated in the design right relating to the design (hereinafter referred to as the "principal design") to which such similar design is similar and for which a design registration (other than a registration for a similar design) was obtained first.**

**(Effects of design right)**

**23 .-- The owner of a design right shall have an exclusive right to commercially work the registered design and designs similar thereto. However, where the design right is the subject of**

**an exclusive license, this provision shall not apply to the extent that the exclusive licensee has an exclusive right to work the registered design and designs similar thereto.**

**(Scope of registered design)**

**24.-- The scope of a registered design shall be decided on the basis of the statement in the request and the design represented in the drawing attached to the request or shown in the photograph, model or sample attached to the request.**

**(Scope of registered design)**

**25.--(1) A request for interpretation may be made to the Patent Office with respect to the scope of a registered design and designs similar thereto.**

**(2) Where such a request is made, the Commissioner of the Patent Office shall designate three trial examiners to give the requested interpretation.**

**(3) Proceedings concerning an interpretation other than those provided for in the preceding subsection shall be prescribed by Cabinet Order.**

**(Relationship with another's registered design, etc.)**

**26.--(1) When a registered design would utilize another person's registered design or design similar thereto, patented invention or registered utility model under an application filed prior to the filing date of the design application concerned, or when the part of a design right relating to the registered design conflicts with another person's patent, utility model or trademark right under an application filed prior to the filing date of the design application concerned, or conflicts with another person's copyright taking effect prior to that date, the owner of the design right, exclusive licensee or non-exclusive licensee shall not commercially work the registered design.**

**(2) When a design similar to a registered design would utilize another person's registered design or design similar thereto, patented invention or registered utility model under an application filed prior to the filing date of the design application concerned, or when the part of a design right relating to designs similar to the registered design conflicts with another person's design, patent, utility model or trademark right under an application filed prior to the filing date of the design application concerned, or conflicts with another person's copyright taking effect prior to that date, the owner of the design right, exclusive licensee or non-exclusive licensee shall not commercially work the design similar to the registered design.**

**(Exclusive licenses)**

**27 .--(1) The owner of a design right may grant an exclusive license on such right.**

**(2) An exclusive licensee shall have an exclusive right to commercially work the registered design and designs similar thereto to the extent laid down in the license contract.**

**(3) Section 77(3) to (5) (transfer etc.), Section 97(2) (surrender) and Section 98(1)(ii) and (2) (effects of registration) of the Patent Law shall apply mutatis mutandis to exclusive licenses.**

**(Non-exclusive licenses)**

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

**(2) A non-exclusive licensee shall have the right to commercially work the registered design and designs similar thereto to the extent prescribed in this Law or laid down in the license contract.**

**(3) Section 73(1) (joint ownership), Section 97(3) (surrender) and Section 99 (effects of registration) of the Patent Law shall apply mutatis mutandis to non-exclusive licenses.**

**(Non-exclusive license by virtue of prior use)**

**29 .-- Where, at the time of filing of a design application [or at the time of filing of the original design application or of submission of an amendment when the design application is deemed to have been filed at the time of submission of the amendment in accordance with Section 9bis of this Law or in accordance with Section 17ter(1) (including its application under Section 50(1) (including its application under Section 57(1))], a person who has created a design or design similar thereto by himself without knowledge of the design in a design application or has learned the design from a person just referred to, has been commercially working the design or design similar thereto in Japan or has been making preparations therefor, such person shall have a non-exclusive license on the design right under the design application. Such license shall be limited to the design which is being worked or for which preparations for working are being made and to the purpose of such working or the preparations therefor.**

**(Non-exclusive license due to working prior to registration of demand for invalidation trial)**

**30 .--(1) When a person coming within any of the paragraphs set out below has been commercially working a design or design similar thereto in Japan or has been making preparations therefor, prior to the registration of a demand for a trial under Section 48(1), without knowing that the design registration falls under any of the paragraphs of the subsection referred to, such person shall have a non-exclusive license on the design right or on the exclusive license existing at the time when the design registration was invalidated, such non-exclusive license being limited to the design which is being worked or for which preparations for working are being made and to the purpose of such working or the preparations therefor:**



- (i) the original owner of the design right where one of two or more design registrations granted for the same or a similar design has been invalidated;**
- (ii) the original owner of the design right, where his design registration has been invalidated and a design registration for the same or a similar design has been granted to the person entitled;**
- (iii) in the case referred to in the two preceding paragraphs, a person who, at the time of registration of the demand for a trial under Section 48(1), has an exclusive license on the design right that has been invalidated or a non-exclusive license which is effective, under Section 99(1) of the Patent Law as applied under Section 28(3) of this Law, against the design right or the exclusive license.**

**(2) The owner of the design right or the exclusive licensee shall have a right to a reasonable remuneration as consideration for the non-exclusive license under the preceding subsection.**

**(Non-exclusive license after expiration of design right, etc.)**

**31.--(1) Where one design application was filed prior to or on the filing date of another design application and part of the design right (relating to designs similar to the registered design concerned) under the first-mentioned application conflicts with the design right under the other application and the term of the first-mentioned design right has expired, the owner of the original design right shall, to the extent of such right, have a non-exclusive license on the other design right or the exclusive license existing at the time when his design right expired.**

**(2) Where a patent right or a utility model right under an application filed prior to or on the filing date of a design application conflicts with the design right under that application, the preceding subsection shall apply mutatis mutandis where the term of the patent right or utility model right has expired.**

**(Non-exclusive license after expiration of design right, etc.)**

**32.--(1) Where one design application was filed prior to or on the filing date of another design application and part of the design right (relating to designs similar to the registered design concerned) under the first-mentioned application conflicts with the design right under the other application and the term of the first-mentioned design right has expired, a person who, at the time of expiration, has an exclusive license on the expired design right or a non-exclusive license which is effective under Section 99(1) of the Patent Law, as applied under Section 28(3) of this Law, against the expired design right or the exclusive license, shall, to the extent of the expired right, have a non-exclusive license on the other design right or on the exclusive license existing when the first-mentioned design right has expired.**

**(2) Where a patent right or a utility model right under an application filed prior to or on the filing date of a design application conflicts with the design right under that application, the preceding subsection shall apply mutatis mutandis where the term of the patent right or utility**

**model right has expired.**

**(3) The owner of the design right or the exclusive licensee shall have a right to a reasonable remuneration as consideration for the non-exclusive license under the two preceding subsections.**

**(Arbitration decision on grant of non-exclusive license)**

**33 .--(1) Where a registered design or design similar thereto falls under any of the cases provided for in Section 26, the owner of the design right or the exclusive licensee may request the other person referred to in that section to hold consultations on the grant of a non-exclusive license to work the registered design or the design similar thereto or of a non-exclusive license on the patent right or the utility model right.**

**(2) The other person referred to in Section 26 who has been requested to hold the consultations under the preceding subsection may request the owner of the design right or the exclusive licensee having requested the consultations to hold consultations on the grant of a non-exclusive license within the scope of the registered design which the owner of the design right or the exclusive licensee desires to work by obtaining the non-exclusive license on the design right, the patent right or the utility model right through the consultations requested by the owner of the design right or the exclusive licensee.**

**(3) If no agreement is reached or no consultation is possible under Subsection (1), the owner of the design right or the exclusive licensee may request the Commissioner of the Patent Office for an arbitration decision.**

**(4) If no agreement is reached or no consultation is possible under subsection (2) and an arbitration under the preceding subsection is requested, the other person referred to in Section 26 may request the Commissioner of the Patent Office for an arbitration decision only within the time limit which the Commissioner of the Patent Office designates as the time limit for the other person to submit a written reply in accordance with Section 84 of the Patent Law as applied under Subsection (7).**

**(5) If, in the case of Subsection (3) or the preceding subsection, the grant of a non-exclusive license would unduly injure the interests of the other person referred to in Section 26 or the owner of the design right or the exclusive licensee, the Commissioner of the Patent Office shall not render an arbitration decision ordering a non-exclusive license to be granted.**

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

**(7) Sections 84, 85(1) and 86 to 91bis (arbitration procedure, etc.) of the Patent Law shall apply mutatis mutandis to arbitration under Subsection (3) or (4).**

**(Transfer, etc. of non-exclusive license)**

**34 .--(1) A non-exclusive license, with the exception of one which results from an arbitration under Section 33(3) or (4) of this Law, Section 92(3) of the Patent Law or Section 22(3) of the Utility Model Law, may be transferred, but only together with the business in which it is worked or only with the consent of the owner of the design right (or the owner and the exclusive licensee in the case of a non-exclusive license on an exclusive license) or in the case of inheritance or other general succession.**

**(2) A non-exclusive licensee may, except in the case of a non-exclusive license resulting from an arbitration under Section 33(3) or (4) of this Law, Section 92(3) of the Patent Law or Section 22(3) of the Utility Model Law, establish a pledge on the non-exclusive license but only with the consent of the owner of the design right (or the owner and the exclusive licensee in the case of a non-exclusive license on an exclusive license).**

**(3) A non-exclusive license resulting from an arbitration under Section 33(3) of this Law, Section 92(3) of the Patent Law or Section 22(3) of the Utility Model Law shall be transferred together with the design, patent or utility model right to which the non-exclusive licensee is entitled and which is transferred together with the business in which it is worked and shall be extinguished at the time when such design, patent or utility model right has been transferred separately from the business in which it is worked or has been extinguished.**

**(4) A non-exclusive license resulting from an arbitration under Section 33(4) of this Law shall be transferred together with the design, patent or utility model right to which the non-exclusive licensee is entitled, and shall be extinguished at the time when such design, patent or utility model right has been extinguished.**

**(Pledges)**

**35 .--(1) Where a design right or an exclusive or non-exclusive license is the subject of a pledge, the pledgee may not work the registered design or designs similar thereto except as otherwise provided by contract.**

**(2) Section 96 (attachment) of the Patent Law shall apply mutatis mutandis to pledges on a design right, exclusive license or non-exclusive license.**

**(3) Section 98(1)(iii) and (2) (effects of registration) of the Patent Law shall apply mutatis mutandis to pledges on a design right or exclusive license.**

**(4) Section 99(3) (effects of registration) of the Patent Law shall apply mutatis mutandis to pledges on a non-exclusive license.**

**(Application mutatis mutandis of Patent Law)**

**36 .-- Section 69(1) and (2) (limits of patent right), Section 73 (joint ownership), Section 76 (extinguishment of patent right in absence of heir), Section 97(1) (surrender) and Section 98(1)(i) and (2) (effects of registration) of the Patent Law shall apply mutatis mutandis to design rights.**

## **Part 2. Infringement**

**(Injunctions)**

**37 .--(1) The owner of a design right or exclusive licensee may require a person who is infringing or is likely to infringe the design right or exclusive license to discontinue or refrain from such infringement.**

**(2) The owner of a design right or exclusive licensee who is acting under the preceding subsection may demand the destruction of the articles by which the act of infringement was committed, the removal of the facilities used for the act of infringement, or other measures necessary to prevent the infringement.**

**(3) In the case of a design for which secrecy has been demanded under Section 14(1), the owner of the design right or exclusive licensee may not take the action provided for in Subsection (1) until he has given a warning in the form of a document which states the matters referred to in each paragraph of Section 20(3) and which has been certified by the Commissioner of the Patent Office.**

**(Acts deemed to be infringement)**

**38 .-- Acts of manufacturing, assigning, leasing, importing or offering for assignment or lease of, in the course of trade, things to be used exclusively for the manufacture of the article to which the registered design or a design similar thereto has been applied shall be deemed to be an infringement of the design right or exclusive license.**

**(Presumption, etc. of amount of damage)**

**39 .--(1) Where the owner of a design right or exclusive licensee claims, from a person who has intentionally or negligently infringed the design right or exclusive license, compensation for**

**damage caused to him by the infringement, the profits gained by the infringer through the infringement shall be presumed to be the amount of damage suffered by the owner or exclusive licensee.**

**(2) The owner of a design right or exclusive licensee may claim, from a person who has intentionally or negligently infringed the design right or exclusive license, an amount of money which he would normally be entitled to receive for the working of the registered design or designs similar thereto, as the amount of damage suffered by him.**

**(3) The preceding subsection shall not preclude a claim to damages exceeding the amount referred to therein. In such a case, where there has been neither willfulness nor gross negligence on the part of the person who has infringed the design right or the exclusive license, the court may take this into consideration when awarding damages.**

**(Presumption of negligence)**

**40 .-- A person who has infringed a design right or exclusive license of another person shall be presumed to have been negligent as far as the act of infringement is concerned. However, this provision shall not apply with respect to the infringement of a design right or exclusive license relating to a design for which secrecy has been demanded under Section 14(1).**

**(Application mutatis mutandis of Patent Law)**

**41 .-- Section 105 (production of documents) and Section 106 (measures for recovery of reputation) of the Patent Law shall apply mutatis mutandis to the infringement of a design right or exclusive license.**

### **Part 3. Annual Fees**

**(Annual fees)**

**42 .--(1) A person who obtains registration of a design right or the owner of a design right shall pay as annual fees the amount specified below, for each case and for each year until the expiration of the design right under Section 21:**

- (i) first to third year: 8,500 yen per annum;**
- (ii) fourth to tenth year: 16,900 yen per annum;**
- (iii) eleventh to fifteenth year: 33,800 yen per annum.**

**(2) A person who obtains registration of a similar design shall pay, as a registration fee, 8,500**

yen for each case.

**(3) The two preceding subsections shall not apply to design rights belonging to the State.**

**(4) The payment of the fee under Subsection (1) or (2) shall be made by patent revenue stamps as prescribed by an ordinance of the Ministry of International Trade and Industry. However, wherever so prescribed by an ordinance of the Ministry of International Trade and Industry, such payment may be made in cash.**

**(Time limit for payment of annual fees)**

**43 .--(1) The annual fee for the first year under Section 42(1)(i) or the registration fee under Section 42(2) shall be paid within 30 days from the transmittal of the examiner's decision or trial decision that the design registration is to be effected.**

**(2) The annual fees for the second and subsequent years under Section 42(1) shall be paid during the preceding year or prior thereto.**

**(3) Upon the request of a person liable to pay an annual or registration fee, the Commissioner of the Patent Office may extend the period prescribed in Subsection (1) by a period not exceeding 30 days.**

**(Late payment of annual fees)**

**44 .--(1) Where the owner of a design right is unable to pay an annual fee within the time limit prescribed in Section 43(2), he may pay the annual fee belatedly within six months from the expiration of that time limit.**

**(2) In the case of late payment of an annual fee in accordance with the preceding subsection, the owner of the design right shall, in addition to the annual fee provided for in Section 42(1), pay a surcharge of the same amount as the annual fee.**

**(3) The payment of the fee under the preceding subsection shall be made by patent revenue stamps as prescribed by an ordinance of the Ministry of International Trade and Industry. However, wherever so prescribed by an ordinance of the Ministry of International Trade and Industry, such payment may be made in cash.**

**(4) Where the owner of a design right fails to pay an annual fee and the surcharge under the preceding subsection within the time limit for late payment under Subsection (2), the design right shall be deemed to have been extinguished retroactively from the moment that the time limit prescribed in Section 43(2) expired.**

**(Restoration of design right by late payment of annual fees)**

**44bis .--(1) Where the original owner of the design right which is deemed to have been extinguished under Section 44(4) is unable to pay an annual fee and the surcharge prescribed in Section 44(4) within the time limit within which he may pay the annual fee and surcharge belatedly under Section 44(1) due to reasons outside his control, he may pay the annual fee and surcharge belatedly but only within 14 days (where he is a resident abroad, within two months) and within six months after the expiration of the time limit.**

**(2) Where the annual fee and surcharge prescribed in Subsection (1) are paid, such design right shall be deemed to have been maintained retroactively from the time of the expiration of the time limit prescribed in Section 43(2).**

**(Restriction on effects of design right restored)**

**44ter .--(1) Where a design right has been restored under Section 44bis(2), the effects of the design right shall not extend to any articles to which the registered design or design similar thereto has been applied and which was imported into, manufactured or acquired in Japan after the expiration of the time limit within which he may pay an annual fee belatedly under Section 44(1) but before the registration of the restoration of the design right.**

**(2) The effects of a design right which has been restored under Section 44bis(2) shall not extend to the following acts after the expiration of the time limit within which he may pay an annual fee belatedly under Section 44(1) but before the registration of the design:**

**(i) the working of the design or design similar thereto;**

**(ii) acts of manufacturing, assigning, leasing, importing or offering for assignment or lease of, things to be used exclusively for the manufacture of the article to which the registered design or design similar thereto has been applied.**

**(Application mutatis mutandis of Patent Law)**

**45 .-- Section 110 (payment of annual fees by an interested person) and Section 111(1) [excluding (iii)] and (2) (refund of annual fees) of the Patent Law shall apply mutatis mutandis to the annual fees under this Law.**

## **Chapter V      Trial**

**(Trial against examiner's decision of refusal)**

**46 .--(1) A person who has received the examiner's decision that his application is to be refused and is dissatisfied may demand a trial thereon within 30 days from the transmittal of the examiner's decision.**

**(2) Where, due to reasons outside his control, a person is unable to demand a trial under the preceding subsection within the time limit prescribed therein, he may, notwithstanding that subsection, make the demand within 14 days (where he is a resident abroad, within two months) from the date when the reasons ceased to be applicable but not later than six months following the expiration of the said time limit.**

**(Trial against ruling to decline amendment)**

**47 .--(1) A person who has received a ruling to decline an amendment under Section 17bis(1) of this Law and is dissatisfied may demand a trial thereon within 30 days from the transmittal of the ruling. However, this provision shall not apply when a new application for design registration has been filed under Section 17ter(1).**

**(2) Section 46(2) shall apply mutatis mutandis to the demand for a trial under the preceding subsection.**

**(Trial for invalidation of design registration)**

**48 .--(1) In the following cases, a trial may be demanded for the invalidation of a design registration:**

**(i) where the registration has been effected contrary to Section 3, 5, 8(2), 9(1) or (2) or 10(1) or to Section 38 of the Patent Law as applied under Section 15(1) of this Law or to Section 25 of the Patent Law as applied under Section 68(3) of this Law;**

**(ii) where the registration has been effected contrary to the provisions of a treaty;**

**(iii) where the registration has been effected in respect of a design application filed by a person who is not the creator of the design and has not succeeded to the right to obtain a design registration for the design concerned;**

**(iv) where, after the registration, the owner of the design right has become a person who can no longer enjoy such right under Section 25 of the Patent Law as applied under Section 68(3) of this Law or the registration no longer complies with a treaty.**

**(2) Even after the extinguishment of a design right, a trial under the preceding subsection may be demanded.**

**(3) Where a trial under Subsection (1) has been demanded, the trial examiner-in-chief shall**



**notify the exclusive licensee with respect to the design right and other persons who have any registered rights relating to the design registration.**

**(Trial for invalidation of design registration)**

**49.--(1) Where a trial decision that a design registration is to be invalidated has become final and conclusive (other than a design registration of a similar design -- the same hereinafter in this subsection), the design right shall be deemed never to have existed. However, where a design registration fell under Section 48(1)(iv) and a trial decision that the registration is to be invalidated has become final and conclusive, the design right shall be deemed not to have existed from the time when the registration first fell under that paragraph.**

**(2) When a trial decision that the design registration of the principal design is to be invalidated has become final and conclusive, the design registration of a similar design shall become invalid.**

**(3) Where a trial decision that a design registration of a similar design is to be invalidated has become final and conclusive or a design registration of a similar design becomes invalid by virtue of the preceding subsection, the design right relating to the similar design shall be deemed never to have existed. However, where the design registration of the similar design falls under Paragraph (iv) of Section 48(1) and the trial decision that the design registration of the similar design is to be invalidated has become final and conclusive, or where the design registration of the principal design falls under said paragraph and the trial decision that the design registration of the principal design is to be invalidated has become final and conclusive so that the design registration of the similar design has become invalid by virtue of the preceding subsection, the design right relating to the similar design shall be deemed not to have existed from the time when the design registration of the similar design or the design registration of the principal design first fell under Section 48(1)(iv).**

**(Application mutatis mutandis of provisions concerning examination)**

**50.--(1) Sections 17bis and 17ter shall apply mutatis mutandis to the trial under Section 46(1). In such a case, "has demanded a trial under Section 47(1)" in Section 17bis(4) shall read "has instituted an action under Section 59(1)".**

**(2) Section 18 shall apply mutatis mutandis where a demand for a trial under Section 46(1) is considered acceptable. However, this provision shall not apply where a trial decision is rendered ordering a further examination in accordance with Section 160(1) of the Patent Law as applied under Section 52 of this Law.**

**(3) Section 50 (notification of reasons for refusal) of the Patent Law shall apply mutatis mutandis where a reason for refusal not contained in the examiner's decision is found in the trial under Section 46(1).**

**(Special provisions for trials against ruling to decline amendment)**

**51 .-- The adjudication in the case of a trial decision after a trial under Section 47(1) to the effect that the ruling shall be cancelled shall be binding on the examiner with respect to the case concerned.**

**(Application mutatis mutandis of Patent Law)**

**52 .-- Sections 131(1) and (2), 132 to 133bis, 134(1), (3) and (4), 135 to 154, 155(1) and (2), 156 to 158, 160(1) and (2), 161 as well as Sections 167 to 170 (demands for trial, trial examiners, trial proceedings, relationship with litigation and costs of trial) of the Patent Law shall apply mutatis mutandis to trials under this Law. In such a case, "Section 121(1)" in Section 161 and "Section 121(1) or 126(1)" in Section 169(3) of the Patent Law shall read "Section 46(1) or 47(1) of the Design Law."**

## **Chapter VI     Retrial and Litigation**

**(Demand for retrial)**

**53 .--(1) Any party may demand a retrial against a final and conclusive trial decision.**

**(2) Sections 420(1) and (2) and 421 (grounds for retrial) of the Code of Civil Procedure (Law No. 29 of 1890) shall apply mutatis mutandis to demands for a retrial under the preceding subsection.**

**(Demand for retrial)**

**54.--(1) Where the demandant and the defendant in a trial have in collusion caused a trial decision to be rendered, with the purpose of injuring the rights or interests of a third person, such person may demand a retrial against the final and conclusive trial decision.**

**(2) In such a retrial, the demandant and the defendant shall be made joint defendants.**

**(Restriction on effects of design rights restored by retrial)**

**55 .--(1) Where a design right relating to an invalidated design registration has been restored through a retrial, the effects of the design right shall not extend to any article to which the registered design or a design similar thereto has been applied and which was imported into,**

**manufactured or acquired in Japan, in good faith after the time when the trial decision became final and conclusive but before the demand for a retrial was registered.**

**(2) Where a design right relating to an invalidated design registration has been restored through a retrial, the effects of the design right shall not extend, after the trial decision became final and conclusive but before the registration of the demand for a retrial, to the following acts:**

**(i) the working of the design or designs similar thereto in good faith;**

**(ii) acts of manufacturing, assigning, leasing, importing or offering for assignment or lease of, in good faith, things to be used exclusively for the manufacture of the article to which the registered design or a design similar thereto has been applied.**

**(Restriction on effects of design rights restored by retrial)**

**56.-- Where a design right relating to an invalidated design registration has been restored through a retrial or where the establishment of a design right under a design application which was refused by a trial decision has been registered through a retrial, and where a person has, in good faith, been commercially working the design or a design similar thereto in Japan or has, in good faith, been making preparations therefor, after the trial decision became final and conclusive but before the registration of the demand for a retrial, such person shall have a non-exclusive license on the design right, the license being limited to the design which is being worked or for which preparations for working are being made and to the purpose of such working or the preparations therefor.**

**(Application mutatis mutandis of provisions on trial)**

**57 .--(1) Section 51(1) and (3) shall apply mutatis mutandis to a retrial against the final and conclusive trial decision on a trial under Section 46(1).**

**(2) Section 51 shall apply mutatis mutandis to a retrial against the final and conclusive trial decision on a trial under Section 47(1).**

**(Application mutatis mutandis of Patent Law)**

**58 .--(1) Sections 173 and 174(5) of the Patent Law shall apply mutatis mutandis to retrials under this Law.**

**(2) Sections 131, 132(3) and (4), 133, 133bis, 134(4), 135 to 147, 150 to 152, 155(1), 156 to 158, 160, 168, 169(3) to (6) and 170 shall apply mutatis mutandis to a retrial against a final and conclusive trial decision in a trial under Section 46(1). In such a case, "Section 121(1) or 126(1)" in Section 169(3) of the Patent Law shall read "Section 46(1) of the Design Law."**

**(3) Sections 131, 132(3) and (4), 133, 133bis, 134(4), 135 to 147, 150 to 152, 155(1), 156, 157, 168, 169(3) to (6) and 170 shall apply mutatis mutandis to a retrial against a final and conclusive trial**

**decision in a trial under Section 47(1). In such a case, "Section 121(1) or 126(1)" in Section 169(3) of the Patent Law shall read "Section 47(1) of the Design Law."**

**(4) Section 174(3) shall apply mutatis mutandis to a retrial against a final and conclusive trial decision under Section 48(1).**

**(Actions against trial decisions, etc.)**

**59 .--(1) An action against a trial decision or a ruling to decline an amendment under Section 17bis(1) as applied under Section 50(1) (including its application under Section 57(1)) or an action against a ruling of dismissal of a demand for a trial or retrial shall come under the exclusive jurisdiction of the Tokyo High Court.**

**(2) Section 178(2) to (6) (time limit for institution of action, etc.) and Sections 179 to 182 (defendant in the action, notification of institution of action, annulment of trial decision or ruling, and sending of certified copy of judgment) of the Patent Law shall apply mutatis mutandis to actions under the preceding subsection.**

**(Actions on amount of remuneration)**

**60 .--(1) Where a person who is concerned in an arbitration decision under Section 33(3) or (4) is dissatisfied with the amount of remuneration fixed in the decision, he may institute an action for the increase or decrease of the remuneration.**

**(2) Section 183(2) (time limit for institution of action) and Section 184 (defendant in the action) of the Patent Law shall apply mutatis mutandis to actions under the preceding subsection.**

**(Relationship between administrative appeal and litigation)**

**60bis.-- Section 184bis (relationship between administrative appeal and litigation) of the Patent Law shall apply mutatis mutandis to actions for the annulment of measures (with the exception of measures under Section 68(7)) taken under this Law or an order or ordinance thereunder.**

## **Chapter VII      Miscellaneous Provisions**

**( Amendment )**

**60ter.--** With respect to a procedure relating to a design application, a demand or other procedure relating to design registration, the person carrying on such procedure may make an amendment only during the pendency of the case in the examination, trial or retrial.

**(Registration in Design Register)**

**61.--(1)** The following matters shall be registered in the Design Register kept in the Patent Office:

- (i)** the establishment, transfer, extinguishment, restoration or restriction on disposal of a design right;
- (ii)** the establishment, maintenance, transfer, modification, extinguishment or restriction on disposal of an exclusive or non-exclusive license;
- (iii)** the establishment, transfer, modification, extinguishment or restriction on disposal of rights in a pledge upon a design right or an exclusive or non-exclusive license.

**(2)** The Design Register, either in whole or in part, may be prepared by means of magnetic tapes (including other materials on which matters can be accurately recorded by an equivalent method -- hereinafter referred to as "magnetic tapes").

**(3)** Other matters relating to registration that are not provided for in this Law shall be prescribed by Cabinet Order.

**(Issuance of design registration certificate)**

**62.--(1)** When the establishment of a design right has been registered, the Commissioner of the Patent Office shall issue a design registration certificate to the owner of the registered design.

**(2)** Re-issuance of the certificate shall be prescribed by an ordinance of the Ministry of International Trade and Industry.

**(Request for certification, etc.)**

**63.--** Anyone may request the Commissioner of the Patent Office to issue a certificate, a copy or an extract of documents, to allow the inspection or copying of documents, models or samples or to issue documents whose contents are recorded in the part of the Design Register prepared by magnetic tapes, where such documents, models or samples relate to design registrations. However, this provision shall not apply in the case of the following documents, models or samples if the Commissioner of the Patent Office considers it necessary to keep them secret:

- (i)** a request or a drawing, photograph, model or sample attached thereto, where the design registration concerned has not been effected;

- (ii) a document, model or sample, where the secrecy of the design concerned has been demanded under Section 14(1);**
- (iii) documents concerning a trial under Section 46(1) or 47(1), where a design registration has not been effected with respect to the design application pending in the trial case;**
- (iv) documents liable to contravene public order or morality.**

**(Indication of existence of design registration)**

**64 .-- The owner of a design right or an exclusive or non-exclusive licensee shall take steps, as prescribed in an ordinance of the Ministry of International Trade and Industry, to mark the articles to which a registered design or a design similar thereto has been applied or the packaging of such articles, with a statement to the effect that the articles are covered by a registered design or a design similar thereto (hereinafter referred to as "indication of a design registration").**

**(Prohibition of false marking)**

**65 .-- The following acts shall be unlawful:**

- (i) the marking of an article to which a registered design or a design similar thereto has not been applied or the packaging of such article, with an indication of a design registration or confusingly similar indication;**
- (ii) the assignment, lease or display for the purpose of assignment or lease of an article to which a registered design or design similar thereto has not been applied, where such article or its packaging is marked with an indication of a design registration or confusingly similar indication;**
- (iii) the inclusion in an advertisement of an indication that an article is covered by a registered design or a design similar thereto or of a confusingly similar indication, for the purpose of causing others to produce or use the article or of assigning or leasing it, where a registered design or a design similar thereto has not been applied to the article.**

**(Design Gazette)**

**66 .--(1) The Patent Office shall publish the Design Gazette (Isho Koho).**

**(2) In addition to those provided for in this Law, the Design Gazette shall contain the following matters:**

- (i) the extinguishment (with the exception of extinguishment due to expiration of term and extinguishment under Section 44(4)) or the restoration (limited to that under Section 44bis(2)) of design right;**

- (ii) demands for a trial or retrial or withdrawals thereof and final decisions of a trial or retrial;**
- (iii) requests for an arbitration decision or withdrawals thereof and arbitration decisions;**
- (iv) final judgments in an action under Section 59(1).**

**(Fees)**

**67 .--(1) The person specified hereunder shall pay the fee the amount of which shall be prescribed by Cabinet Order with the actual costs taken into consideration:**

- (i) person requesting access to design in accordance with Section 14(4);**
- (ii) person making notification of succession in accordance with Section 34(4) of the Patent Law as applied under Section 15(2);**
- (iii) person requesting extension of time limit under Sections 4 and 5(1) of the Patent Law as applied under Sections 17quater, 43(3) or 68(1), or change of date under Section 5(2) of the Patent Law as applied under Section 68(1) of this Law;**
- (iv) person requesting re-issuance of design registration certificate;**
- (v) person requesting issuance of certificate in accordance with Section 63;**
- (vi) person requesting issuance of copy or extract of documents in accordance with Section 63;**
- (vii) person requesting inspection or copying of documents, models or samples in accordance with Section 63;**
- (viii) person requesting issuance of documents containing matters recorded in that part of the Design Register as prepared on magnetic tapes, in accordance with Section 63.**

**(2) The persons specified in the left-hand column of the attached table shall pay the fee the amount of which shall be prescribed by Cabinet Order within the limit of the amounts specified in the right-hand column of the table.**

**(3) The two preceding subsections shall not apply where the person to pay the fee in accordance with these subsections is the State.**

**(4) The payment of the fee under Subsection (1) or (2) shall be made by patent revenue stamps as prescribed by an ordinance of the Ministry of International Trade and Industry. However, wherever so prescribed by an ordinance of the Ministry of International Trade and Industry, such payment may be made in cash.**

**(5) A fee paid by mistake or in excess shall be refunded upon the request of the person making the payment.**

**(6) No request for a refund of a fee under the preceding subsection may be made after one year**

from the date of payment.

**(Application mutatis mutandis of Patent Law)**

**68 .--(1) Sections 3 to 5 (time limits and dates) of the Patent Law shall apply mutatis mutandis to the time limits and dates prescribed in this Law. In such a case, "Section 121(1)" in Section 4 of the Patent Law shall read "Section 46(1) or 47(1) of the Design Law."**

**(2) Sections 6 to 16, 17(3) and (4) and 18 to 24 as well as Section 194 (proceedings) of the Patent Law shall apply mutatis mutandis to design applications, demands and any other proceedings relating to design registrations. In such a case, "Section 121(1)" in Section 9 of the Patent Law shall read "Section 46(1) or 47(1) of the Design Law," and "Section 121(1)" in Section 14 of the Patent Law shall read "Section 46(1) or 47(1) of the Design Law."**

**(3) Section 25 (enjoyment of rights by aliens) of the Patent Law shall apply mutatis mutandis to design rights and other rights relating to design registrations.**

**(4) Section 26 (effect of treaties) of the Patent Law shall apply mutatis mutandis to design registrations.**

**(5) Sections 189 to 192 (transmittal) of the Patent Law shall apply mutatis mutandis to transmittal under this Law.**

**(6) Section 195ter of the Patent Law shall apply mutatis mutandis to measures under this Law or an order or ordinance thereunder.**

**(7) Section 195quater (restriction on appeals under Administrative Appeal Law) of the Patent Law shall apply mutatis mutandis to rulings to decline an amendment, examiners' decisions, trial decisions and rulings of dismissal of a demand for trial or retrial under this Law as well as to measures from which no appeal lies under this Law.**

## **Chapter VIII Penal Provisions**

**(Offense of infringement)**

**69 .--(1) Any person who has infringed a design right or an exclusive license shall be liable to imprisonment with labor not exceeding three years or to a fine not exceeding 3,000,000 yen.**



**(2) The prosecution for the offense under the preceding subsection shall be initiated upon a complaint.**

**(Offense of fraud)**

**70 .-- Any person who has obtained a design registration or a trial decision by means of a fraudulent act shall be liable to imprisonment with labor not exceeding one year or to a fine not exceeding 1,000,000 yen.**

**(Offense of false marking)**

**71 .-- Any person infringing Section 65 shall be liable to imprisonment with labor not exceeding one year or to a fine not exceeding 1,000,000 yen.**

**(Offense of perjury, etc.)**

**72 .--(1) A witness, expert witness or interpreter who, having taken an oath under this Law, has made a false statement or has given a false expert opinion or has interpreted falsely before the Patent Office or a court commissioned thereby shall be liable to imprisonment with labor for a term of not less than three months nor more than ten years.**

**(2) Where a person committing the offense in the preceding subsection has made a voluntary confession before the examiner's decision or trial decision concerning the case has become final and conclusive, his sentence may be reduced or suppressed.**

**(Offense of divulging secrets)**

**73 .-- Where any present or former official of the Patent Office has divulged or made surreptitious use of the secrets relating to a design in a design application to which he had access in the course of his duties, he shall be liable to imprisonment with labor not exceeding one year or to a fine not exceeding 500,000 yen.**

**(Dual liability)**

**74 .-- Where an officer representing a legal entity or a representative, employee or any other servant of a legal entity or of a natural person has committed an act in violation of Section 69(1), 70 or 71, with regard to the business of the legal entity or natural person, the legal entity or the natural person shall, in addition to the offender, be liable to the fine prescribed in those sections.**

**(Administrative penalties)**

**75.-- Where a person who has taken an oath under Section 267(2) or 336 of the Code of Civil Procedure -- as applied under Section 151 of the Patent Law as applied either under Section 52 of this Law, under Section 58(2) or (3) of this Law or under Section 174(3) of the Patent Law as applied under Section 58(4) of this Law -- has made a false statement before the Patent Office or a court commissioned thereby, he shall be liable to an administrative penalty not exceeding 100,000 yen.**

**(Administrative penalties)**

**76.-- Where a person who has been summoned by the Patent Office or a court commissioned thereby in accordance with this Law has failed to appear or has refused to take an oath, to make a statement, to testify, to give an expert opinion or to interpret, without a legitimate reason, he shall be liable to an administrative penalty not exceeding 100,000 yen.**

**(Administrative penalties)**

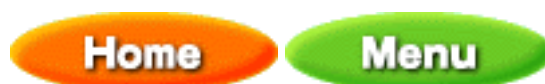
**77.-- Where a person who has been ordered by the Patent Office or a court commissioned thereby to produce or show documents or other evidence in accordance with the provisions of this Law relating to the examination or preservation of evidence has failed to comply with the order, without a legitimate reason, he shall be liable to an administrative penalty not exceeding 100,000 yen.**

## **Attached Table**

**(Related to Section 67)**

### **Person liable to pay Amounts**

- 1. Person filing design \16,000 per case application (\8,100 in the case of a similar design)**
- 2. Person demanding secrecy \5,100 per case of design in accordance (\2,600 in the case with Section 14(1) of a similar design)**
- 3. Person requesting \40,000 per case interpretation in accordance with Section 25(1)**
- 4. Person requesting \55,000 per case arbitration design**
- 5. Person requesting \27,500 per case cancellation of arbitration decision**
- 6. Person demanding trial \55,000 per caser retrial**
- 7. Person demanding \55,000 per case intervention in trial or retrial**





## JAPAN

### [TRADEMARK LAW]

(Law No. 127 of April 13, 1959, as last amended on  
June 12, 1996)

ENTRY INTO FORCE: April 1, 1997

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## Chapter I General Provisions

(Purpose)

**1.-- The purpose of this Law shall be to ensure the maintenance of the business reputation of persons using trademarks by protecting trademarks, and thereby to contribute to the development of industry and to protect the interests of consumers.**

(Definitions, etc.)

**2.--(1) "Trademark" in this Law means characters, signs, three-dimensional shapes or any combination thereof, or any combination thereof with colors (hereinafter referred to as a "mark"):**

- (i) which are used in respect of goods by a person who produces, certifies or assigns such goods in the course of trade;**
- (ii) which are used in respect of services by a person who provides or certifies such services in the course of trade (other than as in (i) above).**

**(2) "Registered trademark" in this Law means a trademark for which a trademark registration has been effected.**

**(3) "Use" with respect to a mark in this Law means any of the following acts:**

- (i) acts of applying the mark on the goods or their packaging;**
- (ii) acts of assigning, delivering, displaying for the purpose of assignment or delivery, or importing, the goods on which or on the packaging of which a mark has been applied;**



- (iii) acts of applying a mark to articles for use by persons to whom the services are provided (including articles assigned or leased -- hereinafter the same) when providing services;**
  - (iv) acts of providing services by use of articles to which a mark has been applied for use by persons to whom the services are provided when providing services;**
  - (v) acts of displaying, for the purpose of providing services, articles to which a mark has been applied and supplied for use in the provision of services (including articles for use by persons to whom the services are provided when providing services -- hereinafter the same);**
  - (vi) acts of applying a mark to articles related to the provision of such services belonging to persons to whom the services are provided when providing services;**
  - (vii) acts of displaying or distributing advertisements relating to the goods or services, price lists or business papers with respect to the goods or articles on which a mark has been applied.**
- (4) Acts of applying a mark to goods or other articles to which a mark is applied as prescribed in the preceding subsection shall include acts of having goods or their packaging, articles that are supplied for use in the provision of services and advertisements relating to goods or services shaped into a mark.**
- (5) In this law, it shall be premised that there may exist services in the scope of similarities of goods and there may exist goods in the scope of similarities of services.**

## **Chapter II Trademark Registration and Applications Therefor**

### **(Registrability of trademarks)**

**3.--(1) Any person may obtain a trademark registration of a trademark to be used in respect of goods or services in connection with his business, except in the case of the following trademarks:**

- (i) trademarks which consists solely of a mark indicating, in a common way, the common name of the goods or services;**
- (ii) trademarks which are customarily used in respect of the goods or services;**
- (iii) trademarks which consist solely of a mark indicating in a common way, the origin, place of sale, quality, raw materials, efficacy, use, quantity, shape (including packaging shape) or price of the goods, or the method or time of manufacturing or using them; or the location of provision of the services, quality, articles for use in such provision, efficacy, use, quantity, modes, price or method or time of the provision of services;**
- (iv) trademarks which consist solely of a mark indicating, in a common way, a commonplace surname or name of a legal entity;**
- (v) trademarks which consist solely of a very simple and commonplace mark;**
- (vi) in addition to those mentioned in each of the preceding paragraphs, trademarks which do not enable consumers to recognize the goods or services as being connected with a certain person's business.**

**(2) In the case of a trademark falling under paragraphs (iii) to (v) of the preceding subsection, where, as a result of the use of such trademarks, the consumers are able to recognize the goods or services as being connected with a certain person's business, trademark registration may be obtained notwithstanding the preceding subsection.**

### **(Unregistrable trademarks)**

**4.--(1) Notwithstanding Section 3, trademark registration shall not be effected in the case of the following trademarks:**

- (i) trademarks which are identical with, or similar to, the national flag, the imperial chrysanthemum crest, a**

decoration, a medal of merit, or a foreign national flag;

(ii) trademarks which are identical with or similar to, a State coat of arms or other emblem (other than a national flag) of a country party to the Paris Convention (meaning 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 The Hague on November 6, 1925, at London on June 2, 1934, at Lisbon on October 31, 1958 and at Stockholm on July 14, 1967 -- hereinafter referred to as "the Paris Convention"), a Member of the World Trade Organization or a contracting party to the Trademark Law Treaty which have been designated by the Minister of International Trade and Industry;

(iii) trademarks which are identical with, or similar to, a mark indicating the United Nations or any other international organization and designated by the Minister for International Trade and Industry;

(iv) trademarks which are identical with, or similar to, the Red Cross ensign on a white ground or the title Red Cross or Geneva Cross;

(v) trademarks comprising a mark identical with, or similar to, an official seal or sign which indicates supervision or certification by the Government of Japan or by the Government of a country party to the Paris Convention or a Member of the World Trade Organization or a contracting party to the Trademark Law Treaty, or by a local public entity and which has been designated by the Minister for International Trade and Industry, which are used on goods or services identical with, or similar to, the goods or services in respect of which such seal or sign is used;

(vi) trademarks which are identical with, or similar to, a famous mark indicating a State or a local public entity or an agency thereof or a non-profit organization or enterprise working in the public interest;

(vii) trademarks liable to contravene public order or morality;

(viii) trademarks containing the portrait of another person or the name, famous pseudonym, professional name or pen name of another person or the famous abbreviation thereof (except where the consent of the person concerned has been obtained);

(ix) trademarks comprising a mark which is identical with, or similar to, a prize awarded at an exhibition held by the Government or a local public entity (hereinafter referred to as the "Government, etc.") or at one which is not held by the Government, etc. but has been designated by the Commissioner of the Patent Office or at an international exhibition held in a foreign country by its government, etc. or a person authorized thereby (except where the recipient of such a prize uses the mark as part of his trademark);

(x) trademarks which are well known among consumers as indicating the goods or services as being connected with another person's business, and trademarks similar thereto, and which are used in respect of such goods or services or similar goods or services;

(xi) trademarks which are identical with, or similar to, another person's registered trademark applied for prior to the filing date of the trademark application concerned and which are used on the designated goods or designated services [meaning the goods or services designated in accordance with Section 6(1) (including its application under Section 68(1)) -- hereinafter referred to as "the designated goods or designated services"] covered by the trademark registration referred to or on similar goods or services;

(xii) trademarks which are identical with another person's registered defensive mark (meaning a mark registered as a defensive mark -- hereinafter referred to as a "registered defensive mark"), and which are used on the designated goods or designated services covered by the defensive mark registration;

(xiii) trademarks which are identical with another person's trademark (other than a trademark which had not been used by that person during a period of at least one year prior to the day on which the trademark right became extinguished) where one year has not elapsed since the date of extinguishment of the trademark right (or the date on which a ruling that a trademark registration is to be revoked or a trial decision that a trademark registration is to be invalidated becomes final and conclusive -- hereinafter referred to as the "date of extinguishment of the trademark right"), or with a trademark similar to such a trademark, and which are used in respect of the designated goods or designated services covered by the trademark right or in respect of similar goods or services;

(xiv) trademarks which are identical with, or similar to, the name of a variety registered under Section 12quater(1) of the Agricultural Seed and Seedlings Law (Law No. 115 to 1947), and which are used on the seeds or seedlings of the variety concerned or in respect of similar goods or services;

(xv) trademarks which are liable to cause confusion with goods or services connected with another person's business (other than the trademarks mentioned in paragraphs (x) to (xiv));

(xvi) trademarks liable to be misleading as to the quality of the goods or services;

(xvii) trademarks comprising a mark indicating an origin of wines or spirits in Japan which has been designated by the Commissioner of the Patent Office or a mark indicating an origin of wines or spirits in a Member of the World Trade Organization prohibited to be used on wines or spirits not originating in the region in that member, which are used in respect to wines or spirits not originating in the region in Japan or that member;

(xviii) trademarks consisting solely of a three-dimensional shape of goods or their packaging with the shape being indispensable to secure the functions of the goods or their packaging;

(xix) trademarks which are well known among consumers in Japan or abroad as indicating the goods or services as being connected with another persons's business, and trademarks identical with or similar thereto, and which are used by the applicant for unfair intention (intention to gain an unfair profit, intention to cause damage to such another person and other unfair intentions -- hereinafter the same) (other than the trademarks mentioned in each of the preceding paragraphs) in respect of such goods or services.

(2) Where registration of a trademark falling under paragraph (vi) of the preceding subsection is applied for by the State, a local public entity or an agency thereof or a non-profit organization working in the public interest or a person carrying on a non-profit enterprise working in the public interest, the said paragraph shall not apply.

(3) In the case of a trademark falling under paragraphs (viii), (x), (xv), (xvii) or (xix) of Subsection (1), the respective provisions shall not apply where the trademark does not fall under the respective paragraph at the time when the trademark application is filed.

(4) Where a trial decision that a trademark registration is to be canceled under Section 53bis has become final and conclusive and the demandant in the trial applies for registration of the trademark covered by the registration canceled by the trial decision, or a trademark similar thereto, paragraph (xiii) of Subsection (1) shall not apply.

(Applications for trademark registration)

5.--(1) Any person desiring a trademark registration shall submit a request to the Commissioner of the Patent Office together with any necessary document; the request shall state the following:

(i) the name and the domicile or residence of the applicant for a trademark registration;

(ii) the trademark for which registration is sought;

(iii) the designated goods or designated services and the class of goods or services as prescribed by Cabinet Order referred to in Section 6(2).

(2) Where a person desires a trademark registration with respect of a trademark consisting of three-dimensional shapes (including their combination with characters, figures, signs or colors or any combination thereof, hereinafter referred to as "three dimensional trademark"), the request shall contain a statement to that effect.

(3) Where a person desires a trademark registration with respect of a trademark consisting of characters designated by the Commissioner of the Patent Office (hereinafter referred to as "standard characters"), the request shall contain a statement to that effect.

(4) In the portion of the statement of the trademark for which the registration is sought, any part which is in the same color as a section for a trademark to be stated shall be deemed not to form part of the trademark. However, this provision shall not apply where an area to be colored is specified and it is stated on the sheets that the color to be applied is the same as that of the section.

(Accordinging of the filing date, etc.)

5bis.--(1) The Commissioner of the Patent Office shall decide to accord as the date of a trademark application the date of submission of the request with respect to the trademark application unless the application falls under any of the

following paragraphs:

- (i) the indication that a trademark registration is sought is not clear;
- (ii) the name of the applicant is not stated, or the statement is not considered sufficient to the extent to enable the identification of the applicant;
- (iii) a trademark for which the registration is sought is not stated; or
- (iv) designated goods or designated services are not stated.

(2) Where the trademark application falls under any of the paragraphs of the preceding subsection, the Commissioner of the Patent Office shall invite the applicant to make the required correction in writing, designating an adequate time limit.

(3) Correction to a trademark application shall be effected by filing a correction in writing with respect to the correction (hereinafter referred to as a "correction in writing").

(4) The Commissioner of the Patent Office shall decide to accord as the date of the trademark application the date of submission of the correction in writing when the person whom he has invited to make the correction under Subsection (2) has complied with the invitation within the time limit designated in accordance with that subsection.

(5) The Commissioner of the Patent Office may dismiss the trademark application when a person whom he has invited to make the correction in accordance with Subsection (2) fails to do so within the time limit designated in accordance with that subsection.

(Unity in application)

6.--(1) An application for a trademark registration shall relate to a single trademark and shall designate one or more items of goods or services in respect of which the trademark is to be used.

(2) A designation under the preceding paragraph shall be made according to the classes of the classification of goods and services, prescribed by Cabinet Order.

(3) The classes of goods and services referred to in the preceding subsection shall not be determinative of the scope of similarity of goods or services.

(Collective trademarks)

7.--(1) Aggregate corporation established under the provision of Section 34 of the Civil Code (Law No. 89 of 1896) or industrial business corporative association and other associations established under the special law (excluding those which are not legal entities), or foreign legal entities corresponding thereto shall be entitled to obtain a collective trademark registration with respect of a trademark for use by their members.

(2) For the purposes of the provision of Section 3(1), "his business" in that section shall read "their members or them."

(3) Any person desiring the registration of a collective trademark under Subsection (1) shall submit to the Commissioner of the Patent Office with respect to a trademark application under Section 5(1) a document proving that the applicant is a legal entity referred to Subsection 1.

(First-to-file rule)

8.--(1) Where two or more trademark applications relating to identical or similar trademarks which are to be used on

identical or similar goods or services are filed on different dates, only the earliest applicant may obtain a trademark registration for the trademark concerned.

(2) Where two or more trademark applications relating to identical or similar trademarks which are to be used on identical or similar goods or services are filed on the same date, only one applicant, agreed upon after mutual consultation among all the applicants, may obtain a trademark registration for the trademark.

(3) Where a trademark application is abandoned, withdrawn or dismissed or where an examiner's decision or trial decision on a trademark application has become final and conclusive, such application shall, for the purposes of the two preceding subsections, be deemed never to have been made.

(4) The Commissioner of the Patent Office shall, in the case of Subsection (2), order the applicants to hold consultations for an agreement under that subsection and to report the result thereof, within an adequate time limit.

(5) Where no agreement is reached in the consultations under Subsection (2) or where the report under the preceding subsection is not made within the time limit designated in accordance with that subsection, registration of the trademark concerned may be obtained only by one applicant chosen by the drawing of lots conducted in a fair and just manner by the Commissioner of the Patent Office.

(Special provisions for time of filing of application)

9.--(1) In the case of a trademark used in respect of goods exhibited or services offered at an exhibition held by the Government, etc. -- or at one which is not held by the Government, etc. but has been designated by the Commissioner of the Patent Office, or at an international exhibition held by the Government, etc. or a person authorized thereby in the territory of a country party to the Paris Convention or a Member of the World Trade Organization or a contracting party to the Trademark Law Treaty, or at an international exhibition held by the Government, etc. or a person authorized thereby in the territory of a country which is neither a party to the Paris Convention nor a Member of the World Trade Organization or a country party to the Trademark Law Treaty, but which has been designated by the Commissioner of the Patent Office --, provided that the person who exhibited the said goods offered said services has applied for a trademark registration, designating those goods or services, within six months from the date when they were exhibited or offered, the trademark application shall be deemed to have been filed at the time when the goods were exhibited or the services were offered.

(2) Any person who desires the application of the preceding subsection with respect to a trademark in a trademark application shall submit a written statement to that effect to the Commissioner of the Patent Office simultaneously with the trademark application. Within 30 days from the filing of the trademark application, he shall also submit to the Commissioner of the Patent Office a document proving that the trademark and the goods or services in the trademark application are a trademark and goods or services falling under the said subsection.

(Priority claim declared as governed by the Paris Convention)

9bis.-- A priority claim based on an application for trademark registration (limited to a trademark equivalent to that defined in Section 2(1)(ii)) filed in or for a country party to the Paris Convention may be declared as governed by the provisions in Article 4 of the Paris Convention for a priority claim based on the application for trademark registration of the trademark equivalent to that defined in Section 2(1)(i).

(Priority claim declared as governed by the Paris Convention)

9ter.-- A priority claim based on an application which a person specified in the left-hand column of the following table has filed in or for any country specified in the right-hand column of the following table may be declared as governed by the provision in Article 4 of the Paris Convention.

Japanese nationals or nationals of a country party to the Paris Convention (including nationals deemed to be the nationals of the country party in accordance with Article 3 of the Paris Convention).	Member of the World Trade Organization or a contracting party to the Trademark Law Treaty.
Nationals of a Member of the World Trade Organization (meaning nationals of Members provided for in paragraph 3 of Article 1 of the Annex 1C to the Marrakesh Agreement Establishing the World Trade Organization or a contracting party to the Trademark Law Treaty).	Country party to the Paris Convention, Member of the World Trade Organization or a contracting party to the Trademark Law Treaty.

(Amendment of designated goods, etc. or the trademark for which trademark registration is sought and change of gist)

9quater.-- Where, after registration of the establishment of the trademark right, it is found that an amendment of the designated goods or designated services stated in the request or the trademark for which registration is sought made, has changed the gist thereof, the trademark application shall be deemed to have been filed at the time when the amendment in writing was submitted.

(Division of trademark applications)

10.--(1) An applicant for a trademark registration may divide a trademark application designating two or more items of goods or services as designated goods or designated services into one or more new trademark applications provided that the trademark application is pending in examination, trial examination or retrial examination or that a suit against a trial decision to refuse the trademark application is pending in court.

(2) Where a trademark application has been divided under the preceding subsection, the new trademark application shall be deemed to have been filed at the time of filing of the original application. However, this provision shall not apply for the purposes of Section 9(2) of this Law and Section 43(1) and (2) of the Patent Law (Law No. 121 of 1959) as applied under Section 13(1) of this Law (including its application under Section 43bis(3) of the Patent Law as applied under Section 13(1) of this Law).

(Conversion of applications)

11.--(1) An applicant may convert his application for registration of a collective trademark into an application for registration of an individual trademark (meaning a trademark application other than an application for registration of a collective trademark -- hereinafter referred to as an "application for registration of an individual trademark").

(2) An applicant may convert his application for registration of an individual trademark into an application for registration of a collective trademark.

(3) A trademark application may not be converted under the two preceding subsections after the examiner's decision or the trial decision with respect to the application has become final and conclusive.

(4) Where the conversion of a trademark application under Subsection (1) or (2) has been made, the original trademark application shall be deemed to have been withdrawn.

(5) Section 10(2) shall apply mutatis mutandis to the conversion of a trademark application under Subsection (1) or (2).

(Conversion of applications)

12.--(1) An applicant may convert his application for registration of a defensive mark into an application for trademark registration.

**(2) An application may not be converted under the preceding subsection after the examiner's decision or the trial decision with respect to the application for registration of a defensive mark has become final and conclusive.**

**(3) Sections 10(2) and 11(4) shall apply mutatis mutandis to the conversion of an application under Subsection (1).**

**(Application mutatis mutandis of Patent Law)**

**13.--(1) Sections 43 and 43bis(2) and (3) of the Patent Law shall apply mutatis mutandis to trademark applications. In such a case, "within one year and four months from the earliest date among the dates given in each of the following paragraphs" in Section 43(2) of the Patent Law shall read "within three months from the filing date of the trademark application" and "or a Member of the World Trade Organization" shall read "a Member of the World Trade Organization or a contracting party to the Trademark Law Treaty," and Subsection (1) or (2)" in Section 43(3) of the Patent Law" shall read "Subsection (1)".**

**(2) Sections 33 and 34(4) to (7) (right to obtain patent) of the Patent Law shall apply mutatis mutandis to the rights deriving from a trademark application.**

## **Chapter III The Examination**

**(Examination by examiner)**

**14.-- The Commissioner of the Patent Office shall have applications for trademark registration examined by an examiner.**

**(Examiner's decision of refusal)**

**15.-- The examiner shall make a decision that a trademark application is to be refused where it falls under any of the following paragraphs:**

**(i) the trademark in the trademark application is not registrable in accordance with Section 3, 4(1), 8(2) or (5), 51(2) (including its application under Section 52bis(2)) or 53(2) of this Law of Section 25 of the Patent Law as applied under Section 77(3) of this Law;**

**(ii) the trademark in the trademark application is not registrable in accordance with the provisions of a treaty;**

**(iii) the trademark application does not comply with the requirements of Section 6(1) or (2).**

**(Notification of reasons for refusal)**

**15bis.-- When the examiner intends to render a decision that an application is to be refused, he shall notify the applicant for the trademark registration of the reasons for refusal and give him an opportunity to submit a statement of his arguments, designating an adequate time limit.**

**(Notification of reasons for refusal)**

**15ter.--(1) Where a trademark for which the registration is sought in a trademark application is a trademark which are identical with, or similar to, another person's trademark applied for prior to the filing date of the trademark application concerned and which are used on the designated goods or designated services covered by the trademark referred to or on similar goods or services, the examiner may notify the applicant that his trademark application may fall under Section 15(i) if the other party's trademark is registered, and give him an opportunity to submit a statement of his arguments, designating an adequate time limit.**

**(2) Where a notification referred to in the preceding subsection has been served and the other applicant's trademark is registered, the examiner shall not be required to serve a notification referred to in the preceding section.**

**(Examiner's decision that a trademark is to be registered)**

**16.-- Where the examiner finds no reason for refusing a trademark application, he shall render a decision that a trademark is to be registered.**

**(Declining of amendments)**

**16bis.--(1) Where an amendment to the designated goods or designated services stated in the request or the trademark for which registration is sought would change the gist thereof, the examiner shall decline the amendment by a ruling.**

**(2) The ruling to decline an amendment under the preceding subsection shall be in writing and state the reasons therefor.**

**(3) Where a ruling to decline an amendment under Subsection (1) has been rendered, the examiner's decision with respect to the trademark application shall not be rendered before the expiration of 30 days from the transmittal of that ruling.**

**(4) Where an applicant has demanded a trial under Section 45(1) against a ruling to decline an amendment under Subsection (1), the examiner shall suspend the examination of the trademark application until the trial decision has become final and conclusive.**

**(Application mutatis mutandis of Patent Law)**

**17.-- Section 47(2) (qualifications of examiners), Section 48 (exclusion of examiners), Section 52 (formal requirements of decision) and Sections 54 (relationship with litigation) of the Patent Law shall apply mutatis mutandis to the examination of trademark applications.**

**(Application mutatis mutandis of Design Law)**

**17bis.--(1) Section 17ter (new application for design as amended) of the Design Law (Law No. 125 of 1959) shall apply mutatis mutandis to the case where an amendment is declined by a ruling under Section 16bis(1).**

**(2) Section 17quater of the Design Law shall apply mutatis mutandis to the extension of the time limit prescribed in Section 17ter(1) as applied under Subsection (1) or Section 55bis(2) (including its application under Section 60bis(1)).**

## **Chapter IV The Trademark Right**

### **Part 1. The Trademark Right**

**(Registration of establishment of trademark right)**

**18.--(1) A trademark right shall come into force upon registration of its establishment.**

**(2) The establishment of a trademark right shall be registered when the registration fee under Section 40(1) or the**



registration fee due to be paid within 30 days from the date of the transmittal of the examiner's decision or the trial decision that the trademark is to be registered under Section 41bis(1) has been paid.

**(3) Upon registration under the preceding subsection, the following particulars shall be published in the Trademark Gazette (Shohyo Koho):**

- (i) the name and the domicile or residence of the owner of the trademark right;**
- (ii) the number and date of the trademark application;**
- (iii) the contents of the trademark stated in the request (represented in the standard characters as applicable under Section 5(3), hereinafter referred to in Section 27(1) as "the trademark stated in the request");**
- (iv) the designated goods or designated services;**
- (v) the registration number and date of the registration of the establishment;**
- (vi) other necessary particulars.**

**(4) During two months after the date of the publication of the Trademark Gazette which states the matter referred to in each paragraph of the preceding subsection (hereinafter referred to as "the Gazette containing the trademark"), the Commissioner of the Patent Office shall make the application files and their attachments available for public inspection in the Patent Office.**

**(Term of trademark right)**

**19.--(1) The term of a trademark right shall be ten years from the date of registration of its establishment.**

**(2) The term of a trademark right may be renewed by a request for registration of renewal.**

**(3) When renewal of the term of the trademark right has been registered, the term shall be deemed to have been renewed upon expiration of the term.**

**(Registration of renewal of term)**

**20.--(1) Any person desiring registration of renewal of the term of a trademark right shall submit a request for renewal to the Commissioner of the Patent Office stating the following:**

- (i) the name and the domicile or residence of the requester;**
- (ii) the registration number of the trademark registration;**
- (iii) other matters fixed by an ordinance of the Ministry of International Trade and Industry.**

**(2) A request for registration of renewal shall be made within six months prior to the date of expiration of the term.**

**(3) Where the owner of a trademark right is unable to make a request for registration of renewal within the time limit prescribed in the preceding subsection, he may make such request belatedly within six months from the expiration of that time limit.**

**(4) Where a request for registration of renewal is not made within the time limit allowing its owner to make such request under the preceding subsection, the trademark right shall be deemed to have been extinguished retroactively from the time of the expiration of the term.**

**(Restoration of trademark right)**

**21.--(1) Where the trademark right is one which was deemed to have been extinguished under Section 20(4) and the**

owner of the extinguished trademark right is unable to make a request for registration of the renewal within the time limit allowing him to make such request under Section 20(3) due to reasons outside his control, he may make such request within 14 days (where he is a resident abroad, two months) from the date on which the reasons ceased to be applicable but not later than six months following the expiration of said time limit.

(2) When a request for registration of renewal is made under the preceding subsection, the term shall be deemed to have been renewed retroactively from the time of the expiration of the term.

**(Restriction on effects of trademark right restored)**

22.-- The effects of the trademark right restored under Section 21(2) shall not extend to the following acts after the expiration of the time limit referred to in Section 20(3) for the request for registration of renewal of the term of the trademark right but before the registration is made to the effect that the term has been renewed by the request made under Section 21(1):

- (i) the use of the registered trademark with respect to the designated goods or designated services; and
- (ii) the acts mentioned in each paragraph of Section 37.

**(Registration of renewal of term)**

23.--(1) When the registration fee under Section 40(2) or the registration fee due to be paid at the time of a request for registration of renewal under Section 41bis(2) has been paid, the renewal of the term of the trademark right shall be registered.

(2) Notwithstanding the provision of the preceding subsection, where a request is made for registration of renewal under Section 20(3) or Section 21(1), the registration to the effect that the term of the trademark right has been renewed shall be made when the payment has been made for the registration fee under Section 40(2) and the registration fee with a surcharge under Section 43(1) or the registration fee due to be paid at the time of the request for registration of renewal under Section 41bis(2) and the registration fee with a surcharge under Section 43(2).

(3) Upon registration under the preceding two subsections, the following particulars shall be published in the Trademark Gazette:

- (i) the name and the domicile or residence of the owner of a trademark right;
- (ii) the registration number and date of the registration of renewal; and
- (iii) other necessary particulars.

**(Division of trademark right)**

24.--(1) Where there are two or more items of the designated goods or designated services, a trademark right may be divided into each such item.

(2) The division of a trademark right under the preceding subsection may be, in the case where a trial is demanded with respect to it under Section 46(2), applied for even after the extinguishment of the trademark right only during the pendency of the case in the trial or retrial examination or a litigation.

**(Transfer of trademark right)**

24bis.--(1) Where there are two or more items of the designated goods or designated services, a trademark right may be transferred separately for each such item.

(2) A trademark right under a trademark application filed by the State or a local public entity, or an agency thereof, or a non-profit organization working in the public interest, referred to in Section 4(2), may not be assigned.

**(3) A trademark right under a trademark application filed by a person carrying on a non-profit enterprise working in the public interest, referred to in Section 4(2), may be transferred only together with the enterprise itself.**

**(Transfer of collective trademark right)**

**24ter.--(1) When a collective trademark right is transferred, the collective trademark shall be deemed to have been converted to an individual trademark right, except as provided in the following subsection.**

**(2) When the owner of a collective trademark desires to transfer his collective trademark right, he shall submit a statement to that effect and a document under Section 7(3) to the Commissioner of the Patent Office at the time of an application for registration of the transfer.**

**(Demand for indication to prevent confusion resulting from transfer of trademark right)**

**24quater.-- Where, as a result of the transfer of a trademark right, the trademark right to a similar registered trademark that is used for identical goods or services or the identical or a similar registered trademark that is used for similar goods or services comes to belong to a different person, and where the use of such registered trademark by the owner of a trademark right or the owner of a right of exclusive use or of non-exclusive use relating to one registered trademark for its designated goods or designated services is likely to cause damage to business interests of the owner of a trademark right or the owner of a right of exclusive use relating to the other registered trademark (limited to the business interests concerning the designated goods or designated services for which the other registered trademark is used), the owner of a trademark right or the owner of a right of exclusive use relating to the other registered trademark may request the owner of the trademark right or the owner of the right of exclusive use or the owner of non-exclusive use relating to the one registered trademark to mark a suitable indication in the use thereof so as to prevent any confusion between the goods or services connected with the other's business and those connected with the own business.**

**(Effects of trademark right)**

**25.-- The owner of a trademark right shall have an exclusive right to use the registered trademark with respect to the designated goods or designated services. However, where the trademark right is subject to a right of exclusive use, this provision shall not apply to the extent that the owner of that right has an exclusive right to use the registered trademark.**

**(Limits of trademark right)**

**26.--(1) The effects of the trademark right shall not extent to the following trademarks (including those which constitute part of other trademarks):**

**(i) trademarks indicating, in a common way, one's own portrait, name, famous pseudonym, professional name or pen name or a famous abbreviation thereof;**

**(ii) trademarks indicating, in a common way, the common name, origin, place of sale, quality, raw materials, efficacy, use, quantity, shape (including packaging shape -- hereinafter referred to in the following paragraph as "shape") or price or the method or time of manufacturing or using the designated goods concerned or goods similar thereto or the common name of services similar to the designated goods, location of provision of the services, quality, articles for use in such provision, efficacy, use, quantity, modes, price, or methods or time of such provision;**

**(iii) trademarks indicating, in a common way, the common name of designated services or services similar thereto, location of provision of the services, quality, articles supplied for use in such provision, efficacy, use, quantity, modes, price, or method or time of such provision or the common name, origin, place of sale, quality, raw materials, efficacy, use, quantity, shape or price, or method or time of manufacturing or using the goods similar to the designated services;**

**(iv) trademarks customarily used on the designated goods or designated services, or goods or services similar thereto;**

**(v) trademarks consisting solely of a three-dimentional shape of goods or their packaging with the shape indispensable to secure the functions of the goods or their packaging.**

**(2) Paragraph (i) of the preceding subsection shall not apply where, after registration of the establishment of the trademark right, one's own portrait, name, famous pseudonym, professional name or pen name or a famous abbreviation thereof has been used with the intention of violating the rules of fair competition.**

**(Limits of trademark right)**

**27.--(1) The scope of a registered trademark shall be decided on the basis of the trademark stated in the request.**

**(2) The scope of the designated goods or designated services shall be decided on the basis of the statement in the request.**

**(Limits of trademark right)**

**28.--(1) A request for interpretation may be made to the Patent Office with respect to the effects of a trademark right.**

**(2) Where such a request is made, the Commissioner of the Patent Office shall designate three trial examiners to give the requested interpretation.**

**(3) Proceedings concerning an interpretation other than those provided for in the preceding subsection shall be prescribed by Cabinet Order.**

**(Relationship with another's patent right, etc.)**

**29.-- Where the use in a given manner of a registered trademark in respect of the designated goods or designated services conflicts with another person's patent, utility model or design right under its application filed prior to the filing date of the trademark application concerned or with another person's copyright taking effect prior to that date, the owner of the trademark right or of the right of exclusive or non-exclusive or non-exclusive use shall not use the registered trademark in such a manner on the part of the designated goods or designated services giving rise to the conflict.**

**(Rights of exclusive use)**

**30.--(1) The owner of a trademark right may grant a right of exclusive use with respect to his trademark right. However, this provision shall not apply to a trademark right under an application referred to in Section 4(2).**

**(2) The owner of a right of exclusive use shall have an exclusive right to use the registered trademark in respect of the designated goods or designated services to the extent laid down in the contract granting such right.**

**(3) A right of exclusive use may be transferred only with the consent of the owner of the trademark right or in the case of inheritance or other general succession.**

**(4) Section 77(4) and (5) (establishment of pledge, etc.), Section 97(2) (surrender) and Section 98(i)(ii) and (2) (effects of registration) of the Patent Law shall apply mutatis mutandis to rights of exclusive use.**

**(Rights of non-exclusive use)**

**31.--(1) The owner of a trademark right may grant a right of non-exclusive use with respect to his trademark right. However, this provision shall not apply to a trademark right under an application referred to in Section 4(2).**

**(2) The owner of a right of non-exclusive use shall have the right to use the registered trademark in respect of the**

designated goods or designated services to the extent laid down in the contract granting such right.

(3) A right of non-exclusive use may be transferred only with the consent of the owner of the trademark right (or only with the consent of such person and of the owner of the right of exclusive use, in the case of a right of non-exclusive use with respect to the right of exclusive use) or in the case of inheritances or other general succession.

(4) Section 73(1) (joint ownership), Section 94(2) (establishment of pledge), Section 97(3) (surrender) and Section 99(1) and (3) (effects of registration) of the Patent Law shall apply mutatis mutandis to rights of non-exclusive use.

**(Right of corporation or association members)**

**31bis.--(1) Members of a corporation or an association entitled to a collective trademark right under Section 7(1) (hereinafter referred to as "corporation or association members") shall have the right to use the collective trademark with its designated goods or designated services in accordance with regulations set forth by the corporation or association. However, where the trademark right is subject to a right of exclusive use, this provision shall not apply to the extent that the owner of that right has an exclusive right to use the registered trademark.**

**(2) The right provided for in the principal sentence of the preceding subsection shall not be transferred.**

**(3) For the purpose of Section 24quater, Section 29, Section 50, Section 52bis, Section 53 and Section 73, corporation or association members shall be deemed as an owner of the right of non-exclusive use.**

**(4) For the purpose of Section 33(1)(iii) to collective trademark registrations, "a person who ... has a right of exclusive use with respect to the trademark right under the trademark registration that has been invalidated or a right of non-exclusive use which is effective, under Section 99(1) of the Patent Law as applied under Section 31(4) of this Law, against the trademark right or the right of exclusive use ..." in the Section 33(1)(iii) shall read "a person who ... has a right of exclusive use with respect to the trademark right under the trademark registration that has been invalidated or a right of non-exclusive use which is effective, under Section 99(1) of the Patent Law as applied under Section 31(4) of this Law, against the trademark right or the right of exclusive use or the corporation or association members who have the right to use the collective trademark."**

**(Right to use trademark by virtue of prior use)**

**32.--(1) Where, from a time prior to the filing by another person of a trademark application and without any intention of violating the rules of fair competition, a person has been using in Japan the trademark in the application or a similar trademark in respect of the designated goods or designated services in the application, or in respect of similar goods or services, and, as a result, the trademark has become well known among consumers as indicating the goods or services as being connected with his business at the time of filing of the trademark application (or at the time of filing of the original trademark application or of submission of an amendment when the trademark application is deemed to have been filed at the time of submission of the amendment in accordance with Section 9quater of this Law or in accordance with Section 17ter(1) of the Design Law as applied under Section 17bis(1) of this Law or 55bis(2) (including its application under Section 60bis(1) of this Law), such person shall have a right to use the trademark in respect of said goods or services provided that he does so continuously. The same shall apply in the case of a person who has succeeded to the business concerned.**

**(2) The owner of the trademark right or of a right of exclusive use may request the person having a right to use the trademark under the preceding subsection to mark his goods or services with a suitable indication so as to prevent any confusion between the goods or services connected with the owner's business and those connected with the other person's business.**

**(Right to use trademark due to use prior to registration of demand for invalidation trial)**

**33.--(1) When a person coming within any of the paragraphs set out below has been using in Japan a registered trademark or a similar trademark in respect of the designated goods or designated services or similar goods or**

services, prior to the registration of a demand for a trial under Section 46(1), without knowing that a trademark registration falls under any of the paragraphs of the subsection referred to, and the trademark has become well known among consumers as indicating the goods or services as being connected with his business, such person shall have a right to use the trademark in respect of the goods or services provided that he does so continuously. The same shall apply in the case of a person who has succeeded to the business concerned:

(i) the original owner of the trademark right, where one of two or more trademark registrations granted for identical or similar trademarks to be used in respect of identical or similar designated goods or designated services has been invalidated;

(ii) the original owner of the trademark right where his trademark registration has been invalidated and a trademark registration has been granted to the person entitled for identical or similar trademarks to be used on identical or similar designated goods or designated services;

(iii) in the cases referred to in the two preceding paragraphs, a person who, at the time of registration of the demand for a trial under Section 46(1), has a right of exclusive use with respect to the trademark right under the trademark registration that has been invalidated or a right of non-exclusive use which is effective, under Section 99(1) of the Patent Law as applied under Section 31(4) of this Law, against the trademark right or the right of exclusive use.

(2) The owner of the trademark right or of the right of exclusive use shall have a right to a reasonable remuneration as consideration for the right of non-exclusive use under the preceding subsection.

(3) Section 32(2) shall apply mutatis mutandis to Subsection (1).

(Right to use trademark after expiration of term of patent right, etc.)

33bis.--(1) Where a patent right under a patent application filed prior to or on the date of an application for registration of a trademark conflicts with the trademark right under that trademark application and the term of the patent right has expired, the patentee shall have the right to use to the extent of the original patent right, the registered trademark or other trademark similar thereto with respect to the designated goods or designated services covered by the trademark application or goods or services similar thereto. However, this provision shall apply only where the registered trademark is used without the intention of violating the rules of fair competitions.

(2) Section 32(2) shall apply mutatis mutandis to the preceding subsection.

(3) The provisions of the preceding two subsections shall apply mutatis mutandis where a utility model or design right under an application filed prior to or on the filing date of the trademark application conflicts with the trademark right under the trademark application and the term of the utility model or design right expired.

(Right to use trademark after expiration of term of patent right, etc.)

33ter.--(1) Where a patent right under a patent application filed prior to or on the filing date of the trademark application conflicts with a trademark right under that trademark application and the term of the patent right has expired, any person who has the exclusive license on the patent right or a non-exclusive license with respect to the patent right or its exclusive license with effects as provided under Section 99(1) of the Patent Law at the time of its expiration shall have the right to use, within the scope of the original patent right, the registered trademark or other trademark similar thereto with respect to the designated goods or designated services falling under the trademark application or goods or services similar thereto. However, this provision shall apply only where the registered trademark is used without the intention of violating the rules of fair competition.

(2) The provisions of Section 32(2) and Section 33(2) shall apply mutatis mutandis to the preceding subsection.

(3) The provisions of the preceding two subsections shall apply mutatis mutandis where a utility model or design right under an application filed prior to or on the filing date of the trademark application conflicts with a trademark right under that trademark application and the term of the utility model or design right has expired.

**(Pledges)**

**34.--(1) Where a trademark right or a right of exclusive or non-exclusive use is the subject of a pledge, the pledgee may not use the registered trademark in respect of the designated goods or designated services except as otherwise provided by contract.**

**(2) Section 96 (attachment) of the Patent Law shall apply mutatis mutandis to pledges on a trademark right or a right of exclusive or non-exclusive use.**

**(3) Section 98(1)(iii) and (2) (effects of registration) of the Patent Law shall apply mutatis mutandis to pledges on a trademark right or a right of exclusive use.**

**(4) Section 99(3) (effects of registration) of the Patent Law shall apply mutatis mutandis to pledges on a right of non-exclusive use.**

**(Application mutatis mutandis of Patent Law)**

**35.-- Section 73 (joint ownership), Section 76 (extinguishment of patent right in absence of heir), Section 97(1) (surrender) and Section 98(1)(i) and (2) (effects of registration) of the Patent Law shall apply mutatis mutandis to trademark rights. In such a case, "transfer otherwise than by inheritance or other general succession ..." in Section 98(1)(i) of the Patent Law shall read "division or transfer otherwise than by inheritance or other general succession..."**

**Part 2. Infringement**

**(Injunctions)**

**36.--(1) The owner of a trademark right or of a right of exclusive use may require a person who is infringing or is likely to infringe the trademark right or right of exclusive use to discontinue or refrain from such infringement.**

**(2) The owner of a trademark right or of a right of exclusive use who is acting under the preceding subsection may demand the destruction of the articles by which the act of infringement was committed, the removal of the facilities used for the act of infringement, or other measures necessary to prevent the infringement.**

**(Acts deemed to be infringement)**

**37.-- The following acts shall be deemed to be an infringement of a trademark right or of a right of exclusive use:**

**(i) use of a trademark similar to the registered trademark in respect of the designated goods or designated services, or use of the registered trademark or of trademark similar thereto in respect of goods or services similar to the designated goods or designated services;**

**(ii) acts of holding, for the purpose of assignment or delivery, designated goods, or goods which are similar to the designated goods or designated services and to which or on the packaging of which the registered trademark or a trademark similar thereto has been applied;**

**(iii) acts of holding or importing articles which are for use by persons to whom the services are provided and to which the registered trademark or a trademark similar thereto has been applied, in the provision of the designated services, or of services similar to the designated services or designated goods, for the purpose of using such articles in the provision of such services;**

**(iv) acts of assigning or delivering articles which are for use by persons to whom the services are provided and to which the registered trademark or a trademark similar thereto has been applied, in the provision of the designated services, or services similar to the designated services or designated goods, for the purpose of causing such articles to be used in the provision of such services, or acts of holding or importing such articles for the purpose of assigning or delivering**

them;

(v) acts of holding articles bearing a reproduction of the registered trademark or a trademark similar thereto for the purpose of using such trademark in respect of the designated goods or designated services or of goods or services similar thereto;

(vi) acts of assigning or delivering, or of holding, for the purpose of assignment or delivery, articles bearing a reproduction of the registered trademark or a trademark similar thereto, for the purpose of causing such trademark to be used in respect of the designated goods or designated services or of goods or services similar thereto;

(vii) acts of manufacturing or importing articles bearing a reproduction of the registered trademark or a trademark similar thereto for the purpose of using such trademark, or causing it to be used, in respect of the designated goods or designated services or of goods or services similar thereto;

(viii) acts of manufacturing, assigning, delivering or importing, in the course of trade, articles to be used exclusively for manufacturing goods bearing a reproduction of the registered trademark or a similar trademark.

(Presumption, etc. of amount of damage)

38.--(1) Where the owner of a trademark right or of a right of exclusive use claims, from a person who has intentionally or negligently infringed the trademark right or right of exclusive use, compensation for damage caused to him by the infringement, the profits gained by the infringer through the infringement shall be presumed to be the amount of damage suffered by the owner.

(2) The owner of a trademark right or of a right of exclusive use may claim, from a person who has intentionally or negligently infringed the trademark right or the right of exclusive use, an amount of money which he would normally be entitled to receive for the use of the registered trademark, as the amount of damage suffered by him.

(3) The preceding subsection shall not preclude a claim to damages exceeding the amount referred to therein. In such a case, where there has been neither willfulness nor gross negligence on the part of the person who has infringed the trademark right or the right of exclusive use, the court may take this into consideration when awarding damages.

(Application mutatis mutandis of Patent Law)

39.-- Section 103 (presumption of negligence), Section 105 (production of documents) and Section 106 (measures for recovery of reputation) of the Patent Law shall apply mutatis mutandis to the infringement of a trademark right or a right of exclusive use.

### Part 3. The Registration Fee

(Registration fee)

40.--(1) A person who obtains registration of a trademark shall pay the amount of 66,000 per case or this amount multiplied by the number of classes of the classification of goods and services (classes of the classification of goods and services prescribed by Cabinet Order referred to in Section 6(2), hereinafter referred to in the following subsections, Section 41bis, Section 65septies and Table attached as "classes of the classification of goods and services," that classes of the classification of goods and services to which the designated goods or designated services belong as a registration fee.

(2) A person who applies for registration of renewal of the term of a trademark right shall pay the amount of 151,000 yen per case or this amount multiplied by the number of classes of the classification of goods and services covered as a registration fee.

(3) The two preceding subsections shall not apply to trademark rights belonging to the State.



**(4) The payment of the fee under Subsection (1) or (2) shall be made by patent revenue stamps as prescribed by an ordinance of the Ministry of International Trade and Industry. However, wherever so prescribed by an ordinance of the Ministry of International Trade and Industry, such payment may be made in cash.**

**(Time limit for payment of registration fee)**

**41.--(1) The registration fee under Section 40(1) shall be paid within 30 days from the date of the transmittal of the examiner's decision or trial decision that the trademark registration is to be effected.**

**(2) Upon the request of a person liable to pay a registration fee, the Commissioner of the Patent Office may extend the period prescribed in the preceding subsection by a period not exceeding 30 days.**

**(3) A registration fee as prescribed in Section 40(2) shall be paid at the time of a request for registration of renewal.**

**(Payment of registration fee in installments)**

**41bis.--(1) Notwithstanding Section 40(1), a person who obtains registration of a trademark right may pay the prescribed registration fee in installments. In this case, the amount of 44,000 yen per case or this amount multiplied by the number of classes of the classification of goods and services shall be paid for each case within 30 days from the date of the transmittal of the examiner's decision or trial decision that the trademark is to be registered and also the amount of 44,000 yen per case or this amount multiplied by the number of classes of the classification of goods and services for each case by the end of five years before the expiration of the term of the trademark right.**

**(2) Notwithstanding Section 40(2), a person who makes a request for registration of renewal may pay the prescribed fee in installments. In this case, the amount of 101,000 yen per case or this amount multiplied by the number of classes of the classification of goods and services shall be paid for each case at the time of a request for registration of renewal and also the amount of 101,000 per case or this amount multiplied by the number of classes of the classification of goods and services by the end of five years before the expiration of the term of the trademark right.**

**(3) Where the owner of a trademark right is unable to pay the registration fee due to be paid by the end of five years before the expiration of the trademark right under Subsection (1) or (2), he may pay the registration fee belatedly within six months after the expiration of that time limit.**

**(4) When the owner of a trademark right fails to pay, within a period during which he may make a delayed payment of the prescribed registration fee under the preceding subsection, a registration fee due to be paid by the end of five years before the expiration of a trademark right and a surcharge under Section 43(3), the trademark right shall be deemed to have been extinguished retroactive to the date of the end of five years before its expiration.**

**(5) Subsection (3) and (4) of Section 40 shall apply mutatis mutandis to Subsections (1) and (2).**

**(6) Section 41(2) shall apply mutatis mutandis to the payment of a registration fee due to be paid within 30 days from the transmittal of the examiner's decision or the trial decision to a trademark is to be registered.**

**(Payment of registration fee by an interested person)**

**41ter.--(1) Any interested person may pay a registration fee (excluding a registration fee due to be paid at the time of a request for registration of renewal) even against an will of the person liable to pay the registration fee.**

**(2) An interested person who has paid a registration fee under the preceding subsection may demand reimbursement of the expenditure to the extent that the person liable to pay is actually making a profit.**

**(Refund of registration fee)**

**42.--(1) A registration fee paid shall be refunded on the request of the person making the payment where it falls under any of the following paragraphs:**

**(i) registration fee paid by mistake or in excess;**

**(ii) registration fee due to be paid by the end of five years before the expiration of a trademark right under Section 41bis(1) or (2) (only in case where a ruling to revoke under Section 43ter(2) or a trial decision or a retrial decision that the trademark registration is to be invalidated has become final and conclusive by the end of five years before the expiration of the trademark right).**

**(2) No refund of a registration fee under the preceding subsection may be requested after one year from the date of payment in the case of a registration fee prescribed under Paragraph (i) above, or after six months from the date on which a ruling to revoke under Section 43ter(2) or a trial decision or a retrial decision became final and conclusive in the case of a registration fee under Paragraph (ii) above.**

**(Surcharge registration fee)**

**43.--(1) A person who make a request for registration of renewal of a trademark right under Section 20(3) or Section 21(1) shall pay, in addition to a registration fee due to be paid under Section 40(2), a surcharge equivalent in amount to the registration fee.**

**(2) In the case where Section 41bis(2) is applicable, a person as prescribed in the preceding subsection shall pay, in addition to a registration fee due to be paid at the time of an application for registration of renewal of a trademark right under Section 41bis(2), a surcharge equivalent in amount to the registration fee.**

**(3) In the case where Section 41bis(3) is applicable, the owner of a trademark right shall pay, in addition to a registration fee due to be paid by the end of five years before the expiration of the trademark right under Section 41bis(1) or (2), a surcharge equivalent in amount to the registration fee.**

**(4) The payment of the surcharge under the preceding three subsections shall be made by revenue stamps as prescribed by an ordinance of the Ministry of International Trade and Industry. However, wherever so prescribed by an ordinance of the Ministry of International Trade and Industry, such payment may be made in cash.**

## **Chapter IVbis Opposition to Registration**

**(Opposition to registration)**

**43bis.-- Only within two months from the publication of the Gazette containing the trademark, any person may file with the Commissioner of the Patent Office an opposition to a trademark registration on the grounds that the trademark registration falls under any of the undermentioned paragraphs. In such an event, if two or more items of designated goods or designated services are covered by the trademark registration, the opposition may be filed with respect to each of such designated goods or designated services. That is:**

**(i) where the trademark registration has been effected contrary to Section 3, 4(1), 8(1), (2) or (5), 51(2) (including its application under Section 52bis(2)), 53(2) or Section 25 of the Patent Law as applied under Section 77(3);**

**(ii) where the trademark registration has been effected contrary to the provisions of a treaty.**

**(Ruling)**

**43ter.--(1) A trial concerning an opposition and a ruling thereon shall be conducted by a collegial body of three or five trial examiners.**

**(2) Where it is found that the trademark registration concerned in the opposition falls under any of the paragraphs of the preceding section, the trial examiners shall render a ruling that the trademark registration is to be revoked (hereinafter referred to as the "ruling to revoke").**

**(3) Where a ruling to revoke has become final and conclusive, the trademark right shall be deemed never to have existed.**

**(4) Where it is not found that the trademark registration in the opposition falls under any of the paragraphs of the preceding section, the trial examiners shall render a ruling that the trademark registration is to be maintained.**

**(5) No appeal shall lie from a ruling under Subsection (4).**

**(Formal requirements of a written opposition, etc.)**

**43quater.--(1) A person filing an opposition to a trademark registration shall submit a written opposition to the Commissioner of the Patent Office stating the following:**

- (i) the name and the domicile or residence of the opponent and his representative;**
- (ii) an identification of the trademark registration concerned in the opposition;**
- (iii) the grounds of the opposition and an indication of the supporting evidence.**

**(2) An amendment of the written opposition submitted under the preceding subsection shall not change the gist thereof. However, this shall not apply to an amendment made to the matter prescribed in Paragraph (iii) of the preceding subsection before a lapse of 30 days after the expiration of the time limit prescribed in Section 43bis.**

**(3) The Commissioner of the Patent Office may, for the benefit of a person residing in a place that is remote or difficult of access, extend upon request or ex officio the period prescribed in the preceding subsection.**

**(4) The trial examiner-in-chief shall transmit a copy of the written opposition to the owner of the trademark right.**

**(5) Section 46(3) shall apply mutatis mutandis where the opposition has been filed.**

**(Designation of trial examiners, etc.)**

**43quinquies.-- Sections 136(2) and 137 to 144 of the Patent Law as applied under Section 56(1) shall apply mutatis mutandis to the collegial body under Section 43ter(1) and trial examiners constituting thereof.**

**(Conduct of trial examination, etc)**

**43.sexies --(1) The trial examination of the opposition shall be conducted by documentary examination. However, the trial examiner-in-chief may decide to conduct the trial by oral trial on a motion by the owner of the trademark right, an opponent or an intervenor, or ex officio.**

**(2) Sections 145(3) to (5), 146 and 147 of the Patent Law as applied under Section 56(1) of this Law shall apply mutatis mutandis to the oral examination in accordance with the proviso to the preceding subsection.**

**(3) Where there is a ground for interruption or suspension of the trial proceedings of an opposition and ruling thereon on the part of one of the joint owners of a trademark right, the interruption or suspension shall have effect on all of them.**

**(Intervention)**

**43septies.--(1) Any person who has a right with respect to the trademark right or any other person who has an interest in the trademark right may intervene in the trial examination, in order to assist the owner of the trademark right until the ruling on the opposition.**

**(2) Sections 148(4) and (5) and 149 of the Patent Law as applied under Section 56(1) of this Law shall apply mutatis mutandis to the intervenor under the preceding subsection.**

**(Taking of evidence and preservation thereof)**

**43octies.-- Sections 150 and 151 of the Patent Law as applied under Section 56(1) of this Law shall apply mutatis mutandis to the examination and preservation of evidence in a trial examination of opposition.**

**(Trial examination ex officio)**

**43novies.--(1) In a trial examination of an opposition, even the grounds that have not been pleaded by the owner of a trademark right, an opponent or intervenor may be examined.**

**(2) In a trial examination of an opposition, only the designated goods or designated services challenged by the opponent may be considered in the trial examination.**

**(Combination or separation of trial examination)**

**43decies.--(1) Trial examinations of two or more oppositions concerning the same trademark right shall be combined, unless special circumstances exist.**

**(2) Trial examinations that have been combined under the preceding subsection may later be conducted separately.**

**(Withdrawal of oppositions)**

**43undecies.--(1) An opposition to the trademark registration may not be withdrawn after the notification under Section 43duodecies.**

**(2) Section 155(3) of the Patent Law as applied under Section 56(2) of this Law shall apply mutatis mutandis to the withdrawal of the opposition.**

**(Notification of reasons for revocation)**

**43duodecies.-- When the trial examiner-in-chief intends to render a ruling to revoke, he shall notify the owner of the trademark right and intervenor of the reasons for revocation of the trademark registration and give them an opportunity to submit a statement of their arguments, designating an adequate time limit.**

**(Formal requirements of ruling)**

**43terdecies.--(1) The ruling on the opposition shall be in writing and shall state particulars mentioned below:**

**(i) the number of the opposition case;**

**(ii) the name and the domicile or residence of the owner of the trademark right, opponent and intervenor as well as of their representatives;**

(iii) the identification of the registered trademark relating to the ruling;

(iv) the conclusions of the ruling and the reasons therefor;

(v) the date of the ruling.

(2) Once the ruling has been rendered, the Commissioner of the Patent Office shall transmit it to the owner of the trademark right, an opponent, intervenor and persons whose demand to intervene has been refused.

(Application mutatis mutandis of provisions on trial)

43quater decies.--(1) Sections 133, 133bis, 134(4), 135, 152, 168, 169(3) to (6) and 170 of the Patent Law as applied under Section 56(1) of this Law shall apply mutatis mutandis to the trial examination of the opposition and the ruling thereon.

(2) Section 43ter(5) of this Law shall apply mutatis mutandis to the ruling under Section 135 of the Patent Law as applied under the preceding subsection.

## Chapter V Trial

(Trial against examiner's decision of refusal)

44.--(1) A person who has received the examiner's decision that his application is to be refused and is dissatisfied may demand a trial thereon within 30 days from the transmittal of the examiner's decision.

(2) Where, due to reasons outside his control, a person is unable to demand a trial under the preceding subsection within the time limit prescribed therein, he may, notwithstanding that subsection, make the demand within 14 days (where he is a resident abroad, within two months) from the date when the reason ceased to be applicable but not later than six months following the expiration of the said time limit.

(Trial against ruling to decline amendment)

45.--(1) A person who has received a ruling to decline an amendment under Section 16bis(1) and is dissatisfied may demand a trial thereon within 30 days from the transmittal of the ruling. However, this provision shall not apply when a new application for trademark registration has been filed under Section 17ter(1) of the Design Law as applied under Section 17bis(1) of this Law.

(2) Section 44(2) shall apply mutatis mutandis to the demand for a trial under the preceding subsection.

(Trial for invalidation of trademark registration)

46.--(1) In the following cases, a trial may be demanded for the invalidation of a trademark registration. In such event, if two or more items of designated goods or designated services are covered by the trademark registration, the trial may be demanded with respect to each of such designated goods or designated services:

(i) where the registration has been effected contrary to Section 3, 4(1), 8(1), (2) or (5), 51(2) (including its application under Section 52bis(2)) or 53(2) or to Section 25 of the Patent Law as applied under Section 77(3) of this Law;

(ii) where the registration has been effected contrary to the provisions of a treaty;

(iii) where the registration has been effected in respect of a trademark application filed by a person who has not succeeded to the right deriving from the trademark application;

(iv) where, after the registration, the owner of the trademark right has become a person who can no longer enjoy such

right under Section 25 of the Patent Law as applied under Section 77(3) of this Law or the registration no longer complies with a treaty;

(v) where, after the registration, the registered trademark has become a trademark falling under Section 4(1)(i) to (iii), (v), (vii) to (xvi).

(2) Even after the extinguishment of a trademark right, a trial under the preceding subsection may be demanded.

(3) Where a trial under Subsection (1) has been demanded, the trial examiner-in-chief shall notify the owner of a right of exclusive use with respect to the trademark right and other persons who have any registered rights relating to the trademark registration.

**(Trial for invalidation of trademark registration)**

**46bis.--(1) Where a trial decision that the trademark registration is to be invalidated has become final and conclusive, the trademark right shall be deemed never to have existed. However, where a trademark registration falls under Section 46(1)(iv) or (v) and a trial decision that the trademark registration is to be invalidated has become final and conclusive, the trademark right shall be deemed not to have existed from the time when the trademark registration came to fall under the application of Section 46(1)(iv) or (v).**

**(2) In such a case, where a time on which the registered trademark came to fall under Section 46(1)(iv) or (v) cannot be established, the trademark right shall be deemed not to have existed from the date of the registration of a demand for a trial to invalidate the trademark registration.**

**(Trial for invalidation of trademark registration)**

**47.-- Where a trademark registration has been effected contrary to Section 3, 4(1)(viii) or (xi) to (xiv) or 8(1), (2) or (5), contrary to Section 4(1)(x) or (xvii) (except where registration was obtained with the intention of violating the rules of fair competition) or contrary to Section 4(1)(xv) (except where the registration was obtained for unfair intention), or where a trademark registration falls under Section 46(1)(iii), a trial on the trademark registration may not be demanded under Section 46(1) after five years from the registration of the establishment of the trademark right.**

**48.-- Deleted**

**49.-- Deleted**

**(Trial for cancellation of trademark registration)**

**50.--(1) Where neither the owner of the trademark right nor the owner of a right of exclusive use nor the owner of a right of non-exclusive use has been continuously using, in Japan for three years or more, the registered trademark (including a trademark consisting of identical characters only with their fonts modified, trademarks which, with their indication mutually replaced in character of hiragana and katakana (Japanese phonetic characters) and Latin alphabet may imply an identical pronunciation or concept, a trademark consisting of figures common in appearance and other trademarks regarded to be generally accepted as identical with the registered trademark -- hereinafter referred to in this Section as "registration trademark") in respect of each item of the designated goods or designated services, any person may demand a trial for the cancellation of registration of the trademark with respect to such designated goods or designated services.**

**(2) In the case where a trial under the preceding subsection has been demanded, unless the defendant can prove that either the owner of the trademark right or the owner of a right of exclusive use or the owner of a right of non-exclusive use has used in Japan within three years prior to the registration of the demand for the trial the registered trademark in respect of any item of the designated goods or designated services to which the demand referred to relates, the owner of the trademark shall not avert the cancellation of the registered trademark for the designated goods or**

designated services. However, this provision shall not apply where the defendant justifies that there are legitimate reasons for the failure to use the registered trademark in respect of the designated goods or designated services.

(3) Where a registered trademark of which the cancellation trial has been demanded under Subsection (1) is used by the owner of the trademark right or the owner of a right of its exclusive use or its non-exclusive use in respect of the designated goods or designated services to which the demand referred to relates from three months before a demand for such cancellation till the date of the registration of the demand, such a use of the registered trademark shall not fall under the use of the registered trademark referred to in Subsection (1) provided that the demandant proves that the registered trademark was used with the knowledge that the cancellation trial for the registered trademark had been demanded. However, this provision shall not apply where the defendant justifies that there are legitimate reasons for such use of the registered trademark.

(Trial for cancellation of trademark registration)

51.--(1) Where the owner of the trademark right intentionally uses a trademark similar to the registered trademark in respect of the designated goods or designated services, or intentionally uses the registered trademark or similar trademark in respect of goods or services similar to the designated goods or designated services in a way which may be misleading as to the quality of the goods or services or which may cause confusion with goods or services connected with any other person's business, any person may demand a trial for the cancellation of the trademark registration.

(2) Where a trademark registration has been canceled under the preceding subsection, the former owner of the trademark right may not obtain a trademark registration of the same or a similar trademark, for the designated goods or designated services covered by the trademark registration or for goods or services similar thereto, until five years have elapsed since the date when the trial decision ordering cancellation became final and conclusive.

(Trial for cancellation of trademark registration)

52.-- The trial under Section 51(1) may not be demanded after five years from the date on which the owner of a trademark right ceased to use the trademark in the manner referred to in that subsection.

(Trial for cancellation of trademark registration)

52bis.--(1) Where, as a result of the transfer of a trademark right, the trademark right to a similar registered trademark that is used for identical goods or services or the identical or similar registered trademark that is used for similar goods or services comes to belong to a different owner and where the use of one registered trademark by its owner is use, with an intention of violating the rules of fair competition, of the registered trademark for its designated goods or designated services in a way which may cause confusion with goods or services connected with the business of the owner of other registered trademark or the owner of the right of its exclusive or non-exclusive use, any person may demand a trial for the cancellation of the trademark registration.

(2) Sections 51(2) and 52 shall apply mutatis mutandis to the trial under Subsection (1).

(Trial for cancellation of trademark registration)

53.--(1) Where the owner of a right of exclusive or non-exclusive use uses the registered trademark or a similar trademark in respect of the designated goods or designated services or goods or services similar thereto in a way which may be misleading as to the quality of the goods or services or which may cause confusion with goods or services connected with any other person's business, any person may demand a trial for the cancellation of the trademark registration. However, this provision shall not apply where the owner of the trademark right was both unaware of the fact and taking appropriate care.

(2) Where a trademark registration has been canceled under the preceding subsection, the former owner of the trademark right and the former owner of the right of exclusive or non-exclusive use who had used the mark in the way

referred to in the preceding subsection may not obtain a trademark registration of the registered trademark or a similar trademark, for the designated goods or designated services covered by the trademark registration or for goods or services similar thereto, until five years have elapsed since the date when the trial decision ordering cancellation became final and conclusive.

**(3) Section 52 shall apply mutatis mutandis to the trial under Subsection (1).**

**(Trial for cancellation of trademark registration)**

**53bis.--** Where a registered trademark is the trademark of a person who has the right to the trademark in a country party to the Paris Convention or a Member of the World Trade Organization or a country party to the Trademark Law Treaty (but only where such right is equivalent to the trademark right) or is similar to such a trademark, and the goods or services relating to such right or similar goods or services have been made the designated goods or designated services, and moreover the trademark application concerned was made, without a legitimate reason and without the authorization of the person who has the right to the trademark, by his agent or representative or by a person who was his agent or representative at any time during the year preceding the filing date of the application, the person who has the right to the trademark may demand a trial for the cancellation of its registration.

**(Trial for cancellation of trademark registration)**

**53ter.--** The trial under Section 53bis may not be demanded after five years from the registration of the establishment of the trademark right.

**(Trial for cancellation of trademark registration)**

**54.--(1)** When a trial decision ordering cancellation of a trademark registration has become final and conclusive, the trademark right shall from that moment become extinguished.

**(2)** Notwithstanding the preceding subsection, a trademark right shall be deemed to have extinguished on the date of registration of a demand for the trial where the trial decision that a trademark registration is to be canceled has become final and conclusive on the trial under Section 50(1).

**(Trial for cancellation of trademark registration)**

**55.--** Section 46(3) shall apply mutatis mutandis to the trials demanded under Sections 50(1), 51(1), 52bis(1), 53(1) and 53bis.

**(Special provisions for trials against examiner's decision of refusal)**

**55bis.--(1)** Section 15bis and 15ter of this Law shall apply mutatis mutandis where a reason for refusal which was not contained in the examiner's decision is found in the trial under Section 44(1).

**(2)** Sections 16bis of this Law and Section 17ter of the Design Law shall apply mutatis mutandis to a trial under Section 44(1) of this Law. In such a case, "has demanded a trial under Section 45(1)" in Section 16bis(4) shall read "has instituted an action under Section 63(1)".

**(Application mutatis mutandis of Patent Law)**

**56.--(1)** Sections 131(1) and (2), 132 to 133bis, 134(1), (3) and (4), 135 to 154, 155(1) and (2), 156 to 158, 160(1) and (2), 161 and 167 to 170 (effects of trial decision, demands for trial, trial examiners, trial proceeding, relationship with litigation and costs of trial) of the Patent Law shall apply mutatis mutandis to trials under this Law. In such a case, "Section 123(1) or 125bis(1)" in Sections 132(1), 145(1), 167 and 169(1) of the Patent Law shall read "Section 46(1), 50(1), 51(1), 52bis(1), 53(1) or 53bis of the Trademark Law," and "Section 121(1)" in Section 161, and "Section 121(1)



or 126(1)" in Section 169(3) of the Patent Law shall read "Section 44(1) or 45(1) of the Trademark Law".

(2) Section 155(3) (withdrawal of demand for trial) of the Patent Law shall apply mutatis mutandis to the trial under Section 46(1).

(Application mutatis mutandis of Design Law)

56bis.-- Section 51 of the Design Law shall apply mutatis mutandis to a trial under Section 45(1) of this Law.

## **Chapter VI Retrial and Litigation**

(Demand for retrial)

57.--(1) Any party or intervenor may demand a retrial against a final and conclusive ruling to revoke or a final and conclusive trial decision or retrial decision.

(2) Sections 338(1) and (2) and 339 (grounds for retrial) of the Code of Civil Procedure (Law No. 109 of 1996) shall apply mutatis mutandis to demands for a retrial under the preceding subsection.

(Demand for retrial)

58.--(1) Where the demandant and the defendant in a trial have in collusion caused a trial decision to be rendered, with the purpose of injuring the rights or interest of a third person, such person may demand a retrial against the final and conclusive trial decision.

(2) In such a retrial, the demandant and the defendant shall be made joint defendants.

(Restriction on effects of trademark right restored by retrial)

59.-- Where a trademark right relating to a revoked or invalidated or canceled trademark registration has been restored through a retrial, the effects of the trademark right shall not extend to the following acts:

(i) the use in good faith of the registered trademark in respect of the designated goods or designated services after the ruling to revoke or the trial or retrial decision became final and conclusive but before the registration of the demand for a retrial;

(ii) the acts mentioned in each paragraph of Section 37 performed in good faith after the ruling to revoke or the trial or retrial decision became final and conclusive but before the registration of the demand for a retrial.

(Restriction on effects of trademark right restored by retrial)

60.--(1) Where a trademark right relating to a revoked or invalidated or canceled trademark registration has been restored through a retrial, or where the establishment of a trademark right under a trademark application which was refused by a trial or retrial decision, has been registered through a retrial, and where a person has, in good faith, been using the registered trademark in Japan or a trademark similar thereto on the designated goods or designated services or goods or services similar thereto after the ruling to revoke or the trial or retrial decision became final and conclusive but before the registration of the demand for a retrial and, as a result, the trademark has become well-known among consumers as indicating the goods or services as being connected with his business at the time of registration of the demand for a retrial, such person shall have a right to use the trademark in the goods or services provided that he does so continuously. The same shall apply in the case of a person who has succeeded to the business concerned.

**(2) Section 32(2) shall apply mutatis mutandis to the preceding subsection.**

**(Restriction on effects of trademark right restored by retrial)**

**60bis.--(1) Section 55bis shall apply mutatis mutandis to a retrial against the final and conclusive trial decision on a trial under Section 44(1).**

**(2) Section 56bis shall apply mutatis mutandis to a retrial against the final and conclusive trial decision on a trial under Section 45(1).**

**(Application mutatis mutandis of Patent Law)**

**61.-- Section 173 (time limit for demand for retrial) and Section 174(3) and (5) (application of provisions on trial, etc.) of the Patent Law shall apply mutatis mutandis to retrials under this Law. In such a case, "Section 123(1) or 125bis(1)" in Section 174(3) of the Patent Law shall read "Section 46(1), 50(1), 51(1), 52bis(1), 53(1) or 53bis of the Trademark Law".**

**(Application mutatis mutandis of Design Law)**

**62.--(1) Section 58(2) of the Design Law shall apply mutatis mutandis to a retrial against the final and conclusive trial decision on a trial under Section 44(1) of this Law.**

**(2) Section 58(3) of the Design Law shall apply mutatis mutandis to a retrial against the final and conclusive trial decision on a trial under Section 45(1) of this Law.**

**(Actions against trial decisions, etc.)**

**63.--(1) An action against a ruling to revoke or a trial decision or a ruling to decline an amendment under Section 16bis(1) as applied under Section 55bis(2) (including its application under Section 60bis(1)) or an action against a ruling of dismissal of a written opposition or a demand for a trial or retrial shall come under the exclusive jurisdiction of the Tokyo High Court.**

**(2) Section 178(2) to (6) (time limit for institution of action, etc.) and Sections 179 to 182 (defendant in the action, notification of institution of action, annulment of trial decisions or ruling, and sending of certified copy of judgment) of the Patent Law shall apply mutatis mutandis to actions under the preceding subsection. In such a case, "Section 123(1) or 125(1)" in Section 179 of the Patent Law shall read "Section 46(1), 50(1), 51(1), 52bis(1), 53(1) or 53bis of the Trademark Law".**

**(Relationship between administrative appeal and litigation)**

**63bis.-- Section 184bis (relationship between administrative appeal and litigation) of the Patent Law shall apply mutatis mutandis to actions for the annulment of measures (with the exception of measures under Section 77(7)) taken under this Law or an order or ordinance thereunder.**

## **Chapter VII Defensive Marks**

**(Registrability of defensive marks)**

**64.--(1) The owner of a trademark right may, when his registered trademark in respect of goods has become**

well-known among consumers as indicating the designated goods as being connected with his business and when the use of the registered trademark by any other person in respect of goods other than the designated goods covered by the registered trademark and goods similar thereto or services similar to the designated goods is likely to cause confusion between such goods or services and the designated goods in connection with his business, obtain a defensive mark registration of a mark identical with the registered trademark with respect to goods or services for which such possibility of confusion exists.

(2) The owner of a trademark right may, when his registered trademark in respect of services has become well known among consumers as indicating the designated services as being connected with his business and when the use of the registered trademark by any other person in respect of services other than the designated services covered by the registered trademark and services similar thereto or goods similar to the designated services is likely to cause confusion between such services or goods and designated services in connection with his business, obtain a defensive mark registration of a mark identical with the registered trademark with respect to services or goods for which such possibility of confusion exists.

(Conversion of applications)

65.--(1) An applicant may convert his application for trademark registration into an application for registration of a defensive mark.

(2) An application may not be converted under the preceding subsection after the examiner's decision or the trial decision with respect to the application has become final and conclusive.

(3) Sections 10(2) and 11(4) shall apply mutatis mutandis to the conversion of an application under Subsection (1).

(Term of right based on defensive mark registration)

65bis.--(1) The term of a right based on a defensive mark registration shall be 10 years from the date of the registration of its establishment.

(2) The term of a right based on a defensive mark registration may be renewed by making a request for registration of a renewal of its registration. However, this provision shall not apply where the registered defensive mark has become not registrable under Section 64.

( Registration of renewal of term of right based on defensive mark registration )

65ter.--(1) Any person desiring registration of renewal of the term of a right based on a defensive mark registration shall submit a request to the Commissioner of the Patent Office, stating the following:

- (i) the name and the domicile or residence of the applicant;
- (ii) the registration number of the defensive mark;
- (iii) other necessary particulars as prescribed by an ordinance of the Ministry of International Trade and Industry.

(2) An application for registration of the renewal shall be made within a six month prior to the date of the expiration of the term.

(3) Where a person desiring registration of renewal of a right based on a defensive mark registration has been unable to make an application for registration of renewal of that right within the time limit allowing him to make such application under the preceding subsection due to reasons outside his control, he may make such application within 14 days (where he is a resident abroad, 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) When an application has been made for registration of renewal of the term of the right based on a defensive mark

registration, the term shall be deemed to have been renewed upon expiration of the term (or, in case of an application under the preceding subsection, on the filing date of such application). However, this provision shall not apply when the examiner's decision or trial decision that the application is to be refused has become final and conclusive or when renewal of the term of the right based on a defensive mark registration has been registered.

**(Registration of renewal of term of right based on defensive mark registration)**

**65quater.--(1)** Where an application for registration of renewal of a right based on a defensive mark registration falls under any of the following paragraphs, the examiners shall make a decision that the application is to be refused.

- (i)** the registered defensive mark in such application has become not registrable under Section 64;
- (ii)** the applicant is not the owner of the right based on the defensive mark registration.

**(2)** Where the examiner finds no reasons for refusing an application for registration of renewal, he shall make a decision that the renewal is to be registered.

**(Registration of renewal of term of right based on defensive mark registration)**

**65quinquies.--** Section 14 and 15bis of this Law, Sections 48 (exclusion of examiners) and 52 (formal requirements of decision) of the Patent Law shall apply *mutatis mutandis* to an examination of an application for registration of renewal of a right based on a defensive mark registration.

**(Registration of renewal of term of right based on defensive mark registration)**

**65sexies.--(1)** When a registration fee under Section 65septies(2) has been paid, the renewal of the term of the right based on the defensive mark registration shall be registered.

**(2)** Upon the registration under the preceding subsection, the following shall be published in the Trademark Gazette.

- (i)** the name and the domicile or residence of the owner of the right based on the defensive mark registration;
- (ii)** the registration number and the date of renewal registration;
- (iii)** other necessary particulars.

**(Registration fees)**

**65septies.--(1)** A person who obtains registration of a right based on a defensive mark registration shall pay the amount of 66,000 yen per case or this amount multiplied by the number of classes of the classification of goods and services as a registration fee.

**(2)** A person obtaining registration of renewal of the term of a right based on a defensive mark registration shall pay the amount of 130,000 yen per case or this amount multiplied by the number of classes of the classification of goods and services covered, as a registration fee.

**(3)** Section 40(3) and (4) shall apply *mutatis mutandis* to the preceding two subsections.

**(Time limit for payment of registration fees)**

**65octies.--(1)** The registration fee under Section 65septies(1) shall be paid within 30 days from the date of the transmittal of the examiner's decision or the trial decision that the defensive mark is to be registered.

**(2)** The registration fee under Section 65septies(2) shall be paid within 30 days from the date of the transmittal of the examiner's decision or a trial decision that the renewal of a right based on a defensive mark registration is to be

registered (where such transmittal is made before the date of the expiration of the term of a right based on a defensive mark registration, the date of the expiration of the term).

(3) Upon the request of a person liable to pay a registration fee, the Commissioner of the Patent Office may extend the period prescribed in the preceding two subsections by a period not exceeding 30 days.

(Payment of registration fee by an interested person)

65novies.--(1) Any interested person may pay a registration fee prescribed in Section 65septies(1) or (2) even against the will of the person liable to pay the registration fee.

(2) An interested person who has paid a registration fee under the preceding subsection may demand reimbursement of the expenditure to the extent that the person liable to pay the registration fee is actually making a profit.

(Refund of registration fee paid by mistake or in excess)

65decies.--(1) A registration fee paid by mistake or in excess under Section 65septies(1) or (2) shall be refunded on the request of the person making the payment.

(2) No refund of a registration fee under the preceding subsection may be requested after one year from the date of payment.

(Dependence of right based on defensive mark registration)

66.--(1) The right based on a defensive mark registration shall be extinguished if the principal trademark right has been divided.

(2) The right based on a defensive mark registration shall be transferred together with the principal trademark right if the principal trademark right is transferred.

(3) The right based on a defensive mark registration shall be extinguished if the principal trademark right is extinguished.

(Acts deemed to be an infringement)

67.-- The following acts shall be deemed to be an infringement of the principal trademark right or a right of exclusive use:

(i) use of a registered defensive mark in respect of the designated goods or designated services;

(ii) acts of holding, for the purpose of assignment or delivery, the designated goods on which or on the packaging of which the registered defensive mark has been applied;

(iii) acts of holding or importing articles which are for use by persons to whom the services are provided and to which the registered defensive mark has been applied, in the provision of the designated services, for the purpose of using such articles in the provision of such services;

(iv) acts of assigning or delivering articles which are for use by persons to whom the services are provided and to which the registered defensive mark has been applied, in the provision of the designated services, for the purpose of causing such articles to be used in the provision of such service, or acts of holding or importing such articles for the purpose of assigning or delivering them;

(v) acts of holding goods bearing a reproduction of the registered defensive mark for the purpose of using such a mark in respect of the designated goods or designated services;

(vi) acts of assigning or delivering, or of holding for the purpose of assignment or delivery, goods bearing a reproduction of the registered defensive mark, for the purpose of causing such defensive mark to be used in respect of

the designated goods or designated services;

(vii) acts of manufacturing or importing goods bearing a reproduction of the registered defensive mark for the purpose of using such defensive mark, or causing it to be used, in respect of the designated goods or designated services.

(Application mutatis mutandis of provisions on trademarks)

68.--(1) Sections 5, 5bis, 6(1) and (2), 9bis to 10 and 13(1) shall apply mutatis mutandis to applications for registration of defensive marks. In such a case "(iii) the designated goods or designated services and the class of classification of the goods and services as prescribed by Cabinet Order referred to in Section 6(2)" in Section 5(1) shall read "(iii) the designated goods or designated services and the class of classification of the goods and services as prescribed by Cabinet Order referred to in Section 6(2); (iv) the registration number of the principal trademark registration to which the application for registration of the defensive mark relates" and "(iv) designated goods or designated services are not stated" in Section 5bis(1) should read "(iv) designated goods or designated services are not stated; and (v) the registration number of the principal trademark registration to which the application for registration of the defensive mark relates is not stated".

(2) Sections 14 to 15bis and Sections 16 to 17bis shall apply mutatis mutandis to the examination of applications for registration of a defensive mark. In such a case, "Section 3, 4(1), 8(2) or (5), 51(2) (including its application under Section 52bis(2)) or 53(2)" in Section 15(i) shall read "Section 64".

(3) Sections 18, 26 to 28, 32 to 33ter, 35 and 69 shall apply mutatis mutandis to a right based on a defensive mark registration. In such a case, "the registration fee under Section 40(1) or the registration fee due to be paid within 30 days from the date of the transmittal of the examiner's decision or a trial decision that the trademark is to be registered under Section 41bis(1)" in Section 18(2) shall read "a registration fee under Section 65septies(1)".

(4) Sections 43bis to 46bis, 53bis, 53ter, 54(1) and 55bis to 56bis shall apply mutatis mutandis to an opposition to and a trial relating to the registration of a defensive trademark. In such a case, "Section 3, Section 4(1), Section 8(1), (2) or (5), Section 51(2) (including its application under Section 52bis(2)), Section 53(2)" in Section 43bis(i) or 46(1)(i) shall read "Section 64" and "a treaty" in Sections 46(1)(iv) shall read "Section 64 and a treaty".

(5) Sections 57 to 63bis shall apply mutatis mutandis to a retrial and an action relating to the registration of a defensive trademark. In such a case, "each paragraph of Section 37" in paragraph (ii) of Section 59 shall read "Paragraphs (ii) to (vii) of Section 67" "a trademark right relating to a revoked or invalidated or canceled trademark registration" in Section 60 shall read "a right based on a defensive mark registration relating to a revoked or invalidated or canceled defensive mark registration" and "a trademark registration application" shall read "an application for registration of a defensive mark or an application for registration of renewal of a right based on a defensive mark registration" and "the establishment of a trademark right" shall read "the establishment of a right based on defensive mark registration or registration of renewal of its term" and "the registered trademark ... or a trademark similar thereto ... on designated goods or designated services or goods or services similar thereto" shall read "identical trademark with the registered defensive mark".

## Chapter VIII Miscellaneous Provisions

(Amendment of proceedings)

68bis.-- With respect to a procedure relating to a trademark application, a defensive mark application, a demand or other procedure relating to trademark or defensive mark registration, the person carrying on such procedure may make an amendment only during the pendency of the case in the examination, trial or retrial.

(Exceptional provisions on trademark right with two or more designated goods or designated services)

69.-- For the purpose of the provisions of Sections 20(4) and 33(1) of this Law, Section 97(1) or 98(1)(i) of the Patent

**Law as applied under Section 35 of this Law, Sections 43ter(3), 46(2), 46bis and 54 of this Law, Section 132(1) of the Patent Law as applied under Section 56(1) of this Law or under Section 174(3) of the Patent Law as applied under Section 61 of this Law, Section 59, 60 or 71(1)(i) or 75(2)(i) of this Law, relating to trademark registration or the trademark right, where there are two or more items of designated goods or designated services, the trademark registration shall be deemed to have been effected, or a trademark right shall be deemed to exist for each of such designated goods or designated services.**

**(Exceptional provisions on trademarks, etc. similar to registered trademarks)**

**70.--(1) The references to "registered trademark" in Section 25, 29, 30(2), 31(2), 31bis(1), 34(1), 38(2), 50, 52bis(1), 59(i), 64, 73 or 74 shall include trademarks which are similar to the registered trademark and would be considered identical if they had the same coloring.**

**(2) The references to "registered defensive mark" in Sections 4(1)(xii) and 67 shall include marks which are similar to the registered defensive mark and would be considered identical if they had the same coloring.**

**(3) The references to "trademark similar to the registered trademark" in Sections 37(i) and 51(1) shall not include trademarks which are similar to the registered trademark and would be considered identical if they had the same coloring.**

**(Registration in Trademark Register)**

**71.--(1) The following matters shall be registered in the Trademark Register kept in the Patent Office:**

- (i) the establishment, renewal of term, division, transfer, modification, extinguishment or restriction on disposal of a trademark right;**
- (ii) the establishment, renewal of term, transfer or extinguishment of a right based on a defensive mark registration;**
- (iii) the establishment, maintenance, transfer, modification, extinguishment or restriction on disposal of a right of exclusive or non-exclusive use;**
- (iv) the establishment, transfer, modification, extinguishment or restriction on disposal of rights in a pledge upon a trademark right or a right of exclusive or non-exclusive use.**

**(2) The Trademark Register, either in whole or in part, may be prepared by means of magnetic tapes (including other materials on which matters can be accurately recorded by an equivalent method -- hereinafter referred to as "magnetic tapes").**

**(3) Other matters relating to registration that are not provided for in this Law shall be prescribed by Cabinet Order.**

**(Request for certification, etc.)**

**72.-- Anyone may request the Commissioner of the Patent Office to issue a certificate, a copy or an extract of documents, to allow the inspection of copying of documents or to issue documents whose contents are recorded in the part of the Trademark Register prepared by magnetic tapes, where such documents relate to trademark or defensive mark registrations. However, this provision shall not apply in the case of documents which are liable to contravene public order or morality.**

**(Indication of existence of trademark registration)**

**73.-- The owner of a trademark right or of a right of exclusive or non-exclusive use shall, when applying a registered trademark to the designated goods or their packaging, or to articles for use in the provision of the designated services, or in the provision of the designated services, to articles related to the provision of relevant designated services belonging to persons to whom the services are provided, take steps to attach to the trademark an indication to the effect that the trademark is a registered trademark (hereinafter referred to as "indication of trademark registration")**

as prescribed in an ordinance of the Ministry of International Trade and Industry.

**(Prohibition of false marking)**

**74.-- No person may commit any of the following acts:**

**(i) acts of attaching to such trademark an indication of a trademark registration or an indication confusingly similar thereto when using a trademark which is not a registered trademark;**

**(ii) acts of attaching to such trademark an indication of a trademark registration or an indication confusingly similar thereto when using a registered trademark in relation to goods or services other than the designated goods or designated services;**

**(iii) acts of holding, for the purpose of assignment or delivery, goods to which or to the packaging of which a trademark other than a registered trademark has been attached, which are other than the designated goods to which or to the packaging of which a trademark registered in relation to goods has been attached, or to which or to the packaging of which a trademark registered in respect to services has been attached, and in respect of which an indication of a trademark registration, or an indication confusingly similar thereto, has been attached to such trademark;**

**(iv) acts of holding, in the provision of services, articles which are for use by persons to whom the services are provided and to which a trademark other than a registered trademark has been applied, which, in the provision of services other than the designated services, are for use by persons to whom the services are provided and to which a trademark registered in respect to services has been applied, or which, in the course or providing services are to be supplied for use by persons to whom the services are provided and to which a trademark registered in respect to goods has been applied, and in respect of which an indication of a trademark registration, or an indication confusingly similar thereto, has been attached to such trademark (such articles being referred to in the next paragraph as "articles with a false indication of trademark registration in respect to services");**

**(v) acts of assigning or delivering, or of holding or importing for the purpose of assignment or delivery, articles with a false indication of trademark registration in respect to services, for the purpose of causing such articles to be used in the provision of such services.**

**(Trademark Gazette)**

**75.--(1) The Patent Office shall publish the Trademark Gazette (Shohyo Koho).**

**(2) In addition to the particulars provided for in this Law, the Trademark Gazette shall contain:**

**(i) extinguishment of a trademark right (excluding extinguishment due to the expiration of a term or falling under Section 41bis(4));**

**(ii) an opposition to a trademark registration or a demand for a trial or a retrial or their withdrawal;**

**(iii) final and conclusive ruling on an opposition to a trademark registration and final and conclusive decision of a trial or a retrial;**

**(iv) a final judgment in an action under Section 63(1).**

**(Fees)**

**76.--(1) The person specified hereunder shall pay the fee the amount of which shall be prescribed by Cabinet Order with the actual costs taken into consideration:**

**(i) person making notification of succession in accordance with Section 34(4) of the Patent Law as applied under Section 13(2) of this Law;**

**(ii) person requesting an extension of a time limit under Section 17quater of the Design Law as applied under Section 17bis(2) (including its application under Section 68(2) of this Law), Section 4 or 5(1) of the Patent Law as applied under Section 41(2) (including its application under Section 41bis(6) of this Law), Section 43quater(3) (including its application under Section 68(4) of this Law), Section 65octies(3) or Section 77(1) of this Law, or change of date in**



accordance with Section 5(2) of the Patent Law as applied under Section 77(1) of this Law;

(iii) person requesting issuance of certificate in accordance with Section 72;

(iv) person requesting issuance of copy or extract of documents in accordance with Section 72;

(v) person requesting inspection or copying of documents in accordance with Section 72;

(vi) person requesting issuance of documents containing matters recorded in that part of the Trademark Register as prepared on magnetic tape, in accordance with Section 72.

(2) The persons specified in the left-hand column of the attached table shall pay the fee the amount of which shall be prescribed by Cabinet Order within the limit of the amounts specified in the right-hand column of the table.

(3) The two preceding subsections shall not apply where the person specified in the left-hand column of the table is the State.

(4) The payment of the fee under Subsection (1) or (2) shall be made by patent revenue stamps as prescribed by an ordinance of Ministry of International Trade and Industry. However, wherever so prescribed by an ordinance of the Ministry of International Trade and Industry, such payment may be made in cash.

(5) A fee paid by mistake or in excess shall be refunded upon the request of the person making the payment.

(6) No request for a refund of a fee under the preceding subsection may be made after one year from the date of payment.

**(Application mutatis mutandis of Patent Law)**

77.--(1) Sections 3 to 5 (time limits and dates) of the Patent Law shall apply mutatis mutandis to the time limits and dates prescribed in this Law. In such a case, "Section 121(1)" in Section 4 of the Patent Law shall read "Section 44(1) or 45(1) of the Trademark Law."

(2) Sections 6 to 9, 11, 16, 17(3) and (4), 18 to 24 as well as Section 194 (proceedings) of the Patent Law shall apply mutatis mutandis to trademark and defensive mark applications, demands and any other proceedings relating to trademark or defensive mark registrations. In such a case, "Section 121(1)" in Section 9 of the Patent Law shall read "Section 44(1) or 45(1) of the Trademark Law," and "Section 121(1)" in Section 14 of the Patent Law shall read "44(1) or 45(1) of the Trademark Law;" "(ii) when the formal requirements specified in this Law or in an order or ordinance thereunder have not been complied with;" in Section 17(3) of the Patent Law shall read "(ii) when the formal requirements specified in this Law or in an order or ordinance thereunder have not been complied with; (ii)bis a registration fee under Section 40(2) of the Trademark Law or a registration fee due to be paid simultaneously with a request for registration of renewal (including a surcharge liable to be paid under Section 43(1) or (2) of the Trademark Law) is not paid;" and "... cannot effect an amendment it seeks to make;" in Section 18bis of the Patent Law shall read "cannot effect an amendment it seeks to make (except where it falls under any of paragraphs of Section 5bis(1) of the Trademark Law)".

(3) Section 25 (enjoyment of rights by aliens) of the Patent Law shall apply mutatis mutandis to trademark rights and other rights relating to trademark registrations.

(4) Section 26 (effect of treaties) of the Patent Law shall apply mutatis mutandis to trademark and defensive mark registrations.

(5) Sections 189 to 192 (transmittal) of the Patent Law shall apply mutatis mutandis to transmittal under this Law.

(6) Section 195ter of the Patent Law shall apply mutatis mutandis to measures under this Law or an order or ordinance thereunder this Law.

**(7) Section 195quater (restriction on appeals under the Administrative Appeal Law) of the Patent Law shall apply mutatis mutandis to examiners' decisions and rulings to decline an amendment, a ruling to revoke, trial decisions and rulings to dismiss a written opposition to the trademark registration or a demand for trial or retrial under this Law as well as to measures from which no appeal lies in accordance with this Law.**

**(Transition Provisions)**

**77bis.-- When Cabinet Order is made or repealed pursuant to the provisions of this Law, any requisite transitional provisions (including penal provisions) may, to the extent deemed necessary and reasonable, be made by means of such Cabinet Orders.**

## **Chapter IX Penal Provisions**

**(Offense of infringement)**

**78.-- Any person who has infringed a trademark right or a right of exclusive use shall be liable to imprisonment with labor not exceeding five years or to a fine not exceeding 5,000,000 yen.**

**( Offense of fraud )**

**79.-- Any person who has obtained a trademark or defensive mark registration or a registration of renewal of the term of a trademark right or right based on a defensive mark registration, a ruling on an opposition to a trademark registration or a trial decision, by means of a fraudulent act shall be liable to imprisonment with labor not exceeding three years or to a fine not exceeding 3,000,000 yen.**

**(Offense of false marking)**

**80.-- Any person infringing Section 74 shall be liable to imprisonment with labor not exceeding three years or to a fine not exceeding 3,000,000 yen.**

**(Offense of perjury, etc.)**

**81.--(1) A witness, expert witness or interpreter who, having taken an oath under this Law, has made a false statement or has given a false expert opinion or has interpreted falsely before the Patent Office or a court commissioned thereby shall be liable to imprisonment with labor for a term of not less than three months nor more than ten years.**

**(2) Where a person committing the offense in the preceding subsection has made a voluntary confession before a ruling on an opposition to the trademark registration or a decision of trial or retrial has become final and conclusive, his sentence may be reduced or suppressed.**

**(Dual liability)**

**82.-- Where an officer representing a legal entity or a representative, employee or any other servant of a legal entity or of a natural person has committed an act in violation of the following paragraphs with regard to the business of the legal entity or natural person, the legal entity shall, in addition to the offender, be liable to the fine prescribed in the following paragraphs and the natural person shall be liable to the fine prescribed in those sections.**

**(i) Section 78, subject to a fine up to 150 million yen;**

**(ii) Section 79 or 80, subject to a fine prescribed in each of these sections.**

**(Administrative penalties)**

**83.-- Where a person who has taken an oath under Section 207(1) of the Code of Civil Procedure -- as applied under Section 151 of the Patent Law as applied either under Section 43octies (including its application under Section 68(4)) or 56(1) (including its application under Section 68(4)) of this Law, under Section 174(3) of the Patent Law as applied under Section 61 (including its application under Section 68(5)) of this Law or under Section 58(2) of the Design Law as applied under Section 62(1) (including its application under Section 68(5)) of this Law or under Section 58(3) of the Design Law as applied under Section 62(2) (including its application under Section 68(5)) of this Law -- and has made a false statement before the Patent Office or a court commissioned thereby, he shall be liable to an administrative penalty not exceeding 100,000 yen.**

**(Administrative penalties)**

**84.-- Where a person who has been summoned by the Patent Office or a court commissioned thereby in accordance with this Law has failed to appear or has refused to take an oath, to make a statement, to testify, to give an expert opinion or to interpret, without a legitimate reason, he shall be liable to an administrative penalty not exceeding 100,000 yen.**

**(Administrative penalties)**

**85.-- Where a person who has been ordered by the Patent Office or a court commissioned thereby to produce or show documents or other evidence in accordance with the provisions of this Law relating to the examination or preservation of evidence has failed to comply with the order, without a legitimate reason, he shall be liable to an administrative penalty not exceeding 100,000 yen.**

**Attached Table**

**(Related to Section 76)**

**Person liable to pay Amounts**

- 1. Person filing application \6,000 per case for trademark plus \15,000 for registration each of the classification**
- 2. Person filing application \12,000 per case for defensive mark plus \30,000 for registration, or renewal each of the of term of right based classification on defensive mark registration**
- 3. Person demanding the \30,000 per case division of a trademark right**
- 4. Person requesting inter- \40,000 per case pretation in accordance with Section 28(1) (including its application under Section 68(3))**
- 5. Person filing opposition \3,000 per case plus to trademark registration \8,000 for each of the classification**
- 6. Person demanding \11,000 per case intervention in a trial examination of the opposition to trademark registration**
- 7. Person demanding trial \15,000 per case plus or retrial \40,000 for each of the classification**
- 8. Person demanding \55,000 per case intervention in trial or retrial**

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# Outline of Industrial Property Systems

## A History of System of Industrial Property Rights

[\\*Chronology](#) [\\*Ten Important Inventors](#)

### (1) History of the Patent (New Utility Model) System

Foresighted monarchs and politicians in medieval Europe granted special rights, using a remuneration or an award as a means for this purpose. Needless to say, this should not be interpreted that a secure system could have been created in this manner. This system was apparently born in mediaval Venice and further developed in England.

#### [ Venetian Republic ]

Patents were granted for inventions already in 1443, and the text of the oldest patent law in the world, officially announced as "Inventor Bylaws" was created in 1474.

#### [ England ]

The text of the patent law, known as "Monopoly Act", was created and the law was enacted in 1624. This law clearly defined basic concepts which are still influencing interpretation of patents to present day.

#### [ America ]

When America became independent from England, establishing an independent patent system was one of the task facing the country. The constitution of the federation, adopted in 1787, stipulated that "... in order to promote progress of useful technology and sciences .... the parliament .... shall grant limited exclusive rights for a certain period of time ..... to inventors". The Patent Law was then adopted based on these constitutional provisions in 1790.

#### [ France ]

The initial Patent Law was enacted in France in 1791. It's special characteristics was the the principle that no examination of any kind was required.

[ Germany ]

Germany enacted a comprehensive Patent Law which was based on the principle of mandatory examination, the first such system in the world, in 1877.

[ Turkey ]

Turkey adopted the special Patent Law for the protection of inventions in the year 1879 during the Ottoman Emperorship. This law introduced the granting of patents without examination, as contained a French law of 1844.

In Japan, it became clearly apparent that a patent system must be created in order to speed up modernization efforts which began after the start of the Meiji Reform, and the "Patent Monopoly Act" was publically proclaimed in Japan on April 18 of year 18 of the Meiji Era (1885). In addition, the New Utility Model Law was enacted in the year 38 of the Meiji Era (1905) in order to complement the patent system.

[ Edo Period ]

Because during the Edo period, there was a tendency to abhor new things, a "Law for New Items" was proclaimed in the year 6 of the Kyoho Era (1721). The purpose of this law was described as "to ensure that absolutely no new types of products would be manufactured".

[ Provisional Regulations for Monopoly ]

After the opening of Japan to Western things, the patent system was introduced from Europe and United States. In year 4 of the Meiji Era (1871), Japan publicly proclaimed its own law, called Provisional Regulations for Monopoly, which was the first patent law in Japan. However, the enforcement of this law was suspended the next year because the people of the country did not understand it well enough at the time to be able to use it, and also because the government office had problems with the operation of this law.

[ Patent Monopoly Act ]

Because it soon became apparent again that a patent system is indispensable, the "Patent Monopoly Act" was officially announced thanks to the efforts of the first Patent Office Director Yoshio Takahashi in year 18 of the Meiji Era. The first patent applied for was a patent for "Hotta's Method for Rust Stopping Paint and Painting

Method", applied for by Tamamatsu Hotta" on July 1, year 18 of the Meiji Era.

[ Current Laws Valid Until Present ]

The patent system was gradually created in the following years. At the same time, the New Utility Model Law was created in year 38 of the Meiji Era. A shift toward emphasis on applications filed earlier rather than on inventions discovered earlier, which was the policy up until this point, started under the Patent Law which was adopted in year 10 of the Taisho Era. This created the foundation on which the current system of patent laws is still based. After that, the patent laws which were adopted in year 10 of the Taisho Era were completely revised in year 34 of the the Showa Era, the advertising system was abolished in year 6 of the Heisei Era, it became possible for application to be received in English and other partial reforms of the patent laws were enacted.

## (2) History of the Design System

A legal system protecting designs was for the first time created through an ordinance issued in order to protect ornamental desing of the textile weaving industry by public officials in the French city of Lyon in 1711. The first example of protection of design in Japan are Design Bylaws which were adopted in year 21 of the Meiji Era (1888). There were several revisions of design laws in the following years, and the current Design Law was adopted at the same time when a complete revision of patent laws took place in Japan in year 34 of the Showa eary (1959).

[ Italy ]

1580, Designers of a new type of design were granted exclusive rights for a period of 2 years to a new type of designs by regulations relating to weaving patterns in the Italian city of Firenze in 1787.

[ England ]

Bylaws for protection of designs were enacted in England in 1787. These bylaws determind that exclusive rights whould be granted to woven product designs for a period of 2 months.

[ America ]

Although protection for designs in America starts already in 1842, there was no independent law for designs in the country as the

provisions for designs were a part of patent laws.

[ Germany ]

"Legislation Relating to Designs, or Patterns, or Utility Models" was adopted in Germany in 1876.

[ Japan ]

The first design was filed in Japan was in year 22 of the Meije Era. It was a design for stripes in textile registered in Ashikaga, prefecture Toshigi, by Yoshibeii Sunaga.

### (3) History of the Trademark System

The first laws about trademarks were publicly announced in England and America. These laws were enacted for protection against fraud. Laws called "Legislation Relating to Commercial Marks and Product Marks" were enacted for the first time in France in 1857. The first trademark law was enacted in Japan in year 17 of the Meiji Era, on June 7 (1884), one year before the "Patent Monopoly Act" was adopted. After that, there were several reforms, similar to reforms of patent laws, and the current Trademark Law is the result of a complete revision of trademark laws in year 34 of the Showa Era.

[ Merchant Marks ]

Merchant marks were symbols used in medieval Europe in the form of linear diagrams or monograms and similar structures which served mostly to demonstrate territorial rights of merchants.

[ Production Marks ]

Production marks were used as a tool persons belonging to guilds in city states in Europe to indicate products manufactured by the guild. The purpose of these marks was to confirm that a person is a qualified craftsman.

[ England ]

After a product mark law was enacted prohibitory false indication, a trademark registration law was created in 1875 which clearly defined principles based on prior use.

[ America ]

Comprehensive legislation relating to registration of trademarks was enacted as a federal law for the first time in 1870.

[ Germany ]

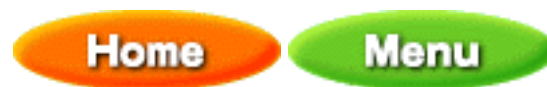
A trademark protection law, which was based on the principle of no examination, was enacted in 1874. It was later modified and the principle of mandatory examination was introduced.

[ Turkey ]

Turkey adopted the special law for the protection of trademarks, named the "Distinctive Signs Act", in the year 1871 during the Ottoman Emperorship. The law introduced the registration of trademarks without examination.

[ First Trademark in Japan ]

The first trademark was registered in Japan in year 18 of the Meiji era (1885). It was a trademark for ointments and pills registered by Yuzen Hirai in Kyoto prefecture.







## Chronology

Western Calendar	Japanese Patents	Overseas Patents	Social Trends
1600		1624 the first patent law was adopted in England	1623 Tokugawa Iemitsu, the third shogun of the Tokugawa family
1700		1752 lightning arrester (Franklin)	1787 Kansei Reform
		1790 U.S. Constitution	
		1791 French patent law	
1800		1814 locomotive engine invented (by Stephenson)	
		1815 Russian patent law	
		1851 sewing machine invented	1853 Commodore Perry's Ships demand opening of Japan
		1864 Italian patent law	
1868 (first year of the Meiji Era)		1867 dynamite invented (by Nobel)	1868 Meiji Reforms in Japan
		1877 patent law adopted in unified Germany	
1880	1884 (year 17 of the Meiji Era) trademark bylaws		
	1885 (year 18 of the Meiji Era) Patent Monopoly Act created a foundation for a system of patent rights in Japan		1885  the first Itoh cabinet is formed
		1887 phonograph invented to record sound on a plate (by Edison)	
	1888 (year 21 of the Meiji Era)		

1890	design bylaws enacted 1890 (year 23 of the Meiji Era) patent for a wooden weaving machine driven by human power registered (invented by Sakichi Toyoda)	1890	traffic between Tokya an Yokohama opened
	1892 (year 25 of the Meiji Era) patent for a dry battery registered (by Senzo Okui)	1893	1893 Tohoku line opened to traffic
	1894 (year 27 of the Meiji Era) spherical property adhesion method patent registered (by xx xxx)	1895	
		wireless communication method (Marconi)	1897
1900	1905 (year 38 of the Meiji Era) new utility model law 1908 (year 41 of the Meiji Era) patent for manufacture of a condiment having as a main component glutaminic acid soda (xx Ikeda)		"fashion boom" 1904 Japanese-Russian war breaks out 1909  Yamanote line starts operations
1910 (first year of the Taisho Era)	1913 (year 2 of the Showa Era) patent for tortoise-shaped scrubbing brush registered (Masaemon Nisio)		1914
		1917	Tokyo train station start operations
		Soviet Constitution	
1920			1922 Einstein: Japan
	1925 (year 14 of the Showa Era) patent for directional antenna for electric waves registered (Syuji Yagi)		1923  Kanto earthquake
1926 (first year of the Showa Era)	1926 (first year of the Showa era) patent for phototelegraphic method registered (xxxx)	1928	
		penicilin (Fleming)	
1930	1934 (year 9 of the Showa Era) Old Complex of the Patent Office completed	1935	
		nylon (karohzasu)	
1940		1941	1941
		polyester (Uinfuirudo)	Pacific war breaks out

			1945
			Pacific war ends
1950	1950 (year 25 of the Showa Era) electrostatic induction field effect transistor patent registered (Junichi Nishizawa)		1952
			NHK broadcasts start (Your Name)
	1959 (year 34 of the Showa Era) Patent Law, New Utility Model Law, Design Law, revised Trademark Law		1958
			the 10,000 yen note is issued
1960	1963 (year 38 of the Showa era) patent for synthetic leather registered (Fukujima)		1964
			Tokyo Olympics
			traffic on Tokaido Shinkansen Line starts
	1967 (year 42 of the Showa Era) patent for color image reception tube using the trinitron method registered (Susumu Yoshida and 2 others)	1967	
			World Intellectual Property Organization (WIPO) founded
1970			1970
			Osaka International Expo
		1973	1972
	1975 (year 50 of the Showa Era) Japan joins the World Intellectual Property Right Organization	European Patent Treaty	Okinawa returned
	1978 (year 60 of the Showa Era) international applications based on the Patent Cooperation Treaty start		
1980	1985 (year 60 of the Showa Era) 100 years of the industrial property rights system		1982
			high-speed traffic starts on the Shinkansen line
1989	1989 (first year of the Heisei Era) the Present Patent Office Complex completed		1988
(first year of the Heisei Era)			Seikan tunnel operations start
1990	1990 (year 2 of the Heisei Era) first electronic applications in the world are accepted		

1992 (year 4 of the Heisei Era)  
system for registration of  
service marks introduced

1994 (year 7 of the Heisei Era)  
system for unexamined new  
utility models introduced

1995 (year 7 of the Heisei Era)  
applications for patents are  
now accepted in English

Patent number 2 million issued

1996 (year 8 of the Heisei Era) 1996  
system for filing objections  
after a patent has been granted  
is introduced

1992

Yamagata Shinkansen line starts  
operations

1995

Meeting of Asian Pacific  
Economic Council (APEC)  
opened in Osaka

World Trade Organization  
(WTO) founded

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## Ten Japanese Great Inventors

### Introduction

The system of industrial rights in Japan, founded a hundred years ago, celebrated 100 years of its existence on April 18, 1985. During this period, the system played a very important role in the industrial development of Japan, which was accelerated by this system for technological development. Up until the present time, the rights to some 2 million and five hundred thousand patents and new utility models have been granted to investors in Japan. This enormous development of patents and utility models was important not only for Japan, but also its contribution to economic development worldwide was not insignificant.

That is why we thought that the best way to celebrate this occasion of the one hundred year anniversary of our system of industrial property rights would be by selecting from inventors and authors of utility models those inventors whose contributions were particularly memorable and of historical significance. That is why we asked professor Seiji Kaya from the Tokyo University to select 10 persons known for their scholarly knowledge and experience. After these 10 inventors were selected, a relief was created to commemorate their achievements and introduce them to Japanese people. This will serve not only to commemorate the successes of these award winning inventors for eternity, but at the same time, we hope that it will also play a role in further promoting the technological progress in our country, through the inspiration provided by the ingenuity of our technicians and researchers who have contributed so much to the development of current technology.

April 18, 1985

**Sakichi Toyoda**



Patent Number 1195  
Wooden Weaving Machine Driven by Human Power

Sakichi Toyoda was born in year 3 of the Keio Era (1867) in Totomikuni (presently Shizuoka Prefecture).

The Patent Monopoly Act was proclaimed when he was 18 years old. Because he was very interested in national issues and wanted to dedicate his efforts to these issues, he decided that he would "dedicate his life's work to inventions", and started wrestling with the problem of how to improve weaving machines and similar devices. When he saw in year 23 of the Meiji Era at the Third Exhibition for Encouragement of Industry, which was held in Ueno, Tokyo, that most of the machines were manufactured abroad, this increased his determination to make a contribution to a gradual development of our domestic research and development. He perfected the design of a wooden weaving machined driven by human power, a design which greatly increase the quality of the product as well as the productivity of a machine creating weaving patterns, and which was widely used at the time. He obtained patent rights for the first time in (to patent number 1195, in year 24 of the Meiji Era).

In year 27 of the Meiji Era, he invented a yarn reel returning machine, which was easy to use and very efficient. With his successful background in this trade and industry, he started developing a power-driven weaving machine and completed the design of this wooden weaving machine driven by human power in 3 years. He obtained the patent rights to his design in the following year. This was the first ever power-driven weaving apparatus that was invented in Japan. He continued the development of machines also in the following year, and in year 36 of the Meiji Era he completed the epoch making design of an automatic shuttle apparatus completing the automation of the weft design. This was the first invention of an automatic weaving machine. He still continued improving the design of automatic weaving machines even after that, and obtained the rights to 84 patents and 35 new utility models. He was awarded the Blue Ribbon Award in year 45 of the Meiji Era and the Order of Merit of the Third Class in year 2 of the Showa Era. He died in year 5 of the Showa Era (1930).



**Kokichi Mikimoto**

Patent Number 2670  
Cultured Pearls

Kokichi Mikimoto was born in year 5 of the Ansei Era (1858) in Shimakoku (at the present in Chie prefecture). Filled with an entrepreneurial spirit, he came to Tokyo in year 11 of the Meiji Era with a desire to found a business. At that time, he was able to study and observe buying and selling of pearls in Yokohama, which was his first encounter with pearls. In order to obtain pearl oysters, he started cultivating them in year 21 of the Meiji Era in Eiran Bay. In year 23 of the Meiji Era he saw at the National Exhibit for Promotion of Industry how objects can be inserted into Aikoya oysters and other pearl oysters to create cultured pearls. He already wanted to start cultivating cultured pearls and at this exhibition he met an examiner of exhibits who told him that could perhaps learn how to cultivate pearls from oysters a professor at the Imperial University. During the same year, he started studying cultivation of pearls and at the end of his study after four years, in year 26 of the Meiji Era, he was able to successfully grow and produce cultured pearls from a protuberance inside the shell of an oyster, for which he obtained his first patent (patent number 2670, in year 29 of the Meiji Era). This semicircular cultured pearls were slightly different from common pearls, but it they were well received and widely used as a decorative object. After this invention, he continued to examine methods aimed at creating a circular cultured pearl, and in year 41 of the Meiji Era he obtained the patent rights to his mother of pearl property cultivating method. Spurred by this invention, the pearl cultivating business in Japan has grown enormously to become one of the industries of the country. He also obtained patents for other inventions related to cultivation of pearl producing oysters, etc. He was awarded the Order of Merit of the First Class in year 29 of the Showa Era. He died in year 29 of the Showa Era (1954).



**Jokichi Takamine**

Patent Number 4785  
Adrenaline

Jokichi Takamine was born in the first year of the Ansei Era (1854) in Etsu Chugoku (presently in prefecture Toyama). In year 12 of the Meiji Era, he graduated from Engineering Faculty (presently the Engineering Faculty of the Tokyo University) in applied sciences, and the next year he went on a study stay to England. After he came back to Japan in year 16 of the Meiji Era, he was employed by the Ministry of Agriculture and Commerce. Because he was interested in the patent system, he stopped in Washington to examine the American system when he was dispatched to America. After that he was appointed by the Patent Office Commissioner Korekiyo Takahashi to the post of Vice Commissioner of the Patent Office in year 19 of the Meiji Era. In addition to that, he was also working at the Ministry of Agriculture and Commerce, where he was participating in a number of research projects relating to brewing processes, the manufacture of Japanese paper, and of other products. Although he retired from the Ministry of Agriculture and Commerce in year 21 of the Meiji Era, he passionately continued his research activities.

In year 23 of the Meiji Era he successfully improved the brewing methods using original yeast and obtained the patent rights to his method. These brewing methods were then transplanted to America when American brewers also started using these methods. A method to manufacture diastase, which is a digestive agent, was invented in America, for which he obtained a great number of patents. At the same time, he also studied the effect of adrenaline, which is a hormone secreted by medulla, which was studied in many places in the world. Although the effect of this hormone was clear, it was necessary to isolate it in a pure form in order to make it possible to use this hormone for clinical purposes.

After he was asked by an American company manufacturing pharmaceutical to isolate adrenaline, he successfully developed a method to manufacture pure adrenaline through separation of crystals with several creative methods which he created by reducing atmospheric pressure without increasing the temperature of the solution while eliminating the solvent. He obtained the patent rights to the manufacturing method that he invented (patent number 4785, year 34 of the Meiji Era).

This method represented the first crystallization of a hormone, and it was valued very highly as it represented an important contribution to manufacturing of daily pharmaceutical products which are necessary for treatment. He received the Order of Merit of the Third Class Order in year 11 of the Showa Era. He died in year 11 of the Showa Era (1922).



**Kikunae Ikeda**

Patent Number 14805  
Sodium Glutamate

Kikunae Ikeda was born in the first year of the Genji Era (1864) in Kyoto. In year 22 of the Meiji Era, he graduated from the Science Faculty of the Tokyo Imperial University, and from year 32 of the Meiji Era he spent two years as an exchange student abroad in Germany. After his return back to Japan, he was employed as a professor by the Tokyo Imperial University. He was engaged in special research activities at the Physics Faculty. He tried to create more interest in applied research which would be linked directly to social progress and to an improved standard of living for Japanese people, which among other things motivated his research of the deliciousness of seaweed called konbu in Japanese. Because he thought that it should be possible to come to an understanding of the condiment representing the component which makes konbu so delicious in order to manufacture it for industrial purposes, he pursued his research of this subject and the result of his research activities was the discovery that this component is sodium glutamate (monosodium glutamate). He obtained the patent rights to the manufacture of sodium glutamate (patent number 14805, year 41 of the Meiji Era).



Sodium glutamate can be used for commercial purposes because of the way it works in foodstuffs, and it is widely sold as a condiment. Because sodium glutamate imparts a special flavor to foodstuffs and helps to preserve stable characteristics, it is widely used as an additive which enriched the cooking style of Japanese people. In addition, it is also widely accepted all over the world and used as a flavor enhancing condiment. Even after retiring from the Tokyo Imperial University in year 12 of the Taisho Era, Kikunae Ikeda continued his passionate research of methods aimed at completing the technology to manufacture sodium glutamate which is produced mainly from the sugar beat waste liquor which can be used as a raw material for manufacturing sodium glutamate. He died in year 11 of the Showa Era (1936).



**Umetaro Suzuki**

Patent Number 20785  
Vitamin B1

Umetaro Suzuki was born in year 7 of the Meiji Era (1874) in Shizuoka prefecture. After graduating from the Faculty of Agricultural Technology of the Tokyo Imperial University, he became a postgraduate student and attained the title of doctor of agricultural sciences in year 34 of the Meiji Era. In the same year he went to study abroad in Switzerland and then in Germany, where he studied organic chemistry. He returned to Japan in year 39 of the Meiji Era. He then became professor at the Faculty of Agricultural Technology of the Tokyo Imperial University next year, in the 40 of the Meiji Era. At the same time, he noticed that there were many beriberi patients among the soldiers in Japan, and also people who came to Tokyo from the provinces became ill with beriberi and many of them died. The government established a special commission for research of beriberi as it was necessary to determine the measures that could be adopted to cope with this emergency. That is why Umetaro Suzuki started studying this problem in order to explain the cause of the disease. He confirmed through experiments that a component facilitating healing was contained in rice bran. He explained the effect of this effective component, called "beriberi acid" (which is called vitamin B1 today), successfully isolated "beriberi acid" from rice bran, and received the patent rights to his invention (patent number 20785 in year 44 of the Meiji Era).

This property was then used for the first time worldwide for extraction of vitamins. In addition, he also confirmed through experiments with animals that "beriberi acid" is an indispensable nutritional component, thus founding the basis for the vitamin science of today. He was decorated with the Culture Order in year 18 of the Showa Era, and also with the First Class Order of the Sacred Treasure. He died in year 18 of the Showa Era.



**Kyota Sugimoto**

Patent Number 27877  
Typewriter for Japanese Language

Kyota Sugimoto was born in Okayama prefecture in year 15 (1882) of the Meiji Era. Because of his desire to become a specialist in communication technology, he entered the Training Institute for Communication Technology in Osaka, and completed his studies at the training institute in year 33 of the Meiji Era. At that time, typewriters were already commonly used in Europe and America, but no practical type of typewriter has been developed yet for the Japanese language, which would make it possible to write Japanese without using a pen.

Because a typewriter which could be used to type Japanese would be very useful if it could be used with a language using complex and difficult characters (kanji), unlike the simple alphabet used in Europe and America, people were hoping that such a typewriter would be invented. After he completed his studies at the training institute, Kyota Sugimoto started working in the letterpress technology field, and then turned his attention to development of a typewriter for text in Japanese. At that time, typewriters which could be used to write Japanese utilized characters arranged either on a cylindrical surface or on an arc-shaped surface, but only a few characters were available. He invented a typewriter for Japanese text which is based on an ingenious construction using a cylindrical tool supporting the paper part and a character part moving forward and backward, with a character carriage moving from the left to the right. He obtained the patent rights to the Japanese typewriter that he invented (patent number 27877, in year 4 of the Showa Era).

This invention amounted to an epoch making design on which current typewriters for Japanese are based, contributing greatly to efficient processing of documents and creation of different types of documents. In year 28 of the Showa Era he was decorated with the Blue Ribbon Award, and in year 40 of the Showa Era he received the Small Asahi Ribbon Award. He died in year 47 of the Showa Era (1972).



**Kotaro Honda**

Patent Number 32234  
KS Steel

Kotaro Honda was born in year 3 of the Meiji Era (1870) in Aichi prefecture. He started studying physics at the Science Faculty of the Tokyo Imperial University, and later became interested in the mechanism of magnetic attraction under the guidance of scholars specializing in iron and steel and performing experiments with magnets under the leadership of professor Hantaro Nagaoka from the Department of Physics. He graduated from the same university in year 30 of the Meiji Era and became a postgraduate student engaged in research activities at the Physics Institute where he attained the rank of doctor of science. In year 40 of the Meiji Era, he studied in Germany, and after his return to Japan, he started teaching at the Tohoku Imperial University of Sciences which was then established. When World War I broke out, imports of magnetic steels were interrupted which is why independent development of this material in Japan was urged as very necessary. He invented KS steel which has a very strong magnetic resistance and serves as a hardened permanent magnetic steel, three times more resistant to magnetism than existing tungsten steel. He obtained the patent rights to his invention of KS steel (patent number 32234, in year 7 of the Showa Era).

The name KS steel, which was given to a type of magnet, was created from the first letters of the name of Kichiei Sumitomo. In addition, in year 8 of the Showa Era, he also invented a new type of KS steel (NKS steel), which is an alloy of the strongest permanent magnets in the world whose magnetic resistance is several times higher than that of the initial KS steel. In year 6 of the Showa Era, he became General Director of the Tohoku Imperial University, and in year 9 of the Showa Era he became also the director of the Tokyo University of Sciences. He was awarded the Culture Award in year 2 of the Showa Era and the Big Asahi Ribbon of the First Class in year 29 of the Showa Era. He died in year 29 of the Showa Era (1954).



**Hidetsugu Yagi**

Patent Number 69115  
Yagi Antenna

Hidetsugu Yagi was born in year 19 of the Meiji Era (1886) in Osaka prefecture. After he graduated from the Department of Electronic Engineering of the Tokyo Imperial University, Faculty of Sciences, in year 42 of the Meiji Era, he studied from year 2 of the Taisho Era in England, America, and Germany, and in Germany he continued research of generation of electric waves used for wireless communication. He returned to Japan in year 5 of the Showa Era. The topic of wireless communication which he pursued during his studies abroad would become a research theme to which he would dedicate his entire life. In year 8 of the Taisho Era he became a professor at the Faculty of Engineering Sciences of the Tokyo Imperial University which was then established and during the same year he also attained the title of doctor of engineering sciences. He was able to foresee that short waves or ultra short waves would become the main element for communication using radio waves and he aimed his research in this direction. This resulted in the publication of his papers called "Generation of Short Wavelength Waves", "Measuring Specific Wavelengths with Short Wavelengths", and other papers. The so called Yagi antenna is based on these published articles. He invented it as a an antenna using his "method for directional electric waves". He obtained the patent rights to his invention (patent number 69115, issued in the year 15 of the Showa Era).

Because this invention uses a very simple construction, it enabled directional communication with electric waves. This construction is still used basically in any type of antenna which is used today for ultra short or extremely short waves. In year 17 of the Showa Era he became Director of the Industrial Sciences Faculty of the Tokyo University, in year 19 of the Showa Era he became General Director of the Technology Institute, and in year 21 of the Showa Era also General Director of the Osaka Imperial University. He was decorated with the Blue Ribbon Award in year 26 of the Showa Era, with the Culture Award in year 31 of the Showa Era, and in year 51 of the Showa Era with the Large Asahi Award of the First Class. He died in year 51 of the Showa Era (1976).

**Yasujiro Niwa**



Patent Number 84722  
Phototelegraphic Method

Yasujiro Niwa was born in year 26 of the Meiji Era (1893) in Chie prefecture. He graduated from the Department of Electronic Engineering at the Faculty of Sciences of the Tokyo University in year 5 of the Taisho Era and then worked at the Research Institute for Electronics of the Ministry of Communications. Because his activities at the Research Institute for Electronics confirmed to him the importance of private enterprise, he apologized to the Ministry of Communications and started working for a privately owned company. At that time, the communication technology in Japan was based mainly on technology which was introduced from Europe and America. Because he felt strongly that it was important to pursue independent research and development in Japan, he went to study the research situation in Europe and America in year 13 of the Taisho Era. After his return to Japan, he continued his research in the field of transmission of images and invented a phototelegraphic method based on transmission through cables. He received patent rights to his invention (patent number 84722, in year 4 of the Showa Era).

This device for phototelegraphic transmission was not only very easy to use, but it also made it possible to completely recreate images with excellent results so that it could be used for the first time as a broadcasting device for broadcast of news and photographs during the coronation ceremony of the Japanese emperor. This successful use represented a great stimulus for the communication industry in Japan thanks to the creativity and ingenuity which leads to practical applications. After perfecting the cable phototelegraphic transmission method, Yasujiro Niwa turned his attention to research of transmission of images through radio and in year 4 of the Showa Era, he successfully tested wireless transmission of images over large distances in Tokyo. In year 24 of the Showa Era he became the Director of the Department of Electronic Engineering of the Tokyo University, in year 34 of the Showa Era he was awarded the Order of Cultural Merits, and in year 46 of the Showa Era he received the Order of Merit of the First Class. He died in year 50 of the Showa Era (1975).

**Tokuhichi Mishima**



Patent Number 96371  
MKM Magnetic Steel

Tokuhichi Mishima was born in Hyogo prefecture in year 26 of the Meiji Era (1893). He graduated from the Metallurgy Department of the Faculty of Engineering of the Tokyo Imperial University in year 9 of the Showa Era. After graduating, he devoted himself to research in the field of metallurgy sciences in metallurgy laboratory. When he was trying to explain the theory of magnetism in magnetic steel, he discovered that the magnetic characteristics are restored when aluminum is added to non-magnetic nickel steel. During the progress of his research he invented MK magnetic steel which has excellent stability and is more resistant than conventional hardened steels. He received patent rights to his invention (patent number 96371, in year 7 of the Showa Era).

This magnetic steel represented a revolutionary product in the history of permanent magnets, and it became the basis for magnets Alnico which are still widely used. MK magnetic steel is cheaper than magnetic materials which were used up until then, and it is widely utilized in magnets used in dynamos, communication equipment, radios, speakers and other types of popular electronic products and other manufactured products, which represented a great contribution to consequent technological development. The name of MK steel was created from the first letters of the name of the beloved house where Mitsujima was born and raised (Mitsujima ka). He became professor at the Tokyo Imperial University in year 13 of the Showa Era. He was decorated with the Blue Ribbon Award in year 25, and with the Large Asahi Ribbon Award in year 50 of the Showa Era. He died in year 50 of the Showa Era (1975).

#### Members of the Memorial Committee for 100 Years of the System of Industrial Property Rights

Committee Chairman	Keijiro Murata	Minister of the Ministry of International Trade and Industry
Member	Shoso Shimosato	Officer at the Office for Science and Technology
"	Yoshihiro Inayama	President of the Keizai Dantai Association, Director of the AIPPI Japan Association
"	Hiroshi Ifuka	President of the Patent Association
"	Sadakazu Nagamura	Director of the Japan Center for Patent Information
"	Haruo Suzuki	President of the Japan Patent Association
"	Masatsugu Suzuki	Director of the Association of Patent Attorneys
"	Manabu Shiga	Patent Office Commissioner

The above named committee was established for a number of activities related to commemoration of 100 years of the industrial property right system in Japan.

