

Patent and Utility Model

On January 30, 2009, the revised Korean Patent Act and Utility Model Act were promulgated, and the summarized contents of the revisions therein are stated as follows:

1. Relaxation of Amendment Restrictions - Applicable to Amendments made on or after July 1, 2009

Currently, after a final notice of an Office Action/Final Rejection is issued, an amendment for narrowing the scope of claims is not acceptable, if scope of the claims is modified substantially as a result thereof. And when a final rejection is issued on the grounds that an amendment after a notice of an Office Action that adds a new matter, it is not possible to delete the new matter to restore the earlier claims in some cases.

Under the revised Patent Act effective as of July 1, 2009, however, an amendment for narrowing the scope of claims being made after a final notice of an Office Action/Final Rejection is issued will be accepted without the restriction that considers the issue as to whether such an amendment substantially changes the scope of claims. When a final rejection is issued on the grounds of adding new matter, it is possible to delete the new matter to restore the earlier claims.

2. Revision of Reconsideration System -Applicable to Applications filed on or after July 1, 2009

Currently, when a Final Rejection is issued, an appeal against the Final Rejection must be filed for Reconsideration by the Examiner who issued the Final Rejection prior to a normal Appeal Procedure.

Under the revised Patent Act effective as of July 1, 2009, Reconsideration can be requested simultaneously with the filing of an amendment without filing an appeal against the final rejection.

3. Extension of Term for Filing a Divisional Application - Applicable to Divisional Applications based on Applications filed on or after July 1, 2009

Currently, there is no opportunity to file a divisional application after Reconsideration.

Under the revised Patent Act effective as of July 1, 2009, filing a divisional application after an Examiner's Final Decision by Reconsideration (of the revised Reconsideration System) will be possible before or on filing an appeal against Examiner's Final Decision to maintain final rejection.

4. Introduction of Examiner's Ex-Officio Correction System - Applicable to Decisions to Grant a patent on or after July 1, 2009

Currently, if an Examiner finds minor defective descriptions on the specification and claims such as apparent clerical errors, inconsistent reference and etc., when he is about to make a Decision to Grant a patent, he issues an Office Action and makes a Decision to Grant a patent after the applicant corrects defective descriptions.

Under the revised Patent Act effective as of July 1, 2009, for such minor defective descriptions, Examiner corrects ex officio and Decision to Grant a patent with Notification for confirmation on the correction.

5. Introduction of Prorated Late Payment of Annuities - Applicable to Late Payment paid on or after July 1, 2009

Currently, when the payment of the issuance fees is late, the issuance fee doubles regardless of the number of days past the due date.

Under the revised Patent Act effective as of July 1, 2009, a late fee is prorated by the number of days past the due date and not exceeding twice the original issuance fee.

6. Exceptions to PCT Applications Filed in Korean Language - Applicable to PCT applications filed in Korean language on or after January 1, 2009

Since the Korean language has just been adopted as a PCT international publication language, a Korean national phase application is deemed to be laid-open and the right to claim compensation related to a Korean national phase application is endowed when the PCT international publication in Korean language is published.

Design

Prearrangement of adopting an international design application system in Korea

The Korean Intellectual Property Office (KIPO) has agreed to pursue being part of the New Hague Accord and Locarno Agreement in year 2009 and 2011 and is currently preparing the revisions to the local design acts to adopt an international filing system for design applications in Korea.

Trademark

1. Adoption of an expedited examination services for trademarks - Effective as of January 1, 2009

- a. When it is obvious that an applicant is using or planning to use his or her trademark on all of the designated goods or services;
- b. When the third party(s) who is not applicant is acknowledged as using trademark filed for registration without any justifiable reason

In the event that one requests an expedited examination services, it is estimated that the examination pendency period will be shortened to 4 to 6 months from 8 months to 1 year.

2. Regulation rejecting the registration of trademark applications similar to invalidated trademarks ruled as unconstitutional as of April 30, 2009

In accordance with article 71-3 of the Korean trademark Act, when a trademark registration is invalidated conclusively, such trademark is considered as being non-existent from the beginning. (Retroactive effect of invalidation decision on the trademark)

However, according to the regulation set forth in the bracket of Korean Trademark Act Article 7-3 effective by April 30, 2009, although an invalidation decision on a previously registered trademark was final, no trademarks identical or similar to such mark could proceed to registration. (Exception of the retroactive effect)

The above regulation, if acknowledging the retroactive effect of invalidation decision unlimitedly, results in an unreasonable situation that the possibility of registration of post filed trademarks is subject to the point of time when an invalidation decision on a previously registered mark is rendered and therefore makes the relation of a trademark registration unstable. As such, the above regulation purports to pursue consistency.

However, such regulation also results in a circumstance under which an applicant of a post filed trademark is forced to proceed with a re-filing on account of a previously filed trademark with grounds of invalidation, thereby being in violation of the applicant's property right and therefore being unconstitutional sentenced as of April 30th, 2009 by the Constitutional Court of Korea. Due to the ruling from the Constitutional Court, the regulation concerned is no longer with any legal effect.

3. Trademark Registrations in Korea reach a million

The total number of trademarks registered before the Korean Intellectual Property Office (KIPO) in accordance with the trademark acts enacted since the foundation of the Republic of Korea has reached a million in 57 years.

When it comes to the types of marks, trademarks account for 790,000 cases; service marks account for 180,000 cases; and business emblems account for 30,000 cases. Foreign registrations consist of 23 percent. Of all the foreign registrations, U.S. marks account for 79,000 cases, followed by Japanese and German marks accounting for 57, 000 and 17,000 cases respectively.

In particular, nearly half the trademarks have been registered for the past 10 years in Korea.

Copyright

Revision of Copyright Act:

Effective as of July 23, 2009

- 1) Integration of Computer Program Protection Act and Copyright Act
 - 2) Establishment of provision of protection for computer program within Copyright Act
 - 3) Strengthening Preventive Methods of Illegal Reproduction on the Internet
- Temporarily close down within 6 months of individual ID to those repeatedly transmitting illegally reproduced work on the Internet;
 - Halting community board services posting illegally transmitted work

Effective as of September 26, 2009

Paying financial compensation to music producers and musicians for work based on musical albums for sales

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