



## Inventions Capable of Being Used for Industrial Purposes

The requisite patentability element of invention for industrial use can be divided into invention and industrial use.

### 1. Invention

(1) An invention refers to:

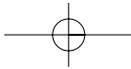
- ① An invention, as used in the Patent Act, refers to a highly-advanced technical creation using the law of nature. An invention must satisfy this requirement in order to satisfy the definitional requirements of the Patent Act.
- ② The term, highly advance, is used to make a general distinction between a device covered in the Utility Model Act and an invention covered in the Patent Act. In practice, highly advance is not considered when evaluating the element of invention.

(2) Matters not considered an invention

There are difficulties in determining whether an item is an invention. Generally, an item will be considered an invention if it does not fall under the items not considered an invention.

① Law of nature.

The law of nature already exists. Because an invention is a technical creation using the law of nature, such laws of nature as thermodynamics, energy presentation, etc. cannot constitute an invention.



② Discovery.

Discovery is an act of finding something that already exists in nature, and as such, it is not a creation. Since an invention must be a creation, a discovery cannot constitute an invention. However, an artificial means of separating the components of a certain natural substance would constitute an invention, and the separated chemical substance or microorganism can also constitute an invention.

③ Violation of the law of nature.

Because an invention must utilize the law of nature, if an item violates the law of nature, it cannot be an invention. Accordingly, if any portion of a patent application violates the law of nature, the alleged invention covered thereunder will not be recognized as an invention.

④ Non-utilization of the law of nature.

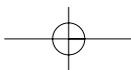
The item covered in a patent application will not be deemed an invention if it utilized something other than the law of nature, such as economic principles, mathematical formula, artificial rules (rules of a game, etc.), mental activity of a man (business plan, etc.). In this case, the determination of the use of the law of nature is made based on the totality of the disclosures made in the patent application. Where an item covered therein generally utilizes the law of nature, it will constitute an invention even if a portion thereof comprises of such things as a mathematical formula.

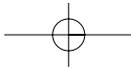
⑤ Function.

A function is achieved from one's own practice and discipline, and as such, it lacks the objective aspect of knowledge that can be transferred to a third party. Accordingly, a function cannot constitute an invention.

⑥ Simple information.

An item will not constitute an invention if it is only characterized by information and its sole purpose is to disclose information (audio, CD, list of computer programs, etc.). However, if the information contains a new technical component, such things as the disclosure of information, means of disclosure of information and method of disclosure of information can constitute an invention.





⑦ Artistic creation.

An aesthetic creation possesses an additional characteristic that is apart from its technical aspect, and accordingly, determination of whether it is an invention can only be made by subjective standards. An artistic impression thus is not an invention, and thus, is not patentable. However, if the artistic impression is one which is created by a technical component or other technical means, such a way of creating the artistic impression can constitute an invention.

⑧ Incomplete invention.

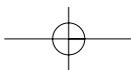
If the specific means with which to achieve the object of the invention are lacking or if the object of the invention clearly will not be achieved based on the available information, it will not constitute an invention.

**2. If an invention cannot be used for an industrial purpose, it is not patentable.**

If an invention cannot be used for an industrial purpose, it cannot be patented. Here, the term, industrial purpose, is interpreted as encompassing all activities which utilize actual and practical technology. It is a concept which is the most comprehensive and broad. The following are the types of inventions that cannot be used for industrial purposes:

(1) Medical activity

- ① It is well-settled that an invention as to the means to conduct surgery, treat or diagnose a certain disease cannot constitute an invention. However, a medical equipment, medicine or a product used in such means can constitute an invention.
- ② Means to treat or dispose of blood, urine, skin, scalp, etc. extracted from a person or means to collect various data from analysis of such items are considered items capable of being used for industrial purposes. Even in these cases, however, such treatment methods as blood transfusion in which the extracted items are intended to be returned to the originating person cannot be an invention as it constitutes a medical activity.
- ③ Even if an invention relates to the method of conducting



surgery, treating or diagnosing a person, it can constitute an invention if the scope of claims of the patent specifically limits the application of said invention only to animals.

(2) An invention incapable of being used as a business

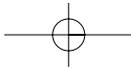
An invention which can only be used personally, experimentally or academically is not an invention that is capable of being used for industrial purposes. However, even such inventions can constitute an invention capable of being used for an industrial purpose if it was capable of sale or business. The Patent Act provides that the patentee holds an exclusive right to practice the patented invention as a business. As such, an invention is not patentable if it did not enable one to engage in a business. Thus, an invention which can only be used personally, experimentally or academically, but otherwise has no other applicability, is not an invention capable of being used for industrial purposes.

(3) An invention which clearly cannot be practiced in actuality

Even if the practice of an invention is possible theoretically, an invention cannot be considered capable of being used for an industrial purpose if it is clear that it cannot actually be practiced. For example, an invention relating to the method of wrapping the surface of the earth in its entirety with an absorbent plastic film in order to prevent the increasing damages by ultraviolet rays due to the thinning of the ozone layer would be such an invention.

### **3. The differences between an invention subject to the grant of a patent registration and an invention subject to the grant of a utility model registration**

The Patent Act provides that an invention capable of being used for an industrial purpose can be registered as a patent. Accordingly, all things (including a composition) as well as methods can be patentable. On the other hand, the Utility Model Act provides that a device relating to the shape, structure or combination of a product capable of being used for industrial purposes can be registered as a utility model. As such, that which can be registered as a utility model is limited to a device relating to the



shape, structure or combination of a product.

(1) There is no definition of a product in the Utility Model Act. However, this term is generally interpreted as one which has a specific shape, is subject to general commercial transactions, can be readily transported and has a specific utility.

(2) That which can be registered as a utility model is a device, not the product itself.

(3) Shape, structure or combination of a product can be briefly explained as follows:

① Shape:

It refers to the outer appearance or form as expressed by lines and surfaces. Form of a cam is considered to be a shape.

② Structure:

This term refers to a three-dimensional configuration. It is expressed in terms of not only its outer appearance, but also its plain view, elevated view, side view and cross-sectional view.

③ Combination:

It refers to a situation where a product is comprised of two or more separable elements, which may possess independent structure and shape, but which functionally combines to effect a desired performance. A typical case would be a nut and a bolt.

