

ENFORCEMENT DECREE OF THE DESIGN PROTECTION ACT

Wholly Amended by Presidential Decree No. 21581, Jun. 30, 2009

Amended by Presidential Decree No. 22788, Mar. 30, 2011

Presidential Decree No. 23488, Jan. 6, 2012

Presidential Decree No. 23519, Jan. 17, 2012

Article 1 (Purpose)

The purpose of this Decree is to provide for matters delegated by the Design Protection Act and matters necessary for the implementation thereof.

Article 2 (Notification of Applications Not Laid Open)

When the Commissioner of the Korean Intellectual Property Office does not lay open applications for design registration under the proviso to Article 23-2 (2) of the Design Protection Act (hereinafter referred to as the "Act"), he/she shall notify applicants for design registration of the purposes of and reasons for not laying open such applications.

Article 3 (Criteria for Designation of Specialized Organizations)

(1) The Commissioner of the Korean Intellectual Property Office may designate corporations which meet each of the following requirements under Article 25-2 (3) of the Act as specialized organizations under Article 25-2 (3) of the Act (hereinafter referred to as "specialized organizations"): Provided, That this shall not apply to a corporation for whom two years have not passed since the revocation of the designation as a specialized organization under Article 25-3 (1) 1, or to a corporation to whom a person who has been an executive of a corporation at the time of the revocation of such designation belongs and for whom two years have not passed since the date of such revocation: *<Amended by Presidential Decree No. 23519, Jan. 17, 2012>*

1. Organizations with equipment necessary for searching prior designs, classifying design articles, or arranging and collecting materials for design examination;
 2. Organizations with human resources and teams exclusively responsible for searching prior designs, classifying design articles, or arranging and collecting materials for design examination;
 3. Organizations without executives and employees who concurrently perform duties referred to in Article 2 of the Patent Attorney Act in other organizations;
 4. Organizations with security systems for facilities or equipment, and executives and employees performing duties of searching prior designs, classifying design articles, or arranging and collecting materials for design examination.
- (2) When specialized organizations designated under paragraph (1) perform duties, other than searching prior designs, classifying design articles or arranging and collecting materials for design examination, they shall ensure that the performance of such duties does not cause unfairness in searching prior designs, classifying design articles, or arranging and collecting materials for design examination.
- (3) Anyone who intends to be designated as a specialized organization shall submit a written application for designation as a specialized organization, along with documents proving the fact that he/she satisfies the requirements of each subparagraph of paragraph (1) to the Commissioner of the Korean Intellectual Property Office.
- (4) Detailed criteria for securing equipment, human resources and teams referred to in each subparagraph of paragraph (1), concrete standards for security systems and matters necessary for the operation of specialized organizations shall be determined and publicized by the Commissioner of the Korean Intellectual Property Office.

Article 4 (Commissioning, etc of Search of Prior Designs)

- (1) The Commissioner of the Korean Intellectual Property Office may

commission specialized organizations to perform each of the following duties under Article 25-2 (1) of the Act:

1. When searching prior designs or classifying design articles is deemed necessary for applications for design registration: Duties of searching prior designs or classifying design articles;
 2. When it is deemed necessary for examiners to efficiently examine applications for design registration: Duties of arranging and collecting materials for design examination.
- (2) When the heads of specialized organizations are commissioned by the Commissioner of the Korean Intellectual Property Office to search prior designs, classify design articles, or arrange and collect materials for design examination under paragraph (1), they shall notify the Commissioner of the Korean Intellectual Property Office of the results of the search of prior designs, classification of design articles or arrangement and collection of materials for design examination, without delay.
- (3) When the Commissioner of the Korean Intellectual Property Office deems that notification of the results referred to in paragraph (2) only is not sufficient to understand prior designs, classification of design articles or arrangement and collection of materials for design examination with regard to the relevant application for design registration, he/she may determine the scope of search, etc., and then re-commission the heads of such specialized organizations to search prior designs, classify design articles or arrange and collect materials for design examination.
- (4) When tasks are re-commissioned under paragraph (3), the provisions of paragraph (2) shall apply *mutatis mutandis*.

Article 5 (Objects of Accelerated Examination)

"Design registration application prescribed by Presidential Decree" in subparagraph 2 of Article 25-4 of the Act means an application for design registration determined by the Commissioner of the Korean Intellectual Property Office, which falls under any of the following subparagraphs:

1. Applications for design registration in the field of defense industry;

2. Applications for design registration directly related to green technology [referring to technology to minimize emission of green-house gases or pollutants by saving energy and resources and efficiently utilizing them, such as technology to reduce greenhouse gases, technology to raise efficiency in using energy, clean production technology, clean energy technology, technology for resources circulation and environmentally friendly technology (including related convergent technology)];
3. Applications for design registration directly related to the promotion of exportation;
4. Applications for design registration related to the duties of the State or local governments (including applications for design registration with regard to the duties of national or public schools under the Higher Education Act, which are filed by the teams exclusively responsible for technology transfer and commercialization that have been established in national or public schools under Article 11 (1) of the Technology Transfer and Commercialization Promotion Act);
5. Applications for design registration by enterprises which have been confirmed as venture businesses under Article 25 of the Act on Special Measures for the Promotion of Venture Businesses;
6. Applications for design registration by enterprises selected as technology-innovative small and medium enterprises under Article 15 of the Technical Renovation of Small and Medium Enterprises Act;
7. Applications for design registration with regard to the outcomes of quality certification projects or projects for supporting development of new technology by the State;
8. Applications for design registration that would be the basis of a priority claim under a treaty (limited to cases where a design-related procedure is under way in a foreign intellectual property office by claiming a right of priority based on the relevant application for design registration);
9. In cases where an applicant for design registration has been working

- or is preparing to work a design for which design registration has been applied, the relevant application for design registration;
10. Applications for design registration directly related to electronic commerce;
 11. Applications for design registration for which the Commissioner of the Korean Intellectual Property Office has agreed with the head of a foreign intellectual property office to make an accelerated examination;
 12. In cases where a person who intends to apply for accelerated examination commissions a specialized organization to search prior designs with regard to the design for which design registration has been applied and requests such specialized organization to notify the Commissioner of the Korean Intellectual Property Office of the results thereof, the relevant application for design registration.

Article 6 (Decisions on Accelerated Examination)

- (1) Anyone who intends to apply for accelerated examination shall submit a written application for accelerated examination determined by Ordinance of the Ministry of Knowledge Economy to the Commissioner of the Korean Intellectual Property Office.
- (2) The Commissioner of the Korean Intellectual Property Office shall decide on whether to conduct an accelerated examination when an application for accelerated examination has been filed under paragraph (1).
- (3) Matters necessary for deciding on whether to conduct an accelerated examination under paragraph (2) shall be determined and publicized by the Commissioner of the Korean Intellectual Property Office.

Article 7 (Eligibility Requirements for Examiners and Administrative Patent Judges)

- (1) Persons eligible to serve as examiners shall be State public officials equivalent to Grade V or higher in general service, belonging to the Korean Intellectual Property Office or its affiliate organizations, or public officials in general service belonging to the Senior Civil Service, and shall have completed training courses for examiners determined by the

International Intellectual Property Training Institute.

- (2) Persons eligible to serve as administrative patent judges shall be persons falling under any of the following subparagraphs, from among State public officials equivalent to Grade IV or higher in general service, belonging to the Korean Intellectual Property Office or its affiliate organizations, or public officials in general service belonging to the Senior Civil Service, and shall have completed training courses for administrative patent judges determined by the International Intellectual Property Training Institute:
 1. Persons who have worked as examiners in the Korean Intellectual Property Office for not less than two years;
 2. Persons who have worked as examiners in the Korean Intellectual Property Office, and as State public officials equivalent to Grade V or higher in general service or public officials in general service belonging to the Senior Civil Service who perform judicial duties in the Intellectual Property Tribunal, and whose total terms of office exceed two years.
- (3) Persons who are certified patent attorneys as public officials of grades of examiners or administrative patent judges under paragraphs (1) and (2) (including public officials in general service belonging to the Senior Civil Service) may become examiners or administrative patent judges, notwithstanding the provisions of paragraphs (1) and (2).
- (4) Matters necessary for the training of examiners and administrative patent judges under paragraphs (1) and (2) shall be determined by the Commissioner of the Korean Intellectual Property Office.

Article 8 (Service, etc. of Documents)

- (1) Documents to be served under the Act shall be sent by registered mail, except for cases where the relevant parties or their agents directly receive documents in the Korean Intellectual Property Office or the Intellectual Property Tribunal or receive them via an information and communications network.
- (2) When documents are served under paragraph (1), the Commissioner of the

Korean Intellectual Property Office or the President of the Intellectual Property Tribunal shall keep the receipts or details thereof according to the following classification:

1. When the relevant parties or their agents directly receive documents in the Korean Intellectual Property Office or the Intellectual Property Tribunal: Receipts in which the date of receipt and the name of the recipient are stated;
 2. When the relevant parties or their agents receive documents via an information and communications network: Details recorded in files for delivery of the electronic information processing system operated by the Korean Intellectual Property Office or the Intellectual Property Tribunal;
 3. When documents are delivered by registered mail: Receipts of registered mail.
- (3) Certified copies of documents on trial decisions or decisions with regard to an application for objection against unexamined design registration, trial, retrial, award for the grant of a non-exclusive license, and revocation of a design registration shall be served by means of special delivery under Acts and subordinate statutes related to mails: Provided, That in case of a delivery to a person who has reported the use of electronic documents under Article 4-29 (1) of the Act, it may be serviced by utilizing an information and communication network. *<Amended by Presidential Decree No. 22788, Mar. 30, 2011>*
- (4) When documents are served, except as otherwise provided for by the Act or this Decree, certified copies of such documents shall be sent to the recipients, and, when a protocol has been prepared in lieu of submission of documents to be served, a certified copy or extract of such protocol shall be sent to the recipients.
- (5) Documents to be served on minors, incompetents or quasi-incompetents shall be served on their legal representatives.
- (6) When several persons jointly exercise authority of representation,

documents shall be served on one of them. *<Amended by Presidential Decree No. 22788, Mar. 30, 2011>*

- (7) Documents to be served on persons confined in correctional facilities, such as prisons or detention centers, shall be served on the heads of the correctional facilities.
- (8) In case where the parties or their agents are two or more persons and have reported the designation of one person as their representative for receiving documents to the Commissioner of the Korean Intellectual Property Office or the President of the Intellectual Property Tribunal, the documents shall be served on him/her. *<Newly Inserted by Presidential Decree No. 22788, Mar. 30, 2011>*
- (9) Documents shall be served to places of domicile or business offices of recipients: Provided, That when recipients report places (limited to places in the Republic of Korea), in which they intend to receive documents, to the Commissioner of the Korean Intellectual Property Office or the President of the Intellectual Property Tribunal in advance, documents shall be served to such places.
- (10) When recipients change places to which documents are to be served, they shall report the fact to the Commissioner of the Korean Intellectual Property Office without delay.
- (11) When it has become impossible to serve documents on recipients due to the recipients's refusal to receive such documents without justifiable grounds, such documents shall be deemed to have been served on the date such documents were sent to the recipients.
- (12) The service, etc. of documents, other than documents to be served under the Act, shall be made by the methods determined by the Commissioner of the Korean Intellectual Property Office.

Article 9 (Design Gazette)

- (1) The Design Gazette referred to in Article 78 (1) of the Act shall be classified into the Examined Design Registration Gazette, the Unexamined Design Registration Gazette and the Design Laid-Open Gazette.

- (2) The Examined Design Registration Gazette shall include the following matters: Provided, That in cases of confidential designs under Article 13 of the Act, matters referred to in subparagraphs 8 through 10 shall be inserted after the elapse of the period of confidentiality requested by the applicant for design registration: *<Amended by Presidential Decree No. 22788, Mar. 30, 2011>*
1. Name and address of the owner of the design right (in cases of a corporation, its title and place of business);
 2. The fact that the registered design relates to a part of an article (hereinafter referred to as "partial design") (limited to a partial design);
 3. Article which is the object of the design and the classification code thereof;
 4. Name and address of the creator;
 5. Application number and date of application;
 6. Date of an application that would be the basis of the priority claim (limited to a design registration applied for under Article 23 (1) of the Act);
 7. Registration number and date of registration;
 8. Drawings or photographs (including photographs of specimens);
 9. Points of the creation;
 10. Explanation of the design;
 11. Indication of a basic design (limited to an application for registration of a similar design under Article 7 of the Act)
 12. Laying-open of the application and date of laying-open (limited to a design registration for which an application has been laid open);
 13. Other matters that shall be included in the Examined Design Registration Gazette under the Act and this Decree or matters deemed necessary to be inserted therein by the Commissioner of the Korean Intellectual Property Office.
- (3) The Unexamined Design Registration Gazette shall include the following matters: Provided, That in cases of confidential designs under Article 13 of

the Act, matters referred to in subparagraphs 8 through 10 shall be inserted after the elapse of the period of confidentiality requested by the applicant for design registration: <Amended by Presidential Decree No. 22788, Mar. 30, 2011>

1. Name and address of the owner of the design right (in cases of a corporation, its title and place of business);
2. The fact that the registered design is a partial design (limited to a partial design);
3. Article which is the object of the design and the classification code thereof;
4. Name and address of the creator;
5. Application number and date of application;
6. Date of an application that would be the basis of the priority claim (limited to a design registration for which an application has been filed under Article 23 (1) of the Act, and when publication of the application is made before documents proving a right of priority are submitted, the relevant details should also be written);
7. Registration number and date of registration;
8. Drawings or photographs (including photographs of specimens);
9. Points of the creation;
10. Explanation of the design;
11. Serial number of the design (limited to an application for multiple design registration under Article 11-2 of the Act);
12. Indication of a basic design (limited to an application for registration of a similar design under Article 7 of the Act)
13. Laying-open of the application and date of laying-open (limited to a design registration for which an application has been laid open);
14. Other matters that shall be included in the Unexamined Design Registration Gazette under the Act and this Decree or matters deemed necessary to be inserted therein by the Commissioner of the Korean Intellectual Property Office.

- (4) The Design Laid-Open Gazette shall include the following matters with regard to an application for design registration for which a request for the laying open of the application is filed under Article 23-2 (2) of the Act, or a decision to reject an application for design registration or a trial decision to the effect that an application for design registration shall be rejected becomes final and binding under the main sentence of Article 23-6 of the Act: *<Amended by Presidential Decree No. 22788, Mar. 30, 2011>*
1. Name and address of the applicant for design registration (in cases of a corporation, its title and place of business);
 2. The fact that the application for design registration is filed for a partial design (limited to a partial design);
 3. Article which is the object of the design and the classification code thereof, and the fact that it is an application for examined design registration or for unexamined design registration;
 4. The fact that a decision to reject all the relevant applications for design registration or a trial decision to the effect that all the relevant applications for design registration shall be rejected has become final and binding on the ground that two or more applicants who have filed an application for registration of the same or a similar design on the same date failed to or were unable to reach agreement (applicable only when inserted under Article 23-6 of the Act);
 5. Name and address of the creator;
 6. Application number and date of application;
 7. Date of an application that would be the basis of the priority claim (limited to cases where a right of priority is claimed under Article 23 (1) of the Act, and when publication of the application is made before documents proving a right of priority are submitted, the relevant details should be written);
 8. Indication of a basic design (limited to an application for registration of a similar design under Article 7 of the Act);
 9. Number and date of laying-open of the application;

10. Drawings or photographs (including photographs of specimens);
11. Points of the creation;
12. Explanation of the design;
13. Other matters related to the laying-open of an application for design registration, which are deemed necessary to be inserted in the Design Laid-Open Gazette by the Commissioner of the Korean Intellectual Property Office.

Article 9-2 (Management of Unique Identifying Information)

The Commissioner of the Korean Intellectual Property Office or the Director of the Intellectual Property Tribunal may manage information which contains resident registration numbers or foreign registration numbers provided for in subparagraph 1 or 4 of Article 19 of the Enforcement Decree of the Personal Information Protection Act, if there exists any inevitable grounds for carrying out the following affairs:

1. Affairs concerning the grant of identification numbers under Article 4-27 of the Act;
2. Affairs concerning the examined or unexamined design registrations under Article 9 of the Act;
3. Affairs concerning the examination and preservation of evidence under Article 72-21 of the Act;
4. Affairs concerning the submission, etc. of documents under Article 78-2 of the Act;
5. Other affairs concerning the application for, report on, or submission of application, examination, trial, or registration under the Act or this Decree.

[This Article Newly Inserted by Presidential Decree No. 23488, Jan. 6, 2012]

Article 10 (Criteria for Imposition of Fines for Negligence)

The criteria for imposition of fines for negligence under Article 88 (1) of the Act are prescribed in the attached Table.

[This Article Wholly Amended by Presidential Decree No. 23519, Jan. 17, 2012]

ADDENDUM

This Decree shall enter into force on July 1, 2009.

ADDENDA <Presidential Decree No. 22788, Mar. 30, 2011>

Article 1 (Enforcement Date)

This Decree shall enter into force on April 1, 2011.

Article 2 (Applicability concerning Delivery of Certified Copies of Documents on Trial Decisions or Decisions)

The amended provisions of Article 8 (3) shall apply beginning with the case where the trial decisions or decisions are made for the first time after the enforcement of this Decree.

ADDENDA <Presidential Decree No. 23488, Jan. 6, 2012>

Article 1 (Enforcement Date)

This Decree shall enter into force on the date of its promulgation. (Proviso Omitted.)

Article 2 Omitted.

ADDENDA <Presidential Decree No. 23519, Jan. 17, 2012>

Article 1 (Enforcement Date)

This Decree shall enter into force on the date of its promulgation.

Article 2 (Applicability concerning Designation of Specialized Organizations)

The amended provisions of the proviso to the part other than the subparagraphs of Article 3 (1) shall apply beginning with the case where the designation of a specialized organization is revoked for the first time after this Decree enters into force.

Article 3 (Transitional Measures concerning Fines for Negligence)

(1) In applying the criteria for imposition of fines for negligence to the violations that have been committed before this Decree enters into force, the former provisions shall govern, notwithstanding the amended provisions of the attached Table.

(2) The imposition disposition of fines for negligence received due to the violations committed before this Decree enters into force shall not be included in calculation of the frequency of violations under the amended provisions of the attached Table.