
Patent Law Enforcement Law

(Order No. 122 of April 13, 1959)

Final Revision: No. 116 of December 14, 1994

(Effective Date of the Patent Law)

Article 1. The Patent Law (Act No. 121 of 1959. Hereinafter, referred to as "the New Law".) shall come into effect as from April 1, 1960.
(Repeal of the Patent Law)

Article 2. The Patent Law (Act No. 96 of 1921. Hereinafter, referred to as "the Former Law") shall be repealed.
(Patent Right)

Article 3. The patent right (excluding the patent right obtained by restricted transfer) which was granted under the Former Law and which exists at the time of the enforcement of the New Law shall be deemed as the patent right under the New Law on the day of enforcement of the New Law. However, the effect thereof shall not extend to the product to which the effect shall not extend under the Former Law Article 125, item 2.

Article 4. The right which is set forth in the Former Law Article 73, paragraph 3 and which exists at the time of the enforcement of the New Law shall be deemed as the right of Article 52, paragraph 1 of the Patent Law prior to the revision under the Act (Act No. 116 of 1994) Article 2 for partial revision of the Patent Law on the day of enforcement of the New Law. However, the provisions of Article 52, paragraph 2 and paragraph 4 of the Patent Law shall not be applied.

(Patent right obtained by restricted transfer)

Article 5. The patent right obtained by restricted transfer under the Former Law, which has been already registered at the time of the enforcement of the New Law, shall be deemed as an exclusive license on the day of the enforcement of the New Law.

(License)

Article 6. The license set forth in Article 14, paragraph 2 of the Former Law, which exists at the time of the enforcement of the New Law, shall be deemed as a non-exclusive license under Article

35, paragraph 1 of the New Law on the day of the enforcement of the New Law.

Article 7. The license set forth in Article 37 of the Former Law, which exists at the time of the enforcement of the New Law, shall be deemed as a non-exclusive license under Article 79 of the Former Law on the day of the enforcement of the New Law.

Article 8. The license set forth in Article 38, paragraph 1 of the Former Law, which exists at the time of enforcement of the New Law, and the license set forth in Article 38, paragraph 1 of the Former Law to which the provisions of Article 38, paragraph 1 of the Former Law are applied under the provisions of Article 20, paragraph 2, shall be deemed as non-exclusive licenses under Article 80, paragraph 1 of the New Law on the day of the enforcement of the New Law and on the day that the trial decision was made conclusive, respectively.

Article 9. The license set forth in Article 38, paragraph 2 of the Former Law, which exists at the time of the enforcement of the New Law, shall be deemed as a non-exclusive license under Article 80, paragraph 1 of the New Law on the day of the enforcement of the New Law.

Article 10. The license set forth in the Former Law Article 39, which exists at the time of the enforcement of the New Law, shall be deemed as a non-exclusive license under the Article 80, paragraph 1 of the New Law on the day of the enforcement of the New Law.
2. The provisions of Article 80, paragraph 2 of the New Law shall not apply in the case of the preceding paragraph.

Article 11. The license set forth in Article 41, paragraph 1 of the Former Law, which exists at the time of the enforcement of the New Law, and the license set forth in the Former Law Article 41, paragraph 1 to which the provisions of Article 41, paragraph 1 of the Former Law are applied under the provision of Article 20, paragraph 5, shall be deemed as non-exclusive licenses under Article 83, paragraph 2 of the New Law, on the day of the enforcement of the New Law and on the day of the permission, respectively.

Article 12. The license set forth in Article 48, paragraph 1 of the Former Law, which exists at the time of the enforcement of the

New Law, shall be deemed as a non-exclusive license under Article 78, paragraph 1 of the New Law on the day of the enforcement of the New Law.

Article 13. The license set forth in the Former Law Article 49, which exists at the time of the enforcement of the New Law, and the license set forth in Article 49 of the Former Law to which the provisions of Article 49 of the Former Law are applied under the provisions of Article 20, paragraph 2 shall be deemed as non-exclusive licenses on the patent right or on the utility model right granted under the arbitration decision specified in Article 92, paragraph 2 of the New Law on the day of the enforcement of the New Law and on the day that the trial decision became conclusive, respectively.

Article 14. The license set forth in Article 126, paragraph 1 of the Former Law, which exists at the time of the enforcement of the New Law, and the license set forth in Article 126, paragraph 1 of the Former Law to which the provisions of Article 126, paragraph 1 are applied under the provisions of Article 20, Article 3 shall be deemed as non-exclusive licenses under Article 176 of the New Law on the day of the enforcement of the New Law and on the day that the trial decision became conclusive, respectively.

Article 15. The license set forth in Article 127, paragraph 1 of the Former Law, which exists at the time of the enforcement of the New Law, and the license set forth in Article 127, paragraph 1 of the Former Law to which the provisions of Article 127, paragraph 1 of the Former Law are applied under the provisions of Article 20, paragraph 3 shall be deemed as non-exclusive licenses under Article 80, paragraph 1 of the New Law on the day of the enforcement of the New Law and on the day that the trial decision became conclusive, respectively.

Article 16. Where the patent right which was obtained based on an application filed under the Former Law and which is deemed to be the patent right under the New Law in accordance with Article 3 (including a patent granted under the Former Law then in force remaining applicable as set forth in Article 20, paragraph 1) conflicts with another person's utility model right obtained based

on an application filed prior to the date of filing of the patent application, the patentee, the exclusive licensee, or the non-exclusive licensee may not work the patented invention as a business.

2. The case prescribed in the preceding paragraph is deemed to correspond to the case prescribed in Article 72, of the New Law and the provisions of the New Law Article 92 of the New Law shall be applied.

Article 17. Where the term of the utility model right which is in conflict with the patent right (including a patent granted under the Former Law then in force remaining applicable as prescribed in Article 20, paragraph 1) under the Former Law which is deemed to be the patent right under the New Law under the provisions of Article 3, under a utility model application filed on or before the date of filing of the patent application has expired, the original utility model right holder shall be deemed to have a non-exclusive license under Article 80, paragraph 1 of the New Law with regards to the exclusive license which exists at the time of expiration of the term of the patent right or the utility model right within the scope of the original utility model right.

2. The provisions of Article 80, paragraph 2 of the New Law shall not apply in the case of the preceding paragraph.

3. Where the term of the utility model right which is in conflict with the patent right (including a patent granted under the Former Law then in force remaining applicable as prescribed in Article 20, paragraph 1) under the Former Law which is deemed to be the patent right under the New Law under the provisions of Article 3, under a utility model application filed on or before the date of filing of the patent application has expired, a person who, at the time of expiration, has an exclusive license on the utility model right or a non-exclusive license on the utility model right or the exclusive license, having the effect of Article 99, paragraph 1 of the New Law as applied mutatis mutandis in the Utility Model Law (Act No. 123 of 1959) Article 19, paragraph 3 shall be deemed to have a non-exclusive license under Article 80, paragraph 1 of the New Law with regards to the exclusive license which exists at the time of expiration of the term of the patent

right or the utility model right within the scope of the original utility model right.

(Term of Patent Right)

Article 18. With regards to the term of the patent right (including a patent granted under the Former Law then in force remaining applicable as prescribed in Article 20, paragraph 1) under the Former Law which is deemed to be the patent right under the New Law under Article 3, the provisions then in force shall remain applicable. However, excluding the case under Article 20, paragraph 5, the term may not be extended.

(Pledge)

Article 19. Where the grant of a pledge on the patent right made prior to the enforcement of the New Law is not registered at the time of the enforcement of the New Law, the pledge shall lose its effect on the day of the enforcement of the New Law.

(Procedures while Application is Pending)

Article 20. With regards to a patent application (including an application pending at the appeal trial) pending at the time of the enforcement of the New Law, until a ruling or a trial decision with regards to the patent application becomes conclusive, the provisions then in force shall remain applicable.

2. With regards to trials of Article 49, Article 53, paragraph 1 or paragraph 2, or Article 84, paragraph 1 of the Former Law or appeal trials against the trial decisions of these trials, pending at the time of the enforcement of the New Law, the provisions then in force shall remain applicable. However, with regards to trials (including those pending at the appeal trials at the time of the enforcement of the New Law, and remanded after the enforcement of the New Law and pending at the trials) of Article 49, Article 53, paragraph 1 or paragraph 2 or Article 84, paragraph 1 of the Former Law, pending at the time of the enforcement of the New Law, a trial decision of the trial shall be deemed to be a trial decision of the appeal trial, and a ruling to dismiss a demand for a trial shall be deemed to be a ruling to dismiss a demand for an appeal trial.

3. With regards to the retrial of Article 121, paragraph 1 of the Former Law pending at the time of the enforcement of the New Law

(including its application under Article 128, paragraph 1 of the Former Law), the provisions then in force shall remain applicable.

4. The proviso of paragraph 2 shall apply mutatis mutandis to the case set forth in the preceding paragraph.

5. With regards to procedures other than the procedures under paragraph 1 to paragraph 3, which are pending at the Patent Office at the time of the enforcement of the New Law, the provisions then in force shall remain applicable.

(Patent Application of a Person who is Entitled to Obtain a Patent)

Article 21. With regards to a patent application filed by a person who is entitled to obtain a patent under Article 10 or Article 11 of the Former Law and pending at the time of the enforcement of the New Law, these provisions shall remain in effect after the enforcement of the New Law.

(Successions to the Right to Obtain Patent)

Article 22. Where succession to the right to obtain a patent after the patent application was filed prior to the enforcement of the New Law (excluding inheritance or other general succession) was not notified to the Director General of the Patent Office at the time of the enforcement of the New Law, the succession shall lose its effect on the day of the enforcement of the New Law.

(Transfer, etc., of Patent Right)

Article 23. Transfer (excluding those by inheritance or other general succession) or restriction on disposal of a patent right made prior to the enforcement of the New Law, which was not registered at the time of the enforcement of the New Law, shall lose its effect on the day of the enforcement of the New Law.

2. Transfer (excluding those by inheritance or other general succession), changes, or restriction of disposal of a pledge on the patent right made prior to the enforcement of the New Law (excluding inheritance or other general succession), which was not registered at the time of the enforcement of the New Law, shall lose its effect on the day of the enforcement of the New Law.

(Inventions by Employees)

Article 24. The provisions of the New Law Article 35 shall apply to inventions created by an employee, an executive officer of a

legal entity, or a public servant prior to the enforcement of the New Law.

(Invalidation Trial)

Article 25. In a trial of Article 123, paragraph 1 or Article 129, paragraph 1 of the Patent Law prior to the revision under the Act (Act No. 26 of 1995) for partial revision of the Patent Law, etc., or a retrial against a final and conclusive trial decision of these trials with regards to a patent under the Former Law or an approval under Article 53, paragraph 1 of the Former Law (including the patent or the approval under the provisions of the Former Law which shall remain applicable as prescribed in the provisions of Article 20, paragraph 1 or paragraph 2), the provisions of Article 57 of the Former Law shall remain in effect after the enforcement of the New Law, and the patent or the approval may be invalidated only in connection with the provisions of paragraph 1 or 2 of the same Article.

2. The provisions of the preceding paragraph shall also apply to a trial of Article 84, paragraph 1, item 1, of the Former Law or a retrial against the final and conclusive trial decision of an appeal trial against the trial decision of the trial (including the final and conclusive trial decisions under the provisions of the Former Law which shall remain applicable as prescribed in the provision of Article 20, paragraph 2), demanded after the enforcement of the New Law.

3. With regards to a patent granted prior to the enforcement of the New Law or an approval under Article 53, paragraph 1 or paragraph 2 of the Former Law, the provisions of Article 85 of the Former Law shall remain in effect after the enforcement of the New Law.

(Patent Fees)

Article 26. With regards to patent fees already paid or to be paid prior to the enforcement of the New Law, the provisions of the Former Law then in force shall remain applicable.

2. The provisions of Article 111 of the New Law shall be applied to patent fees (including those paid under the provisions of the Former Law which shall remain applicable as prescribed in the preceding paragraph) paid prior to the enforcement of the New Law.

3. With regards to the payment of the patent fees for the patent right whose term was extended under the Former Law (including the patent right whose term was extended under the provisions of the Former Law which shall remain applicable as prescribed in Article 20, paragraph 5), the provisions of Article 65, paragraph 2, paragraph 4, and paragraph 7, Article 66, paragraph 1, Article 67, and Article 69, excluding the case prescribed in paragraph 1 of the Former Law, shall remain in effect after the enforcement of the New Law.

4. Where a patent is granted to a person who is entitled to obtain a patent under the provisions of Article 11 of the Former Law (including the provisions of Article 11 which remain applicable pursuant to the provision of Article 21), the provisions of Article 65, paragraph 6 of the Former Law shall remain in effect after the enforcement of the New Law.

(Patent Compensation Committee)

Article 27. Where the term of the patent right is extended under the provisions of the Former Law which remain applicable as prescribed in Article 20, paragraph 5, the matters deemed to be under the authority of the patent compensation committee under Article 3 of the Former Patent Law Enforcement Order (Order No. 460 of 1921) are under the authority of the patented invention working council.

(Compensation)

Article 28. With regards to the right to receive compensation occurring prior to the enforcement of the New Law, the provisions of the Former Law then in force shall remain applicable.

(Disposition)

Article 29. A disposal, procedures, and other acts made under the Former Law (including those under the provisions of the Former Law which shall remain applicable as prescribed in Article 20, from paragraph 1 to paragraph 3, or paragraph 5) shall be deemed to have been made under the New Law where there are corresponding provisions in the New Law.

(Application of Penal Provisions)

Article 30. with regard to the application of penal provisions to acts made prior to the enforcement of the New Law and to acts made

after the enforcement of the New Law concerning the procedures to which the provisions of the Former Law shall remain applicable as prescribed in Article 20, paragraph 1 to paragraph 3, or paragraph 5, the provisions of the Former Law then in force shall remain applicable.