

October 5, 2021

Amendments to the Korean Patent Act, Trademark Act, and Design Protection Act

Purpose of the Amendments: Relief of applicant's mistakes and expansion of opportunities to acquire intellectual property rights

Patents, Trademarks and Designs

First of all, the period for filing an appeal trial against the final rejection has been extended from the current 30 days to 3 months to provide sufficient time for preparing trials and minimize unnecessary extension of the period.

In addition, if the right is extinguished due to the lapse of the period, such as for submitting documents and paying fees, the requirements for restoration of rights have been eased from "non-attributable reasons" to "justifiable reasons." For example, relief will be possible in the future in the case of sudden hospitalization due to COVID-19 and failure to proceed with the procedure as a result.

Further, if there is a priority claim in the parent application, the priority will be automatically recognized even in the case of filing a divisional application for the parent application so as to prevent the application from being rejected due to errors such as omission of the priority claim.

Patents

Currently, when an appeal trial against the final rejection proceeds, even if some of the claims are allowable, the entire patent application will be rejected. Even if there are any allowable claims, it is not possible to obtain a patent right for the allowable claims. However, the amendments have expanded the opportunity for applicants to acquire rights by introducing a new separate application system where only allowable claims can be filed even if the final rejection (the decision of rejection) is sustained.

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In addition, if the invention is improved according to the market situation even after the notice of allowance, it has become possible to file an application with a domestic priority claim by adding an improved invention.

Trademarks and Designs

If the examiner finds a clear reason for rejection on a trademark or a design application, he/she can *ex officio* cancel the notice of allowance and re-examine the application, thereby blocking the occurrence of insufficient rights with invalidation grounds in advance and prevent any possibility of disputes.

In addition, in response to the final rejection of a design application, an amendment must be filed “at the time of a filing a request for re-examination,” but such has been expanded to “within the period for filing a request for re-examination.”

The amendments will be promulgated within this October and will take effect six (6) months after the promulgation. We will further let you know when the effective date is confirmed.



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