

법제교류 연구 15-18-⑧
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Overview and Historical Development of Intellectual Property Laws in South Korea

Hyung-Gun Kim



한국법제연구원
KOREA LEGISLATION RESEARCH INSTITUTE

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Researcher: Hyung-Gun Kim (Research Fellow)

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Abstract

I . Background and Purpose of Research

- The study was carried out as part of the Korea Legislation Research Institute's legal exchange research project. The purpose of this study is to provide an overview of the legislative history of Korean intellectual property laws to share Korea's legislative development experiences in the field of intellectual property law.

II . Contents

- This study gives a brief overview of the structure and sources of intellectual property laws in South Korea.
- This study then scrutinizes the legislative history (i.e., reason for enactment, major amendments and structure of law) of Korean intellectual property laws.
- This study breaks into five chapters: 1) Overview of Intellectual Property Laws in South Korea; 2) Laws on Industrial Property and Industrial Designs; 3) Laws on Copyrights and Neighboring Rights; 4) Laws on Trademarks and Other Distinctive Signs; and 5) Laws on Plant Variety Protection.

III. Expected Effects

- This study may serve as a brief introduction to Korean intellectual property laws in English.

- This study may serve as a guide to the legislative history of Korean intellectual property laws.

▶▶ **Key Words : Intellectual Property Laws, Patent Act, Copyright Act, Trademark Act, Utility Model Act, Design Protection Act, Plant Variety Protection Act**

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I . Overview of Intellectual Property Laws in South Korea

1. Structure of Intellectual Property Laws in South Korea

Classification of intellectual property laws may vary subject to legal scholars or countries and may change over time. One common way to classify intellectual property laws could be to categorize them as: 1) laws on industrial property and industrial designs; 2) laws on copyright and neighboring rights; 3) laws on trademark and other distinctive signs; and 4) laws on plant variety protection.

Employing this categorization, intellectual property laws in South Korea could be classified as described in Table 1.

Table 1. Structure of Intellectual Property Laws in South Korea

<p>- Laws on Industrial Property and Industrial Designs -</p> <ul style="list-style-type: none">▪ Patent Act▪ Utility Model Act▪ Design Protection Act▪ Act on the Layout-Design of Semiconductor Integrated Circuits <p>- Laws on Copyright and Neighboring Rights -</p> <ul style="list-style-type: none">▪ Copyright Act▪ Computer Programs Protection Act (repealed and integrated into the Copyright Act in 2009) <p>- Laws on Trademark and Other Distinctive Signs -</p> <ul style="list-style-type: none">▪ Trademark Act▪ Internet Address Resources Act

- Laws on Plant Variety Protection -

- Act on the Protection of New Varieties of Plants

2. International Conventions, Treaties and Agreements on Intellectual Property That South Korea Has Officially Signed and Ratified

Treaties duly concluded and promulgated under the Constitution have the same legal effect as laws enacted by legislative bodies at any level of government in South Korea.¹⁾ Therefore, international conventions, treaties and agreements on intellectual property which South Korea has officially signed and ratified are important sources of law, and as a matter of law, they have resulted in a number of amendments to intellectual property laws in South Korea.

Major international conventions, treaties and agreements on intellectual property that have been signed and ratified by South Korea are listed in Table 2.

Table 2. Major International Conventions, Treaties and Agreements That South Korea Has Officially Signed and Ratified

- Industrial Property and Industrial Designs -

- Paris Convention for the Protection of Industrial Property (May 4, 1980)²⁾
- Convention Establishing the World Intellectual Property Organization (March 1, 1979)
- Patent Cooperation Treaty (May 10, 1984)

1) Article 6(1) of Constitution of the Republic of Korea.

2) It indicates the date of entering into force in South Korea.

2. International Conventions, Treaties and Agreements on Intellectual Property
That South Korea Has Officially Signed and Ratified

- Strasbourg Agreement Concerning the International Patent Classification (October 8, 1999)
 - Budapest Treaty on the International Recognition of the Deposit of Micro-organisms for the Purposes of Patent Procedure (March 28, 1988)
 - Locarno Agreement Establishing an International Classification of Industrial Designs (April 17, 2011)
 - Hague Agreement Concerning the International Registration of Industrial Designs (July 1, 2014)
- Copyright and Neighboring Rights -**
- The Berne Convention for the Protection of Literary and Artistic Works (August 21, 1996)
 - Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (March 18, 2009)
 - The World Intellectual Property Organization Copyright Treaty (June 24, 2004)
 - The WIPO Performances and Phonograms Treaty (March 18, 2009)
- Trademark and Other Distinctive Signs -**
- Nice Agreement Concerning the International Classification of Goods and Services for the Purpose of the Registration of Marks (January 8, 1999)
 - Trademark Law Treaty (February 25, 2003)
 - Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks (April 10, 2003)
 - Vienna Agreement Establishing an International Classification of the Figurative Elements of Marks (April 17, 2011)
- Plant Variety Protection -**
- International Convention for the Protection of New Varieties of Plants (January 7, 2002)

II. Laws on Industrial Property and Industrial Designs

1. Patent Act

A. Reason for Enactment and Main Provisions

A Bill for the Patent Act was introduced in the National Assembly on December 2, 1961.³⁾ The Bill was proposed to promote the progress and development of advanced technologies and to contribute to the development of national industries by stimulating, protecting and supporting innovative and inventive activities.⁴⁾ It was passed by the National Assembly on December 27, 1961 and was enacted as Act No. 950 on December 31, 1961.

The Patent Act of 1961, among other things, provides: 1) the patenting of a plant variety; 2) unpatentable subject matter (e.g., food, personal preference items, medical substance and chemical substance); 3) the first-to-file doctrine; 4) government grants and financial assistance for inventive activities; 5) foreigners' legal capacity to be a patent right holder; 6) the authorization of a compulsory license or the cancellation of a patent based on non-use for three (3) consecutive years without any justifiable excuse; and 7) remedies for the infringement of patent rights.⁵⁾

3) The Patent Act was first enacted in 1946 and amended once in 1952. The Patent Act of 1946 and the Patent Act of 1952 provided matters related to the protection of inventions, matters related to the protection of utility models, and matter related to the protection of designs. The Patent Act of 1961 stipulated matters only related to the protection of inventions.

4) Bill No. AA0249, Draft of the Patent Act, *available at* http://likms.assembly.go.kr/bill/jsp/BillDetail.jsp?bill_id=003737 (last visited Oct. 27, 2015).

5) *Id.*

B. Major Amendments

The Patent Act has been amended 72 times since its enactment. Major amendments which have been made to substantive provisions of the Act are as follows.

- (1) Patent Act of 1974: Amended by Act No. 2505 (February 8, 1973; Entering into force on January 1, 1974)

The amendment was made to eliminate side effects of the patent system that had impeded free activities of enterprises by prohibiting the abuse of patent rights and to contribute to the development of national industries by strengthening the protection of new and useful inventions.⁶⁾ This amendment, among other things, provides: 1) unpatentable subject matter (e.g., inventions concerning the use of substances and substances manufactured by nuclear fission); 2) the ineligibility for patent registration of an invention disclosed in a publication in other countries prior to the filing date of an application (failure to satisfy the novelty requirement); 3) the authorization of a compulsory license based on non responding to international market demand due to the patent right holder's exercising its monopoly privileges or non-use for three (3) consecutive years; 4) the compensation and management of patented inventions created by public servants in connection with their duties; and 5) the qualifications for examiners and their duty to receive professional training.⁷⁾

6) Bill No. BB0138, Draft of a Whole Amendment to the Patent Act, *available at* http://likms.assembly.go.kr/bill/jsp/BillDetail.jsp?bill_id=007667 (last visited Oct. 27, 2015).

7) *Id.*

(2) Patent Act of 1981: Amended by Act No. 3325 (December 31, 1980; Entering into force on September 1, 1981)

This amendment was primarily made to incorporate common provisions of the Paris Convention for the Protection of Industrial Property (“Paris Convention”) into the Act and to adopt some of the features of the patent system in developed countries.⁸⁾ The amendment requires a patent application to describe the invention in detail and introduces the multiple claiming system in the rules of claim drafting. Also, it establishes legal grounds for ‘the principle of national treatment’ and ‘the right of priority,’ and it adopts an early publication of the application for patent registration by a request to avoid overlapped R&D and investment.⁹⁾

(3) Patent Act of 1982: Amended by Act No. 3566 (November 29, 1982; Entering into force on November 29, 1982)

The amendment made a revision to the Patent Act in order to stipulate matters concerning the process of filing an international application for patent registration under the Patent Cooperation Treaty.¹⁰⁾ It provides the qualifications of a patent applicant who may file an international application, the patent documents to be submitted, the filing date of an international application, etc. for a case where the international application is submitted to the Commissioner of the Korean Intellectual Property Office (“KIPO”).¹¹⁾

8) Bill No. CC0077, Draft of a Partial Amendment to the Patent Act, *available at* http://likms.assembly.go.kr/bill/jsp/BillDetail.jsp?bill_id=009128 (last visited Oct. 27, 2015).

9) *Id.*

10) Bill No. 110314, Draft of a Partial Amendment to the Patent Act, *available at* http://likms.assembly.go.kr/bill/jsp/BillDetail.jsp?bill_id=009564 (last visited Oct. 27, 2015).

11) *Id.*

II. Laws on Industrial Property and Industrial Designs

It also provides the priority date, the submission of a Korean translation of the international application, the date of disclosure, etc. for a case where the international application is filed in countries other than South Korea to obtain a patent registration from the KIPO.¹²⁾

(4) Patent Act of 1987: Amended by Act No. 3891 (December 31, 1986; Entering into force on July 1, 1987)

This amendment was made to keep up with international standards of the patent protection, to improve the non-exclusive license system, and to extend the duration of the patent protection.¹³⁾ It makes some of the unpatentable inventions (e.g., medical substance and chemical substance) patentable subject matter under the Act, and it also provides the grant of a non-exclusive license to patented inventions based on non-use for three (3) consecutive years without any justifiable excuse.¹⁴⁾ Through this amendment, the duration of the patent protection is extended to ‘15 years from the date of registration,’ and it may be extended further up to five (5) years in case of inventions that would require an authentication or a registration under other laws such as medical substance.¹⁵⁾

(5) Patent Act of 1996: Amended by Act No. 5080 (December 29, 1995; Entering into force on July 1, 1996)

This amendment was primarily made to stipulate matters related to the implementation of the Agreement on Trade-Related Aspects of Intellectual

12) *Id.*

13) Bill No. 120320, Draft of a Partial Amendment to the Patent Act, *available at* http://likms.assembly.go.kr/bill/jsp/BillDetail.jsp?bill_id=010346 (last visited Oct. 27, 2015).

14) *Id.*

15) *Id.*

Property Rights (“TRIPs Agreement”).¹⁶⁾ To strengthen the protection of patent rights, it adds ‘offering for assigning or lease’ of patented products to the definition of the term “carrying-out of a patent” and makes some of the unpatentable inventions (i.e., substances manufactured by nuclear fission) patentable subject matter under the Act.¹⁷⁾ Besides, through the amendment, the early publication of an application for patent registration (may be published within 18 months from the filing date of a patent application if the applicant requests) is introduced to the patent system, and the duration of the patent protection is extended to ‘20 years from the filing date of a patent application.’¹⁸⁾

(6) Patent Act of 1999: Amended by Act No. 5576 (September 23, 1998; Entering into force on January 1, 1999)

For the convenience of applicants who file for patent registration, this amendment adopts the filing of a patent application by electronic documents.¹⁹⁾ The revised Act stipulates that patent applicants may submit the electronic version of patent documents or a floppy disk storing the electronic documents and the KIPO may also deliver relevant documents or give a notice to the applicants through the computer networks.²⁰⁾

16) Bill No. 141204, Draft of a Partial Amendment to the Patent Act, *available at* http://likms.assembly.go.kr/bill/jsp/BillDetail.jsp?bill_id=013313 (last visited Oct. 27, 2015).

17) *Id.*

18) *Id.*

19) Bill No. 150900, Draft of a Partial Amendment to the Patent Act, *available at* http://likms.assembly.go.kr/bill/jsp/BillDetail.jsp?bill_id=014444 (last visited Oct. 27, 2015).

20) *Id.*

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(7) Patent Act of 2001: Amended by Act No. 6411 (February 3, 2001; Entering into force on July 1, 2001)

The amendment, among other things, provides the revised novelty requirement and the calculation of presumed damages by a patent infringement.²¹⁾ It adopts ‘disclosure by electrical communication lines’ and stipulates that inventions described in a publication distributed in South Korea or in other countries prior to the filing date of an application or inventions made accessible to the public through electrical communication lines should be unpatentable.²²⁾ Also, on the subject of the calculation of damages by a patent infringement, it establishes that the amount of damages may be calculated by multiplying the number of transferred products by the profit per unit of the products that the patentee or the exclusive licensee might have sold in the absence of the patent infringement.²³⁾

(8) Patent Act of 2003: Amended by Act No. 6768 (December 11, 2002; Entering into force on March 12, 2003)

This amendment was made to incorporate the amendment of the Patent Cooperation Treaty into the Act.²⁴⁾ In order for the Patent Act to be in line with the Treaty, it stipulates that an applicant who has filed an international application for patent registration in a foreign language should

21) Bill No. 160294, Draft of a Partial Amendment to the Patent Act, *available at* http://likms.assembly.go.kr/bill/jsp/BillDetail.jsp?bill_id=016408 (last visited Oct. 27, 2015).

22) *Id.*

23) *Id.*

24) Bill No. 161595, Draft of a Partial Amendment to the Patent Act, *available at* http://likms.assembly.go.kr/bill/jsp/BillDetail.jsp?bill_id=021371 (last visited Oct. 27, 2015).

submit a Korean translation of the required application materials to the KIPO Commissioner within 30 months from the priority date.

(9) Patent Act of 2005: Amended by Act No. 7554 (May 31, 2005; Entering into force on September 1, 2005)

This amendment was made to incorporate the WTO's decision for a reservation to some of the provisions of the TRIPs Agreement into the Patent Act.²⁵⁾ In accordance with the WTO's decision, the amendment adds a new article to the Act and provides in essence that: 1) in a case where the use of a patented invention is necessary for exporting medicines to countries intending to import the medicines to cure diseases threatening public health, a person who would like to use the patented invention may request the KIPO Commissioner to adjudicate for the authorization of a non-exclusive license thereon; and 2) in making such adjudication, the KIPO Commissioner should impose the condition that all of the produced medicines must be exported to the importing countries.²⁶⁾

(10) Patent Act of 2010: Amended by Act No. 9985 (January 27, 2010; Entering into force on July 28, 2010)

It has modified the provision concerning the limitations on the effect of a patent in order to incorporate research and testing for 1) obtaining permission for items of medicines or reporting items of medicines under the Pharmaceutical Affairs Act and 2) registering pesticides under the Pesticide Control Act into the definition of 'research and testing' under

25) Bill No. 171739, Draft of a Partial Amendment to the Patent Act, *available at* http://likms.assembly.go.kr/bill/jsp/BillDetail.jsp?bill_id=030540 (last visited Oct. 27, 2015).

26) *Id.*

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the Patent Act to which the patent protection are not available.²⁷⁾ Also, it stipulates that the Government may use patents non-commercially or authorize other person to use the patents on its behalf in situations of national emergency or for public interests, to be in line with the TRIPs Agreement.²⁸⁾

(11) Patent Act of 2012: Amended by Act No. 11117 (December 2, 2011; Entering into force on March 15, 2012)

The amendment was made to stipulate matters related to the implementation of the Korea-U.S. Free Trade Agreement (“Korea-US FTA”).²⁹⁾ Through this amendment, the following have been established: 1) the extension of grace period for non-prejudicial disclosures (from six (6) months to 12 months); 2) the repealing of the cancellation of patent registration based on non-use for two (2) or more years from the date of the adjudication for the grant of non-exclusive license; 3) the extension of the duration of patent rights due to a delay in the registration process; and 4) the court’s order to preserve the confidentiality of trade secrets learned in the course of a patent right infringement lawsuit or an exclusive license infringement lawsuit.³⁰⁾

27) Bill No. 1806896, Draft of a Partial Amendment to the Patent Act, *available at* http://likms.assembly.go.kr/bill/jsp/BillDetail.jsp?bill_id=PRC_P0Q9B1V1N2C7P0R9B0D8T2M8K3Y8J6 (last visited Oct. 27, 2015).

28) *Id.*

29) Bill No. 1801500, Draft of a Partial Amendment to the Patent Act, *available at* http://likms.assembly.go.kr/bill/jsp/BillDetail.jsp?bill_id=ARC_F0X8Z1S0M1P0A1Q4K4Y8D4S9O6K7U7 (last visited Oct. 27, 2015).

30) *Id.*

(12) Patent Act of 2013: Amended by Act No. 11654 (March 22, 2013; Entering into force on July 1, 2013)

The amendment was made primarily to address the implementation of the Patent Law Treaty. Reflecting the intent of the Patent Law Treaty, this amendment stipulates the restoration of a patent application and the refund of the patent fees.³¹⁾ Under the Patent Act of 2013, a patent applicant may request an examination or a re-examination of his patent application - if it has been withdrawn or rejected because of his failure to comply with the period during which a request for examination or re-examination should have been filed due to a cause not imputable to him - within two (2) months from the date when the cause has ceased to exist.³²⁾ Also, it provides that ‘fees for a priority claim’ as well as ‘patent fees and fees for a request for examination’ should be refunded if the patent application has been withdrawn or abandoned within one (1) month from the filing date of the patent application.³³⁾

(13) Patent Act of 2014: Amended by Act No. 12313 (January 21, 2014; Entering into force on January 21, 2014)

The previous Patent Act, in order to promote small and medium-sized enterprises’ filing for patents, reduced or waived patent fees charged to them for the first three (3) years. This amendment, however, has removed the limitation of ‘for the first three (3) years’ on such fee exemption scheme.³⁴⁾

31) Bill No. 1900385, Draft of a Partial Amendment to the Patent Act, *available at* http://likms.assembly.go.kr/bill/jsp/BillDetail.jsp?bill_id=ARC_D1C2P0O6K2O8P1Y6H4H3L3O9I8J5W2 (last visited Oct. 27, 2015).

32) *Id.*

33) *Id.*

34) Bill No. 1908740, Draft of a Partial Amendment to the Patent Act, *available at*

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(14) Patent Act of 2015: Amended by Act No. 12753 (June 11, 2014; Entering into force on January 1, 2015)

In order for applicants to obtain a filing date as early as possible, the amendment has enabled them to file a patent application for registration in a foreign language as well as in Korean.³⁵⁾ Also, for the convenience of applicants who file for the registration of an international patent, it has enabled them to request a one (1) month extension to the deadline for the submission of a Korean translation for the required application documents in a foreign language.³⁶⁾

C. Patent Act at a Glance³⁷⁾

The current Patent Act, Patent Act of 2015,³⁸⁾ is composed of 12 Chapters and 232 Articles.

Chapter I stipulates general provisions, and Chapters II, III and IV provide the requirements for patent registration and patent applications, the examination of patent applications, patent registration and patent fees respectively. Matters related to patent rights and the protection of patent right holders are addressed in Chapters V and VI, and matters related to

http://likms.assembly.go.kr/bill/jsp/BillDetail.jsp?bill_id=PRC_O1B3H1A2C1D7E1Y5F3M0T2F6C7G0N8 (last visited Oct. 27, 2015).

35) Bill No. 1906706, Draft of a Partial Amendment to the Patent Act, *available at* http://likms.assembly.go.kr/bill/jsp/BillDetail.jsp?bill_id=ARC_J1U3T0W9Z0P5D1D3M4G8F3A4V9G0D3 (last visited Oct. 27, 2015).

36) *Id.*

37) The full text of the Patent Act (English translation) is *available at*: http://elaw.klri.re.kr/kor_service/lawView.do?hseq=27658&lang=ENG (last visited Oct. 27, 2015).

38) It has been amended on January 28, 2015 by Act No. 13096 and entered into force on July 29, 2015.

trials, retrials and litigations are stipulated in Chapters VII, VIII and IX. Chapter X codifies procedural rules concerning international applications under the Patent Cooperation Treaty, and supplementary provisions and penalty provisions are regulated in Chapters XI and XII.

Table 3. Patent Act at a Glance

Chapter	Main Provisions
Chapter I . General Provisions (§§1~28-5)	Purpose, Definitions, Patent Administrators for Overseas Residents, Scope of Power of Attorney, Legal Capacity of Foreigners, Calculation of Periods, etc.
Chapter II . Requirements for Patent Registration and Patent Applications (§§29~56)	Requirements for Patent Registration, Unpatentable Inventions, First-to-File Doctrine, Application of Registration, Abstract, Filing Date of Patent Applications, Patent Applications in a Foreign Language, Corrections to Patent Applications, Conversion of Applications, Priority Claims under International Treaties, etc.
Chapter III. Examination (§§57~78-2)	Examination by Examiners, Designation of Specialized Agencies, Request for Examination of Patent Applications, Decision to Grant or Reject Patent, Disclosure of Patent Applications, Request for Re-Examination, Ex Officio Corrections, etc.
Chapter IV. Patent Fees and Certificates of Patent Registration, etc. (§§79~86)	Patent Fees, Late Patent Fee Payment, Reinstatement of Patent Applications or Patents by Making Late Patent Fee Payment, Refunds of Patent Fees, Patent Register, Issuance of Certificates of Patent Registration, etc.
Chapter V . Patent Rights (§§87~125-2)	Duration of Patent Rights, Extension of Duration of Patent Rights, Effects of Patent, Limitations on Effects of Patent, Scope of Protection for Patented Inventions, Transfer and Joint Ownership of Patent, Exclusive and Non-Exclusive Licenses, Non-Exclusive Licenses Based on Prior Use, Effects of Abandonment of Patent, etc.

Chapter	Main Provisions
Chapter VI. Protection of Patent Rights Holders (§§126~132)	Right to Seek Injunction against Infringement, Conducts Deemed Infringement, Estimation of Damages, Presumption of Negligence, etc.
Chapter VII. Trial (§§132-2~177)	Korean Intellectual Property Trial and Appeal Board, Trial on Rulings Rejecting Patent Applications, Trial on Invalidity of Patents, Trials to Confirm Scope of Rights, Trials for Corrections, Trials for Grant of Non-Exclusive Licenses, etc.
Chapter VIII. Retrial (§§178~185)	Petitions for Retrial, Period for Filing Petitions for Retrial, Restrictions on Effects of a Patent Reinstated by Retrial, etc.
Chapter IX. Litigation (§§186~191)	Legal Proceedings against Trial Rulings, Revocation of Trial Rulings or Decisions, Patent Attorney's Fees and Costs of Litigation, etc.
Chapter X. International Applications under Patent Cooperation Treaty (§§192~214)	<p>Section 1. International Application Procedure</p> <p>Persons Eligible to File International Applications, Recognition of International Filing Date, International Searches and International Preliminary Examination, etc.</p> <p>Section 2. Special Provisions on International Patent Applications</p> <p>Korean Translation of International Patent Applications, Submission of Documents, Special Provisions Concerning Amendments, etc.</p>
Chapter XI. Supplementary Provisions (§§215~224-5)	Prohibition of Disclosure of Documents Relating to Patent Applications, Patent Marking, Prohibition of False Marking, Non-Appealability, etc.
Chapter XII. Penalty Provisions (§§225~232)	Divulgence of Confidential Information, False Indication, Breach of Orders to Maintain Confidentiality, Administrative Fines, etc.

2. Utility Model Act

A. Reason for Enactment and Main Provisions

The previous Act stipulated the establishment of the patent office, matters related to the protection of inventions, matters related to the protection of utility models, and matters related to the protection of designs, and there were provisions inconsistent or in conflict with other provisions within the Act.³⁹⁾ This had frequently caused problems in the interpretation and application of the Act, and as a result, a Bill for the Utility Model Act was introduced in the National Assembly on December 4, 1961.⁴⁰⁾ The Bill was proposed to separately stipulate matters only related to utility models.⁴¹⁾ It was passed by the National Assembly on December 27, 1961 and was enacted as Act No. 952 on December 31, 1961.

The Utility Model Act of 1961, among other things, provides: 1) subject matter for a utility model; 2) the novelty requirement; 3) the first-to-file doctrine; 4) the scope of utility model rights; 5) the duration of utility model rights (10 years from the date of registration, not exceeding 12 years from the date of application); 6) the grant of a non-exclusive license on the basis of prior use; and 7) remedies for infringement of utility model rights.⁴²⁾

39) Bill No. AA0259, Draft of the Utility Model Act, *available at* http://likms.assembly.go.kr/bill/jsp/BillDetail.jsp?bill_id=003749 (last visited Oct. 27, 2015).

40) *Id.*

41) *Id.*

42) *Id.*

B. Major Amendments

The Utility Model Act has been amended 36 times since its enactment. Major amendments which have been made to substantive provisions of the Act are as follows.

- (1) Utility Model Act of 1974: Amended by Act No. 2508
(February 8, 1973; Entering into Force on January 1, 1974)

The amendment modified the Utility Model Act to be in line with the amendment of the Patent Act, the main legislation that regulates matters concerning industrial property rights.⁴³⁾ This amendment, among other things, provides: 1) the ineligibility for registration of a utility model disclosed in a publication in other countries prior to the filing date (failure to satisfy the novelty requirement); 2) the authorization of a compulsory license or the cancellation of utility model rights on the grounds of non-use for three (3) consecutive years; 3) the compensation and management of utility models created by public servants in connection with their duties; and 4) the adaptation of the qualifications for examiners and the examiners' duty to receive professional training.⁴⁴⁾

- (2) Utility Model Act of 1981: Amended by Act No. 3328
(December 31, 1980; Entering into Force on September 1, 1981)

This amendment was made to incorporate common provisions of the Paris Convention into the Act and to reasonably manage the utility model

43) Bill No. BB0157, Draft of a Whole Amendment to the Utility Model Act, *available at* http://likms.assembly.go.kr/bill/jsp/BillDetail.jsp?bill_id=007650 (last visited Oct. 27, 2015).

44) *Id.*

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system.⁴⁵⁾ The amendment establishes legal grounds for ‘the principle of national treatment’ and ‘the right of priority,’ and it also adopts an early publication of the application for utility model registration by a request to avoid overlapped R&D and investment.⁴⁶⁾

(3) Utility Model Act of 1982: Amended by Act No. 3567 (November 29, 1982; Entering into Force on November 29, 1982)

The amendment made a revision to the Utility Model Act in order to stipulate matters concerning the process of filing an international application for a utility model registration under the Patent Cooperation Treaty.⁴⁷⁾ The amendment, among other things, provides: 1) the registration of a utility model on the basis of an international application; 2) the submission of a Korean translation of the international application materials; 3) the submission of the drawings(if the international application does not include the drawings); 4) the reasons for which the international utility model registration gets nullified.⁴⁸⁾

(4) Utility Model Act of 1990: Amended by Act No. 4209 (January 13, 1990; Entering into Force on September 1, 1990)

This amendment was made to keep up with international standards of the utility model protection and to strengthen the protection for utility model right holders.⁴⁹⁾ Through the amendment, applicants’ duty to submit an

45) Bill No. CC0080, Draft of a Partial Amendment to the Utility Model Act, *available at* http://likms.assembly.go.kr/bill/jsp/BillDetail.jsp?bill_id=009119 (last visited Oct. 27, 2015).

46) *Id.*

47) Bill No. 110313, Draft of a Partial Amendment to the Utility Model Act, *available at* http://likms.assembly.go.kr/bill/jsp/BillDetail.jsp?bill_id=009565 (last visited Oct. 27, 2015).

48) *Id.*

49) Bill No. 130687, Draft of a Whole Amendment to the Utility Model Act, *available at*

abstract of the descriptions is established, and a limit on the duration of utility model rights is added (10 years from the publication date of an application, but no more than 15 years from the filing date of an application).⁵⁰⁾

(5) Utility Model Act of 1996: Amended by Act No. 5081
(December 29, 1995; Entering into Force on July 1, 1996)

The amendment modified provisions of the Utility Model Act that had been incompatible with the TRIPs Agreement.⁵¹⁾ It adds ‘assigning’ and ‘offering for assigning or leasing’ to the definition of ‘carrying-out (of a utility model)’ in order to strengthen the protection of utility model rights and defines the term as: ‘any act of manufacturing, using, assigning, leasing, or importing, or offering for assigning or leasing (including displaying for the purpose of assignment or leasing) articles related to a device’.⁵²⁾ Also, through this amendment, the duration of utility model rights is extended from ‘10 years from the publication date of an application’ to ‘15 years from the filing date of an application’.⁵³⁾

(6) Utility Model Act of 1999: Amended by Act No. 5577
(September 23, 1998; Entering into Force on July 1, 1999)

The amendment, among other things, provides: 1) the simplification of the registration of utility models to expedite the utility model registration

http://likms.assembly.go.kr/bill/jsp/BillDetail.jsp?bill_id=011353 (last visited Oct. 27, 2015).

50) *Id.*

51) Bill No. 141207, Draft of a Partial Amendment to the Utility Model Act, *available at* http://likms.assembly.go.kr/bill/jsp/BillDetail.jsp?bill_id=013316 (last visited Oct. 27, 2015).

52) *Id.*

53) *Id.*

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process; 2) the request for a technical assessment of utility models to minimize adverse effects of the expedited registration process; and 3) the shortening of the duration of utility model rights taking the expedited registration process into consideration.⁵⁴⁾ As a consequence, a utility model satisfying the formal and basic requirements for the utility model registration may be registered without further substantial examination.⁵⁵⁾ Also, any person may request the KIPO Commissioner a technical assessment of a device for which an application has been filed for utility model registration or a registered utility model, and the duration of utility model rights is shortened from ‘15 years from the filing date of an application’ to ‘10 years from the filing date of an application’.⁵⁶⁾

(7) Utility Model Act of 2003: Amended by Act No. 6766 (December 11, 2002; Entering into Force on May 12, 2003)

The amendment was mainly made to incorporate the amendment of the Patent Cooperation Treaty into the Act.⁵⁷⁾ In order for the Utility Model Act to be in line with the Patent Cooperation Treaty, it provides that an applicant who has filed an international application for utility model registration in a foreign language should submit a Korean translation of the required application materials to the KIPO Commissioner within 30 months from the priority date.⁵⁸⁾

54) Bill No. 150901, Draft of a Whole Amendment to the Utility Model Act, *available at* http://likms.assembly.go.kr/bill/jsp/BillDetail.jsp?bill_id=014445 (last visited Oct. 27, 2015).

55) *Id.*

56) *Id.*

57) Bill No. 161596, Draft of a Partial Amendment to the Utility Model Act, *available at* http://likms.assembly.go.kr/bill/jsp/BillDetail.jsp?bill_id=021373 (last visited Oct. 27, 2015).

58) *Id.*; Under the previous Utility Model Act, a Korean translation of the required application materials should be submitted within 20 months, or it should be submitted within 30 months if an international preliminary examination requested by the applicant.

(8) Utility Model Act of 2009: Amended by Act No. 9371
(January 30, 2009; Entering into Force on July 1, 2009)

This amendment establishes applicants' right to request a re-examination against a decision to reject the registration of a utility model.⁵⁹⁾ Under the previous Utility Model Act, an applicant whose application for utility model registration has been rejected and who would like to raise an objection to the rejection must initiate a trial within 30 days from the date of receipt of the certified copy of the decision.⁶⁰⁾ Under the revised Utility Model Act, however, the applicant in such case may file a request for re-examination within 30 days from the date of receipt of the certified copy of the decision.⁶¹⁾

(9) Utility Model Act of 2012: Amended by Act No. 11114
(December 2, 2011; Entering into Force on March 15, 2012)

The amendment was made to establish 1) the extension of the duration of utility model rights on the grounds of a delay in the registration process and 2) the court's order to preserve the confidentiality of trade secrets learned in the course of a utility model right infringement lawsuit or an exclusive license infringement lawsuit, which had been agreed through the Korea-U.S. FTA.⁶²⁾ On top of this, it modifies the provision concerning

59) Bill No. 1801712, Draft of a Partial Amendment to the Utility Model Act, *available at* http://likms.assembly.go.kr/bill/jsp/BillDetail.jsp?bill_id=ARC_C0N8A1B1J0T3R1X7D2Z6J3T7H5Q3G7 (last visited Oct. 27, 2015).

60) *Id.*

61) *Id.*

62) Bill No. 1801497, Draft of a Partial Amendment to the Utility Model Act, *available at* http://likms.assembly.go.kr/bill/jsp/BillDetail.jsp?bill_id=ARC_K0J8G1O0D1X0Q1M4K2E4S5E3A5W7H5 (last visited Oct. 27, 2015).

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the exceptions to public disclosure (the exceptions used to be applied if an application filed within six (6) months from the relevant date, but now applied if filed within 12 months) and has repealed the provision on the cancellation of utility model rights.⁶³⁾

(10) Utility Model Act of 2015: Amended by Act No. 12752
(June 11, 2014; Entering into Force on January 1, 2015)

In order for applicants to obtain a filing date as early as possible, this amendment enables them to file an application for the registration of a utility model in foreign languages as well as in Korean.⁶⁴⁾ Also, for the convenience of applicants who file for an international utility model registration, it enables them to request a one (1) month extension to the deadline for the submission of a Korean translation for the required application materials in a foreign language.⁶⁵⁾

C. Utility Model Act at a Glance⁶⁶⁾

The current Utility Model Act, Utility Model Act of 2015, is composed of 10 Chapters and 52 Articles.

Chapter I stipulates general provisions, and Chapters II, III and IV provide the requirements for utility model registration and utility model

63) *Id.*

64) Bill No. 1906705, Draft of a Partial Amendment to the Utility Model Act, *available at* http://likms.assembly.go.kr/bill/jsp/BillDetail.jsp?bill_id=ARC_U1M3N0S9V0K5X1E3K3Z6U2R1V4N2P9 (last visited Oct 27, 2015).

65) *Id.*

66) The full text of the Utility Model Act (English translation) is *available at* http://elaw.klri.re.kr/kor_service/lawView.do?hseq=25237&lang=ENG (last visited Oct. 27, 2015).

applications, the examination of utility model applications, utility model registration and registration fees respectively. Matters related to utility model rights and the protection of utility model right holders are addressed in Chapters V and VI. Matters related to trials, retrials and litigations are stipulated in Chapter VII, and procedural rules concerning international applications under the Patent Cooperation Treaty are codified in Chapter VIII. Supplementary provisions and penalty provisions are regulated in Chapters IX and X.

Table 4. Utility Model Act at a Glance

Chapter	Main Provisions
Chapter I . General Provisions (§§1~3)	Purpose, Definitions, Application of the Patent Act
Chapter II . Requirements for Application and Registration of Utility Models (§§4~11)	Requirements for Utility Model Registration, Unregistrable Utility Models, First-to-File Doctrine, Application for Utility Model Registration, Filing Date of Utility Model Applications, Utility Model Applications in a Foreign Language, Corrections to Utility Model Applications, Conversion of an Application, etc.
Chapter III. Examination (§§12~15)	Request for Examination of Utility Model Applications, Decision to Reject Utility Model Registration, Notification of Grounds for Rejection, etc.
Chapter IV. Registration Fees and Utility Model Registration, etc. (§§16~20)	Registration Fees, Utility Model Register, Issuance of Certificates of Utility Model Registration, etc.
Chapter V . Utility Model Rights (§§21~28)	Duration of Utility Model Rights, Extension of Duration of Utility Model Rights due to Registration Delays, Applications for Extended Registration of Duration of Utility Model Rights, Effects of Utility Model Rights, Limitations on Effects of Utility Model Rights, Non-Exclusive Licenses, etc.

2. Utility Model Act

Chapter	Main Provisions
Chapter VI. Protection of Utility Model Right Holders (§§29~30)	Conducts Constituting Infringement of Utility Model Rights, Application of Patent Act.
Chapter VII. Trials, Retrials, and Litigations (§§31~33)	Trial for Invalidation of Utility Model Registration, Trial Invalidating Extended Registration of Duration of Utility Model Rights, Trial for Granting Non- Exclusive Licenses, etc.
Chapter VIII. International Applications under Patent Cooperation Treaty (§§34~41)	Utility Model Registration Based on International Applications, Applications for International Utility Model Registration, Korean Translation of International Utility Model Applications, Submission of Drawings, Restrictions on Request Timing for Examination of Application, International Applications Recognizable as Utility Model Registration by Decision
Chapter IX. Supplementary Provisions (§§42~44)	Utility Model Gazette, Application of Patent Act, etc.
Chapter X. Penalty Provisions (§§45~52)	Infringement, Divulgence of Confidential Information, False Indication, Breach of Orders to Maintain Confidentiality, Administrative Fines, etc.

3. Design Protection Act

A. Reason for Enactment and Main Provisions

The previous Act stipulated the establishment of the patent office, matters related to the protection of inventions, matters related to the protection of utility models, and matters related to the protection of designs, and there were provisions inconsistent or in conflict with other provisions in the Act.⁶⁷⁾ This had frequently caused problems in the interpretation and application of the Act, and consequently, a Bill for the Design Act was introduced in the National Assembly on December 2, 1961.⁶⁸⁾ The Bill was proposed to separately stipulate matters only related to designs.⁶⁹⁾ It was passed by the National Assembly on December 27, 1961 and was enacted as Act No. 951 on December 31, 1961.

The Design Act of 1961, among other things, provides: 1) subject matter for a design; 2) the novelty requirement; 3) the first-to-file doctrine; 4) the scope of design rights; 5) the duration of design rights (eight (8) years from the date of registration); and 6) remedies for infringement of design rights.⁷⁰⁾

B. Major Amendments

The Design Act has been amended 39 times since its enactment. Major amendments which have been made to substantive provisions of the Act are as follows.

67) Bill No. AA0258, Draft of the Design Act, *available at* http://likms.assembly.go.kr/bill/jsp/BillDetail.jsp?bill_id=003738 (last visited Oct. 27, 2015).

68) *Id.*

69) *Id.*

70) *Id.*

- (1) Design Act of 1974: Amey Act No. 2507 (February 8, 1973; Entering into Force on January 1, 1974)

The amendment modified the Design Act to be in line with the amendment of the Patent Act, the main legislation that regulates matters concerning industrial property rights.⁷¹⁾ This amendment, among other things, provides: 1) the ineligibility for registration of a design disclosed in a publication in South Korea or other countries prior to the filing date (failure to satisfy the novelty requirement); 2) the authorization of a compulsory license or the cancellation of design rights based on non-use for three (3) consecutive years; 3) the compensation and management of designs created by public servants in connection with their duties; and 4) the ineligibility for registration of a design which would be considered to be as a technical creation.

- (2) Design Act of 1981: Amended by Act No. 3327 (December 31, 1980; Entering into Force on September 1, 1981)

The amendment was made to incorporate common provisions of the Paris Convention, and as a result, provisions concerning ‘the principle of national treatment’ and ‘the right of priority’ have been added to the Act.⁷²⁾

71) Bill No. BB0152, Draft of a Whole Amendment to the Design Act, *available at* http://likms.assembly.go.kr/bill/jsp/BillDetail.jsp?bill_id=007662 (last visited Oct. 27, 2015).

72) Bill No. CC0079, Draft of a Partial Amendment to the Design Act, *available at* http://likms.assembly.go.kr/bill/jsp/BillDetail.jsp?bill_id=009123 (last visited Oct. 27, 2015).

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- (3) Design Act of 1994: Amended by Act No. 4595 (December 10, 1993; Entering into Force on January 1, 1994)

This amendment was made to stipulate matters related to the implementation of the TRIPs Agreement.⁷³⁾ Through the amendment, the duration of design rights is extended from eight (8) years from the date of registration to 10 years from the date of registration.⁷⁴⁾

- (4) Design Act of 1998: Amended by Act No. 5354 (August 22, 1997; Entering into Force on March 1, 1998)

The amendment was made mainly to provide: 1) the establishment of the ‘registration of a design without examination’ (for designs for a limited number of articles with short life cycle); 2) matters concerning an objection to the registration of a design without examination (filing an objection and rendering a decision on the objection); 3) the extension of the duration of design rights (from 10 years from the date of registration to 15 years from the date of registration; and 4) the readjusting of the amount of criminal money penalties to secure the effectiveness of design right protection.⁷⁵⁾

- (5) Design Act of 2001: Amended by Act No. 6413 (February 3, 2001; Entering into Force on February 3, 2001)

This amendment, among other things, was made to: 1) establish the protection of a partial design; 2) reduce the registration requirements for

73) Bill No. 140326, Draft of a Partial Amendment to the Design Act, *available at* http://likms.assembly.go.kr/bill/jsp/BillDetail.jsp?bill_id=012431 (last visited Oct. 27, 2015).

74) *Id.*

75) Bill No. 150518, Draft of an Amendment to the Design Act, *available at* http://likms.assembly.go.kr/bill/jsp/BillDetail.jsp?bill_id=014062 (last visited Oct. 27, 2015).

designs for one set of products (i.e., where two or more articles are used together as a set of articles, a design for the set of articles may be registered as one design if it is unitary); 3) make a ‘design made only in a shape essential for a function of the relevant article’ fall into the category of ‘unregistrable designs’; and 4) adopt a calculation method for the amount of damages suffered by the design right holder (may be calculated by multiplying the number of transferred articles by the profit per unit of the articles that the design right holder might have sold in the absence of said infringement).⁷⁶⁾

(6) Design Protection Act of 2005: Amended by Act No. 7289
(December 31, 2004; Entering into Force on July 1, 2005)

First of all, this amendment has changed the title of the ‘Design Act’ to ‘Design Protection Act’ in order to enhance the understanding of the Act.⁷⁷⁾ In addition, through the amendment, ‘fonts’ have become eligible for the protection of design rights under the Act, and examiners have been allowed to render a decision to reject the registration of a design ‘without examination’ based on information and evidence concerning the unregistrability of the design submitted to the KIPO Commissioner.⁷⁸⁾

76) Bill No. 160296, Draft of an Amendment to the Design Act, *available at* http://likms.assembly.go.kr/bill/jsp/BillDetail.jsp?bill_id=016406 (last visited Oct. 27, 2015).

77) Bill No. 170004, Draft of an Amendment to the Design Act, *available at* http://likms.assembly.go.kr/bill/jsp/BillDetail.jsp?bill_id=027990 (last visited Oct. 27, 2015).

78) *Id.*

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(7) Design Protection Act of 2011: Amended by Act No. 10809 (June 30, 2011; Entering into Force on July 1, 2011)

The amendment was made, among other things, to stipulate matters related to the implementation of the Korea-E.U. Free Trade Agreement (“Korea-EU FTA”).⁷⁹⁾ It adds ‘exporting’ to the definition of ‘carrying-out of a design’ to strengthen the protection of design rights and defines the term as: ‘any act of manufacturing, using, assigning leasing, exporting, importing, or offering for assignment or lease of (including displaying for the purpose of assignment or lease) an article to which a design has been applied’.⁸⁰⁾

(8) Design Protection Act of 2012: Amended by Act No. 11111 (December 2, 2011; Entering into Force on March 15, 2012)

This amendment was made primarily to establish the preservation of confidentiality in an infringement lawsuit which had agreed through the Korea-US FTA.⁸¹⁾ Through the amendment, three (3) new articles (Article 81-2 Order to Preserve Confidentiality, Article 81-3 Revocation of Order to Preserve Confidentiality, and Article 81-4 Notification, etc. of Request for Reading Trial Records, etc.) are added to the Act.

79) Bill No. 1809664, Draft of an Amendment to the Design Protection Act, *available at* http://likms.assembly.go.kr/bill/jsp/BillDetail.jsp?bill_id=ARC_G1E0V1M0S2K6L1E6W4J0Q0C8Z3V5A9 (last visited Oct. 27, 2015).

80) *Id.*

81) Bill No. 1801498, Draft of an Amendment to the Design Protection Act, *available at* http://likms.assembly.go.kr/bill/jsp/BillDetail.jsp?bill_id=ARC_X0P8L1C0O1E0V1V4F3G9T0W8Y8B2S5 (last visited Oct. 27, 2015).

(9) Design Protection Act of 2014: Amended by Act No. 11848
(May 28, 2013; Entering into Force on July 1, 2014)

In order to better protect the rights of creators of a design, this amendment has repealed the registration of a ‘similar design’, newly adopted the registration of a ‘related design’, and strengthened the requirements of trademark registration (i.e., no registration granted for designs easily created by combining shape, pattern or color that were known, the establishment of an exception to the application of the expanded first-to-file doctrine, etc.).⁸²⁾ Also, the amendment has extended the duration of design rights (from 15 years from the date of registration to 20 years from the date of application) and addressed matters related to the implementation of the Hague Agreement Concerning the International Registration of Industrial Designs (“Hague Agreement”) (incorporating provisions on the international application process under the Hague Agreement into the Design Protection Act).⁸³⁾

C. Design Protection Act at a Glance⁸⁴⁾

The current Design Protection Act, Design Protection Act of 2014, is composed of 11 Chapters and 229 Articles.

Chapter I stipulates general provisions, and Chapters II, III and IV provide the requirements and application for design registration, the examination

82) Bill No. 1903281, Draft of an Amendment to the Design Protection Act, *available at* http://likms.assembly.go.kr/bill/jsp/BillDetail.jsp?bill_id=PRC_Q1O3Y0S6Y1K0Q1J7R2Q5R2A9D6J7R3 (last visited Oct. 27, 2015).

83) *Id.*

84) The full text of the Design Protection Act (English translation) is *available at* http://elaw.klri.re.kr/kor_service/lawView.do?hseq=28698&lang=ENG (last visited Oct. 27, 2015).

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of application for design registration, and registration fees and design registration respectively. Matter related to design rights and the protection of design right holders are addressed in Chapters V and VI. Matters related to trials are stipulated in Chapter VII, and matters related to retrials and litigations are provided in Chapter VIII. Chapter IX codifies procedural rules concerning international applications under the Hague Agreement, and supplementary provisions and penalty provisions are regulated in Chapters X and XI.

Table 5. Design Protection Act at a Glance

Chapter	Main Provisions
Chapter I . General Provisions (§§1~32)	Purpose, Definitions, Design Administrators for Overseas Residents, Scope of Power of Attorney, Jurisdiction over Overseas Residents, Calculation of Periods, Suspension of Procedures, Legal Capacity of Foreigners, Reporting by Use of Electronic Documents and Digital Signature, Notifications, etc. via Information and Communications Networks, etc.
Chapter II . Requirements for Application and Registration of Designs (§§33~57)	Requirements for Design Registration, Unregistrable Designs, Related Designs, Applications for Design Registration, Filing Date of Design Applications, Designs for One Set of Products, Secret Designs, First-to-File Doctrine, Corrections of Procedures, Corrections to Applications, Division of Applications, Publication of Applications, etc.
Chapter III. Examination (§§58~78)	Examination by Examiners, Designation of Specialized Agencies, Expedited Examination, Decisions to Reject Applications for Design Registration, Notification of Grounds for Rejection, Petitions for Re-Examination, Ex Officio Corrections, etc.
Chapter IV. Registration Fees and Design Registration, etc. (§§79~89)	Design Registration Fees, Late Payment of Registration Fees, Reinstatement of Applications for Design Registration and Design Rights by Making Late Payment of Registration Fees, Full or Partial Exemption from Registration Fees, Refunds of Registration Fees, Design Register, Issuance of Certificates of Design Registration, etc.

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Chapter	Main Provisions
Chapter V. Design Rights (§§90~112)	Duration of Design Rights, Effects of Design Rights, Scope of Protection of Registered Designs, Exclusive Licenses, Non-Exclusive Licenses, Non-Exclusive Licenses by Prior Use, Non-Exclusive Licenses by Earlier Application, Renunciation of Design Rights, Effects of Renunciation, Pledge, etc.
Chapter VI. Protection of Design Rights Holders (§§113~118)	Right to Seek Injunction against Infringement, Conducts Deemed Infringement, Estimation of Damages, Presumption of Negligence, Restoration of Reputation of Design Right Holders, etc.
Chapter VII. Trials (§§119~157)	Trials on Decision to Dismiss Corrections without Prejudice, Trials on Decision to Reject Applications for Design Registration or to Revoke Design Registration, Trials to Invalidate Design Registration, Trials for Granting Non-Exclusive Licenses, Dismissal of Petitions for Trial without Prejudice, Panels for Trial, Trial Costs, etc.
Chapter VIII. Retrials and Litigations (§§158~172)	Petitions for Retrial, Petitions to Oppose Decision Obtained by Fraud, Restrictions on Effects of Design Rights Restored by Retrial, Cancellation of Administrative Rulings or Decisions, Lawsuit against Administrative Rulings or Decisions on Consideration, etc.
Chapter IX. International Applications under Hague Agreement (§§173~205)	Section 1. International Applications via Korean Intellectual Property Office International Applications, Procedures for International Applications, Effective Date of Submission of International Applications and Other Documents, etc.

Chapter	Main Provisions
Chapter IX. International Applications under Hague Agreement (§§173~205)	Section 2. Applications for International Design Registration Applications for International Design Registration, Special Provisions Concerning Requirements for Design Registration, Special Provisions Concerning Applications for Design Registration, Effects of Correction of International Register, etc.
Chapter X. Supplementary Provisions (§§206~219)	Entrustment of Digitization of Design Documents, Design Gazette, Submission of Documents, Design Registration Indication, Restrictions on Appeals, etc.
Chapter XI. Penalty Provisions (§§220~229)	Divulgence of Confidential Information, False Marking, Breach of Orders to Maintain Confidentiality, Administrative Fines, etc.

4. Act on the Layout-Design of Semiconductor Integrated Circuits (“Semiconductor Layout-Design Act”)

A. Reason for Enactment and Main Provisions

A Bill for the Semiconductor Layout-Design Act was introduced in the National Assembly on October 16, 1992, and it was proposed to stimulate technological development in semiconductor related industries by granting intellectual property rights to semiconductor layout-designs (“layout-designs”), protecting the right holders, and promoting lawful use of layout-designs.⁸⁵⁾ The Bill was passed by the National Assembly on November 10, 1992 and was enacted as Act No. 4526 on December 8, 1992.

The Semiconductor Layout-Design Act of 1992, among other things, provides: 1) the expansion of the scope of protection to final products manufactured employing layout-designs; 2) the duration of rights (10 years from the date of registration); 3) the right holder’s exclusive right to use and to grant a license to use layout-designs and to establish a right of pledge for his benefit; 4) the authorization of a compulsory license based on non-use for two (2) consecutive years without any justifiable excuse or based on national security concerns; and 5) the establishment of the Committee for Deliberation and Conciliation on Layout-Designs (for deliberation on matters concerning layout-design rights and exclusive and non-exclusive licenses and for the conciliation of

85) Bill No. 140086, Draft of the Semiconductor Layout-Design Act, *available at* http://likms.assembly.go.kr/bill/jsp/BillDetail.jsp?bill_id=012191 (last visited Oct. 27, 2015).

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disputes arising in connection with the rights and interests protected by this Act); and 6) remedies for the infringement of layout-design rights.⁸⁶⁾

B. Major Amendments

The Semiconductor Layout-Design Act has been amended 11 times since its enactment. Major amendments which have been made to substantive provisions of the Act are as follows.

(1) Semiconductor Layout-Design Act: Amended by Act No. 4890
(January 5, 1995; Entering into Force on July 1, 1995)

The amendment was made to revise provisions concerning adjudication for the grant of a non-exclusive license and compensation for infringement and damages.⁸⁷⁾ By this amendment, any person who desires to use a protected layout-design may file a petition for adjudication for the grant of a non-exclusive license without negotiations with the right holder if he files it for a national emergency or any other crucial situation.⁸⁸⁾ Additionally, this amendment has repealed special provisions relating to the amount of compensation against the infringement of layout-design rights, which eliminates the possibility that it might adversely affect the right holders.⁸⁹⁾

86) *Id.*

87) Bill No. 140834, Draft of a Partial Amendment to the Semiconductor Layout-Design Act, available at http://likms.assembly.go.kr/bill/jsp/BillDetail.jsp?bill_id=012928 (last visited Oct. 27, 2015).

88) *Id.*

89) *Id.*

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(2) Semiconductor Layout-Design Act: Amended by Act No. 8397 (April 27, 2007; Entering into Force on October 28, 2007)

This amendment was made to adopt the procedural provisions for filing applications by electronic documents under the Patent Act for creators' convenience and to reduce or waive fees and charges for registration of a layout-design for small and medium-sized enterprises.⁹⁰⁾ As a result, Article 5-2 stipulating the application of the Patent Act (from Article 28-2 to Article 28-5) and Article 40-2 providing for the reduction or waiver of registration fees and charges is added to the Semiconductor Layout-Design Act.⁹¹⁾

(3) Semiconductor Layout-Design Act: Amended by Act No. 12289 (January 21, 2014; Entering into Force on January 21, 2014)

The amendment was mainly made to make layout-design rights infringement penalties more effective by readjusting the amount of criminal money penalties.⁹²⁾ This amendment readjusted the amount of criminal money penalties in Article 45, 46, and 47 of the Semiconductor Layout-Design Act considering the general level of prices.⁹³⁾

90) Bill No. 175553, Draft of a Partial Amendment to the Semiconductor Layout-Design Act, *available at* http://likms.assembly.go.kr/bill/jsp/BillDetail.jsp?bill_id=038336 (last visited Oct. 27, 2015).

91) *Id.*

92) Bill No. 1907510, Draft of a Partial Amendment to the Semiconductor Layout-Design Act, *available at* http://likms.assembly.go.kr/bill/jsp/BillDetail.jsp?bill_id=PRC_N1W3Y1H1M004S1D7C3D1B2T9E7E8M0 (last visited Oct. 27, 2015).

93) *Id.*

C. Semiconductor Layout-Design Act at a Glance⁹⁴⁾

The current Semiconductor Layout-Design Act, Semiconductor Layout-Design Act of 2015,⁹⁵⁾ is composed of seven (7) Chapters and 49 Articles.

Chapter I stipulates general provisions. Matters related to layout-design rights are provided in Chapter II, and the registration of layout-designs is addressed in Chapter III. Chapter IV stipulates matters related to the Committee for Deliberation and Conciliation on Layout-Designs, and Chapter V codifies remedies for the infringement of layout-design rights. Supplementary provisions and penalty provisions are regulated in Chapters VI and VII.

94) The full text of the Semiconductor Layout-Design Act (English translation) is *available* at http://elaw.klri.re.kr/kor_service/lawView.do?hseq=27613&lang=ENG (last visited Oct. 27, 2015).

95) It has been amended by Act No. 13150 (February 3, 2015) and entered into force on August 4, 2015.

Table 6. Semiconductor Layout-Design Act at a Glance

Chapter	Main Provisions
Chapter I. General Provisions (§§1~5-2)	Purpose, Definitions, Layout-Design Administrators for Overseas Residents, Creator of Layout-Design in Service, etc.
Chapter II. Layout-Design Rights (§§6~18)	Creation of Layout-Design Rights, Duration of Layout-Design Rights, Effects of Layout-Design Rights, Limits of Scope of Layout-Design Rights, Transfer and Joint Ownership of Layout-Design Rights, Exclusive Licenses, Non-Exclusive Licenses, Adjudication on Non-Exclusive Licenses, Lapse of Layout-Design Rights, Pledge, etc.
Chapter III. Registration of Layout-Designs (§§19~24)	Applications for Registration of Creation of Layout-Designs, Rejection of Applications, Registration of Creation, Registration Marks, Effects of Registration, etc.
Chapter IV. Committee for Deliberation and Conciliation on Layout-Designs (§§25~34)	Committee for Deliberation and Conciliation on Layout-Designs, Functions of Committee, Procedures of Conciliation, Successful Conciliations, Unsuccessful Conciliations, Conciliation Expenses, etc.
Chapter V. Remedies for Infringements (§§35~38)	Demand to Cease from Infringement, Claims for Damages, Compensation, Claims for Royalties against Bona Fide Persons
Chapter VI. Supplementary Provisions (§§39~44-2)	Hearings, Fees, Refunds of Fees Mistakenly Paid, Judicial Jurisdiction over Overseas Residents, Fostering of Layout-Design Technologies, etc.
Chapter VII. Penalty Provisions (§§45~49)	Infringement, Divulgence of Confidential Information, False Marking, etc.

III. Laws on Copyrights and Neighboring Rights

1. Copyright Act

A. Reason for Enactment and Main Provisions

A Bill for Copyright Act was introduced in the National Assembly on January 11, 1957, and it was proposed to contribute to the improvement and development of culture by protecting the rights of authors of academic and artistic works.⁹⁶⁾ The Bill was passed by the National Assembly on January 18, 1957 and was enacted as Act No. 432 on January 28, 1957.

The Copyright Act of 1957, among other things, provides: 1) the scope of copyright (author's property rights and moral rights); 2) the establishment of the Korea Copyright Commission; 3) the right of disclosure; 4) the duration of copyright (the period of author's life plus 30 years); 6) the effect of copyright registration; and 7) remedies for the infringement of copyright.⁹⁷⁾

B. Major Amendments

The Copyright Act has been amended 24 times since its amendment. Major amendments which have been made to substantive provisions of the Act are as follows.

96) Bill No. 030225, Draft of the Copyright Act, *available at* http://likms.assembly.go.kr/bill/jsp/BillDetail.jsp?bill_id=001962 (last visited Oct. 27, 2015).

97) *Id.*

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(1) Copyright Act of 1987: Amended by Act No. 3916 (December 31, 1986; Entering into Force on July 1, 1987)

The amendment was made to incorporate changes and developments in the scope of copyright protection and the usage pattern of copyrighted works into the Act and to keep up with the international standards of protection for the rights of authors.⁹⁸⁾ This amendment, among other things, provides: 1) the copyright protection for works of foreigners under the principle of reciprocity; 2) the extended scope of copyright protection (subdividing author's property rights in copying, public performance, broadcasting, exhibition, distribution, derivative works, etc.); 3) the extension of the duration of copyright protection (the period of author's life plus 50 years); 4) the establishment of neighboring rights for performers, producers of sound recordings, and broadcasting service providers (for 20 years); and 5) the establishment and authorization of copyright management services.⁹⁹⁾

(2) Copyright Act of 1994: Amended by Act No. 4717 (January 7, 1994; Entering into Force on July 1, 1994)

Among other things, this amendment establishes performers' and sound recording producers' right to authorize the rental of sound recordings, adopts copyright protection for database, and extends the duration of neighboring right protection.¹⁰⁰⁾ Under the amendment, copyright protection becomes available for 'database' which falls within the definition of 'compilation

98) Bill No. 120290, Draft of a Whole Amendment to the Copyright Act, *available at* http://likms.assembly.go.kr/bill/jsp/BillDetail.jsp?bill_id=010316 (last visited Oct. 27, 2015).

99) *Id.*

100) Bill No. 140550, Draft of a Partial Amendment to the Copyright Act, *available at* http://likms.assembly.go.kr/bill/jsp/BillDetail.jsp?bill_id=012655 (last visited Oct. 27, 2015).

works,' the right to authorize the rental of commercial sound recordings has been given to performers and sound recording producers, and the duration of the neighboring right protection is extended from '20 years' to '50 years.'

(3) Copyright Act of 2000: Amended by Act No. 6134 (January 12, 2000; Entering into Force on July 1, 2000)

The amendment was made to effectively protect the rights of authors from infringing activities by newly developed digital copying technologies and copying apparatus.¹⁰¹⁾ Through this amendment, provisions concerning the definition of 'transmission' (meaning a 'transmission of the works or a provision for use by means of wire or wireless communications so as to have the public receive or use it at individually selected time and places') and authors' right to transmit their works are included into the Copyright Act.¹⁰²⁾ The amendment also stipulates that the exception for a reproduction by users for their private use (permitting a reproduction within the limit of the users' personal, family or the equivalent use) should not apply to the case of reproductions by copying apparatus installed for the use by the public.¹⁰³⁾

(4) Copyright Act of 2005: Amended by Act No. 7233 (October 16, 2004; Entering into Force on January 17, 2005)

In order to clarify the rights of performers and sound recording producers in relation with the use of their performance and sound recordings on the

101) Bill No. 152345, Draft of a Partial Amendment to the Copyright Act, *available at* http://likms.assembly.go.kr/bill/jsp/BillDetail.jsp?bill_id=015886 (last visited Oct. 27, 2015).

102) *Id.*

103) *Id.*

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internet, this amendment has established the right of transmission to performers and sound recording producers.¹⁰⁴⁾ Accordingly, performers have the right to transmit their performance, and sound recording producers retain the right to transmit their sound recordings.

(5) Copyright Act of 2007: Amended by Act No. 8101 (December 28, 2006; Entering into Force on June 29, 2007)

This amendment was primarily made: 1) to stipulate matters related to promoting the fair use of copyrighted materials, 2) to introduce the authentication of copyright holders, and 3) to enable the Copyright Committee to support the formulation of policies on technological protection measures and rights management information.¹⁰⁵⁾

The amendment has set the following rules: 1) no compensation for the ‘transmission of copyrighted materials’ done at high schools, their equivalents or lower level schools for the purpose of education; 2) no authorization required for using political speeches delivered in public and statements made in public, in the court, etc.; and 3) no authorization required for reproducing, distributing, or broadcasting of news articles and editorials published in newspapers or internet newspapers, unless otherwise stated.¹⁰⁶⁾ Also, an authentication system for verifying a lawful right holder (by an authentication service provider designated by the Minister) has been established for the security of transactions of copyright works,

104) Bill No. 170013, Draft of a Partial Amendment to the Copyright Act, *available at* http://likms.assembly.go.kr/bill/jsp/BillDetail.jsp?bill_id=027999 (last visited Oct. 27, 2015).

105) Bill No. 175514, Draft of a Whole Amendment to the Copyright Act, *available at* http://likms.assembly.go.kr/bill/jsp/BillDetail.jsp?bill_id=038202 (last visited Oct. 27, 2015).

106) *Id.*

and supporting the formulation of policies on technological protection measures and rights management information has been incorporated into the duties of the Copyright Committee.¹⁰⁷⁾

(6) Copyright Act of 2009: Amended by Act No. 9625
(April 22, 2009; Entering into Force on July 23, 2009)

This amendment was made to integrate the Copyright Act and the Computer Programs Protection Act and to strengthen the restrictions on online service providers and their subscribers reproducing or transmitting copyrighted works without authorization.¹⁰⁸⁾ According to the amendment, the Computer Programs Protection Act has been repealed and integrated with the Copyright Act to maintain consistency in policies on the protection of copyright and to promote the effective enforcement thereof.¹⁰⁹⁾ The amendment requires online service providers to take protection measures such as warnings, suspension of the subscriber's account, and removal of the infringing works when infringing works reproduced without authorization are transmitted through information and communications networks.¹¹⁰⁾

(7) Copyright Act of 2009: Amended by Act No. 9529
(March 25, 2009; Entering into Force on September 26, 2009)

The amendment, among other things, provides the compensation for performers and sound recording producers who suffer economic damages

107) *Id.*

108) Bill No. 1802291, Draft of a Partial Amendment to the Copyright Act, *available at* http://likms.assembly.go.kr/bill/jsp/BillDetail.jsp?bill_id=PRC_O0B8R1V1H2U7K1D4O5H0J5Z5I4U7P0 (last visited Oct. 27, 2015).

109) *Id.*

110) *Id.*

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by the use of commercial sound recordings.¹¹¹⁾ The amendment in essence makes persons who give a performance using commercial sound recordings in which other performers' performance is recorded pay reasonable compensation to the performers and producers of such sound recordings.¹¹²⁾

(8) Copyright Act of 2013: Amended by Act No. 10807 (June 30, 2011; Entering into Force on July 1, 2013)

The amendment was made primarily to stipulate matters related to the implementation of the Korea-EU FTA.¹¹³⁾ In order to incorporate what had agreed through the Agreement into the Copyright Act, it has extended the duration of the copyright protection (the period of author's life plus 70 years) and established broadcasting service providers' right to perform their broadcasting (only if they receive entrance fees in relation with watching the broadcasting at a place accessible to the public).¹¹⁴⁾ In addition, it has prohibited the removing, disabling, or circumventing of technological protection measures and established exemptions to copyright infringement liability for the four (4) types of online service providers respectfully: 1) mere conduit, 2) caching, 3) hosting, and 4) information searching.¹¹⁵⁾

111) Bill No. 1803945, Draft of a Partial Amendment to the Copyright Act, *available at* http://likms.assembly.go.kr/bill/jsp/BillDetail.jsp?bill_id=PRC_Y0Y9I0O2Q0N3J2L0B0L9T0T2R5Z4H8 (last visited Oct. 27, 2015).

112) *Id.*

113) Bill No. 1812330, Draft of a Partial Amendment to the Copyright Act, *available at* http://likms.assembly.go.kr/bill/jsp/BillDetail.jsp?bill_id=PRC_V1T1Z0M6L0P9I1V0P5A1Y4E1V1W6C6 (last visited Oct. 27, 2015).

114) *Id.*

115) *Id.*

(9) Copyright Act of 2013: Amended by Act No. 11110
(December 2, 2011; Entering into Force on August 1, 2013)

The amendment was made primarily to stipulate matters related to the implementation of the Korea-US FTA.¹¹⁶⁾ According to what had agreed through the Agreement, the amendment, among other things, provides: 1) the incorporation of ‘temporary storage’ into the definition of the term “reproduction”; 2) the establishment of ‘fair use of works’; 3) the extension of the duration of the neighboring right protection (for 70 years; for 50 years in case of broadcasting); 4) copyright holders’ right to request information on those subscribers who have reproduced or transmitted copyrighted works without their authorization (for the purpose of instituting civil or criminal lawsuits); and 5) the establishment of statutory damages (up to 10 million KRW; up to 50 million KRW in case of infringing copyrights intentionally for profit).¹¹⁷⁾

(10) Copyright Act of 2013: Amended by Act No. 11903 (July 16, 2013; Entering into Force on October 17, 2013)

The Copyright Act only addressed the right of access to information for the visually impaired and provided that reproducing works already published in braille and distributing them for the visually impaired are permissible. Therefore, to address the right of access to information for the hearing impaired, this amendment stipulates a provision for the hearing impaired.¹¹⁸⁾ Under the revised Copyright Act, converting works

116) Bill No. 1813727, Draft of a Partial Amendment to the Copyright Act, *available at* http://likms.assembly.go.kr/bill/jsp/BillDetail.jsp?bill_id=PRC_I1A1H1J1N012C1O8Y1B8U1C8W4I8D2 (last visited Oct. 27, 2015).

117) *Id.*

118) Bill No. 1900506, Draft of a Partial Amendment to the Copyright Act, *available at*

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already published into sign language and reproducing, distributing, publicly performing, or publicly transmitting such sign language are permissible.¹¹⁹⁾

(11) Copyright Act of 2014: Amended by Act No. 12137
(December 30, 2013; Entering into Force on July 1, 2014)

The amendment has incorporated free use of works produced or owned by the State or a local government into the Act and has expanded the scope of uses permissible under the use for the purpose of school education.¹²⁰⁾ Works produced or owned by the State or a local government, which are funded for the public interest, are excluded from the copyright protection.¹²¹⁾ Also, ‘exhibiting’ copyrighted works becomes permissible under the Act, and ‘broadcasting or transmitting copyrighted works’ is replaced by ‘publicly transmitting copyrighted works’, in consideration of the usage pattern of copyrighted works for the purposes of school education.¹²²⁾

C. Copyright Act at a Glance¹²³⁾

The current Copyright Act, Copyright Act of 2014, is composed of 11 Chapters and 142 Articles.

http://likms.assembly.go.kr/bill/jsp/BillDetail.jsp?bill_id=PRC_D1M2M0K7A0V4P1J6Q4U6N1Y8C7N8G1 (last visited Oct. 27, 2015).

119) *Id.*

120) Bill No. 1908464, Draft of a Partial Amendment to the Copyright Act, *available at* http://likms.assembly.go.kr/bill/jsp/BillDetail.jsp?bill_id=PRC_Z1D3R1U0B0L1Z1G7W0Q4J3B2W4E4J5 (last visited Oct. 27, 2015).

121) *Id.*

122) *Id.*

123) The full text of the Copyright Act (English translation) is *available at* http://elaw.klri.re.kr/kor_service/lawView.do?hseq=32626&lang=ENG (last visited Oct. 27, 2015).

Chapter I stipulates general provisions, and matters related to copyright and neighboring rights are provided in Chapters II and III. The protection of database producers is addressed in Chapter IV, and special provisions for cinematographic works and computer programs are stipulated in Chapters V and V-2. Chapter VI provides limitations on the liability of online service providers, and Chapter VI-2 codifies the prohibition of incapacitating technological protection measures. Matters related to copyright management services and the Korea Copyright Commission are stipulated in Chapters VII and VIII. Chapter IX addresses remedies for the infringement of copyright, and supplementary provisions and penalty provisions are regulated in Chapters X and XI.

Table 7. Copyright Act at a Glance

Chapter	Main Provisions
Chapter I . General Provisions (§§1~3)	Purpose, Definitions, Formulation of Measures for Protection of Copyrights, Foreigner's works
	<u>Section 1. Works</u> Examples of Works, Derivative Works, Compilation Works, Works Not Protected
	<u>Section 2. Authors</u> Presumption of Authors, Author of Works for Hire, Copyrights
Chapter II . Copyrights (§§4~63-2)	<u>Section 3. Author's Moral Rights</u> Right of Disclosure, Right of Attribution, Right of Integrity, Inalienability of Author's Moral Rights, Author's Moral Rights to Joint Works
	<u>Section 4. Author's Property Rights</u> (1) <u>Types of Author's Property Rights</u> : Right of Reproduction, Right of Public Performance, Right of Exhibition, Right of Public Transmission, Right of Distribution, Right of Lease, Right of Production of Derivative Rights (2) <u>Limitations on Author's Property Rights</u> : Reproduction for Judicial Proceedings, Use of Political Speech, Use for Purpose of School Education, Reproduction of Current News Articles or Editorials, Free Use of Public Works, Quotation from Works

Chapter	Main Provisions
<p>Chapter II. Copyrights (§§4~63-2)</p>	<p>Published, Reproduction for Private Use, Reproduction for Visually Handicapped, Reproduction for Hearing Impaired Persons, Fair Use of Works, etc. (3) <u>Protection Periods of Author's Property Rights</u> : Principles of Protection Periods, Protection Period of Anonymous and Pseudonymous Works, Protection Period of Works for Hire, etc. (4) <u>Transfer, Exercise and Expiry of Author's Property Rights</u> : Transfers of Author's Property Rights, Authorizations to Use Works, Exercises of Author's Property Rights to Joint Works, Expiry of Author's Property Rights, etc. (5) <u>Exploitation of Works under Statutory Licenses</u> : Exploitation of Works Whose Right Holders Are Unknown, Broadcasting of Works Published, Production of Commercial Music Records (6) <u>Registration and Authentication</u> : Registration of Copyrights, Registration and Effects of Changes in Rights, Orders to Maintain Confidentiality, Authentication of Right Holders (7) <u>Right of Exclusive Publication</u> : Establishment of Right of Exclusive Publication, Obligations of Holders of Right of Exclusive Publication, Duration of Right of Exclusive Publication, etc. (7-2) <u>Special Provisions Concerning Publication</u> : Establishment of Rights of Publication, <i>Mutatis Mutandis</i> Application of Articles 58 through 62</p>

III. Laws on Copyrights and Neighboring Rights

Chapter	Main Provisions
<p>Chapter III. Neighboring Rights (§§64~90)</p>	<p><u>Section 1. General Rules</u> Protected Subject Matter, Presumption of Performers, Relationship with Copyright</p> <p><u>Section 2. Rights of Performers</u> Inalienability of Moral Rights of Performers, Right of Reproduction, Right to Perform, Right of Distribution, Compensation by Broadcasting Service Providers, etc.</p> <p><u>Section 3. Rights of Sound Recording Producers</u> Right of Reproduction, Right of Distribution, Right to Rent, Compensation to Sound Recording Producers by Broadcasting Service Providers, etc.</p> <p><u>Section 4. Rights of Broadcasting Service Providers</u> Right of Reproduction, Right of Simultaneous Relay, Right of Performance</p> <p><u>Section 5. Protected Period for Neighboring Rights</u> Protection Period</p> <p><u>Section 6. Limitations on, Transfers, and Exercises of Neighboring Rights</u> Limitations on Neighboring Rights, Statutory Licenses for Use of Stage Performance, Music Records and Broadcasting, Registration of Neighboring Rights, etc.</p>
<p>Chapter IV. Protection of Database Producers (§§91~98)</p>	<p>Protected Database, Rights of Database Producers, Period of Protection, Statutory Licenses for Use of Database, Registration of Rights of Database Producers, etc.</p>
<p>Chapter V. Special Provisions Concerning Cinematographic Works (§§99~101)</p>	<p>Cinematization of Works, Rights in Cinematographic Works, Rights of Producers of Cinematographic Works</p>

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Chapter	Main Provisions
Chapter V-2. Special Provisions Concerning Computer Programs (§§101-2~101-7)	Protected Subject Matter, Restrictions on Author's Property Rights of Computer Programs, Reverse Engineering of Program Codes, etc.
Chapter VI. Restrictions on Liability of Online Service Providers (§§102~104)	Restriction on Liability of Online Service Providers, Suspension of Reproduction or Transmission, Request to Provide Information on Reproducers and Transmitters, etc.
Chapter VI-2. Prohibition of Incapacitating Technological Protection Measures (§§104-2~104-8)	Prohibition of Incapacitation of Technological Protection Measures, Prohibition of Removal or Alteration of Rights Management Information, Prohibition of Forging of Labels, Prohibition of Incapacitation of Encrypted Broadcasting Signals, etc.
Chapter VII. Copyright Trust Management Services (§§105~111)	Authorization for Copyright Trust Management Services, Obligations of Copyright Trust Management Service Providers, Supervision, Cancellation of Authorization, etc.
Chapter VIII. Korea Copyright Commission (§§112~122)	Establishment of Korea Copyright Commission, Missions, Mediation, Conciliation Division, Application for Conciliation, Expenses of Conciliation, Copyright Information Center, etc.
Chapter IX. Remedies for Infringement of Rights (§§123~129-5)	Right to Seek Injunction against Infringement, Conducts Deemed Infringement, Claims for Damages, Protection of Author's Moral Rights after Death, etc.
Chapter X. Supplementary Provisions (§§130~135)	Collecting and Destroying Illegal Reproductions, Official Fees, Donation of Author's Property Rights, etc.
Chapter XI. Penalty Provisions (§§136~142)	Penalties, Confiscations, Administrative Fines, etc.

IV. Laws on Trademarks and Other Distinctive Signs

1. Trademark Act

A. Reason for Enactment and Main Provisions

A Bill for the Trademark Act was introduced in the National Assembly on October 13, 1949.¹²⁴⁾ The Bill was proposed to contribute to the development of national industries and to protect the interests of consumers by maintaining the business reputation of those persons using trademarks through the protection of trademarks.¹²⁵⁾ It was passed by the National Assembly on November 4, 1949 and was enacted as Act No. 71 on November 28, 1949.

The Trademark Act of 1949, among other things, provides: 1) subject matter for a trademark; 2) the first-to-use doctrine (the registration of a trademark available to a trademark owner who has used the trademark first); 3) the scope of trademark rights; 4) foreigners' legal capacity to be a trademark right holder; 5) the duration of trademark registration (10 years for the date of registration); and 6) remedies for the infringement of trademark rights.¹²⁶⁾

124) Bill No. 010180, Draft of the Trademark Act, *available at* http://likms.assembly.go.kr/bill/jsp/BillDetail.jsp?bill_id=000169 (last visited Oct. 27, 2015).

125) *Id.*

126) *Id.*

B. Major Amendments

The Trademark Act has been amended 38 times since its amendment. Major amendments which have been made to substantive provisions of the Act are as follows.

- (1) Trademark Act of 1958: Amended by Act No. 480 (March 11, 1958; Entering into Force on March 11, 1958)

The amendment was made to adopt the first-to-file doctrine and make marks concerning the Olympics unregistrable subject matter under the Trademark Act.¹²⁷⁾ Taking difficulties in determining who used the trademark first in business into account, this amendment replaces ‘the first-to-use doctrine’ with ‘the first-to-file doctrine’.¹²⁸⁾ Also, it includes marks concerning the Olympics into the subject matter deemed to be unregistrable under the Act.¹²⁹⁾

- (2) Trademark Act of 1973: Amended by Act No. 2506 (February 8, 1973; Entering into Force on February 8, 1973)

The amendment, among other things, provides the repealing of the time limitation for initiating an invalidation trial and the establishment of the publication of trademark applications.¹³⁰⁾ It removes the time limitation for initiating a trial to invalidate the registration of a trademark which is

127) Bill No. 030336, Draft of a Partial Amendment to the Trademark Act, *available at* http://likms.assembly.go.kr/bill/jsp/BillDetail.jsp?bill_id=002114 (last visited Oct. 27, 2015).

128) *Id.*

129) *Id.*

130) Bill No. BB0158, Draft of a Whole Amendment to the Trademark Act, *available at* http://likms.assembly.go.kr/bill/jsp/BillDetail.jsp?bill_id=007649 (last visited Oct. 27, 2015).

against the public interests, and it adopts the publication of trademark applications to prevent disputes over trademarks in advance and to secure fairness in the examination of trademark applications.¹³¹⁾

- (3) Trademark Act of 1981: Amended by Act No. 3326 (December 31, 1980; Entering into Force on September 1, 1981)

This amendment was mainly made to incorporate common provisions of the Paris Convention into the Trademark Act and to keep up with international standards of the trademark protection.¹³²⁾ It establishes legal grounds for ‘the right of priority’ and adopts the registration of collective marks.¹³³⁾

- (4) Trademark Act of 1986: Amended by Act No. 3892 (December 31, 1986; Entering into Force on December 31, 1986)

To facilitate the use of trademarks, the amendment repeals provisions on the same quality requirements.¹³⁴⁾ The previous Trademark Act required that products of a trademark licensee keep the same quality as products of a trademark right holder.¹³⁵⁾ This amendment has repealed such requirement in using trademarks in order to allow trademark licensees to use the trademarks according to his needs.¹³⁶⁾

131) *Id.*

132) Bill No. CC0078, Draft of a Partial Amendment to the Trademark Act, *available at* http://likms.assembly.go.kr/bill/jsp/BillDetail.jsp?bill_id=009114 (last visited Oct. 27, 2015).

133) *Id.*

134) Bill No. 120325, Draft of a Partial Amendment to the Trademark Act, *available at* http://likms.assembly.go.kr/bill/jsp/BillDetail.jsp?bill_id=010354 (last visited Oct. 27, 2015).

135) *Id.*

136) *Id.*

IV. Laws on Trademarks and Other Distinctive Signs

- (5) Trademark Act of 1996: Amended by Act No. 5083 (December 29, 1995; Entering into Force on January 1, 1996)

To make the Trademark Act be in line with the TRIPs Agreement, this amendment includes ‘colors’ into the definition of “trademark”, and defines it as ‘any sign, letter, figure or the combination of them, and colors added to the each of the foregoing’.¹³⁷⁾

- (6) Trademark Act of 1998: Amended by Act No. 5355 (August 22, 1997; Entering into Force on March 1, 1998)

The amendment adds ‘three-dimensional shape’ into the definition of the term “trademark” following international trends of the trademark protection and simplifies the application and examination procedures for trademark registration (e.g., the product designation of two (2) or more classes in a single application and the repealing of publication on newspaper, etc. of the transfer of trademarks for more than 30 days).¹³⁸⁾

- (7) Trademark Act of 2001: Amended by Act No. 6414 (February 3, 2001; Entering into Force on July 1, 2001)

Through this amendment, the right to demand compensation for damages occurred prior to the registration of a trademark is established, and the implementation of the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks (“Madrid Agreement”) is addressed.¹³⁹⁾ The revised Trademark Act authorizes an applicant to

137) Bill No. 141206, Draft of a Partial Amendment to the Trademark Act, *available at* http://likms.assembly.go.kr/bill/jsp/BillDetail.jsp?bill_id=013315 (last visited Oct. 27, 2015).

138) Bill No. 150517, Draft of a Partial Amendment to the Trademark Act, *available at* http://likms.assembly.go.kr/bill/jsp/BillDetail.jsp?bill_id=014061 (last visited Oct. 27, 2015).

demand a compensation payment in an amount equivalent to the damages of his business caused by the infringing use of his trademark (from the date of warning to the date of trademark registration), and it stipulates matters related to the process of filing an international application under the Madrid Agreement.¹⁴⁰⁾

(8) Trademark Act of 2005: Amended by Act No. 7290 (December 31, 2004; Entering into Force on July 1, 2005)

The amendment, among other things, has established the registration of a ‘geographical indications collective mark’.¹⁴¹⁾ This amendment provides that it is a ‘collective mark’ which is intended to be used directly by a corporation composed solely of persons who carry on the business of producing, manufacturing or processing goods eligible for a geographical indication, and the registration of a geographical indications collective mark may be granted to such corporations.¹⁴²⁾

(9) Trademark Act of 2012: Amended by Act No. 10811 (June 30, 2011; Entering into Force on January 1, 2012)

This amendment was made mainly to stipulate matters related to the implementation of the Korea-EU FTA.¹⁴³⁾ It establishes legal grounds for the rejection of the registration of a trademark which is similar to or the

139) Bill No. 160297, Draft of a Partial Amendment to the Trademark Act, *available at* http://likms.assembly.go.kr/bill/jsp/BillDetail.jsp?bill_id=016405 (last visited Oct. 27, 2015).

140) *Id.*

141) Bill No. 170604, Draft of a Partial Amendment to the Trademark Act, *available at* http://likms.assembly.go.kr/bill/jsp/BillDetail.jsp?bill_id=028843 (last visited Oct. 27, 2015).

142) *Id.*

143) Bill No. 1809666, Draft of a Partial Amendment to the Trademark Act, *available at* http://likms.assembly.go.kr/bill/jsp/BillDetail.jsp?bill_id=ARC_H1R0Z1J0T2U6U1V7P0E6I311C7V1I7 (last visited Oct. 27, 2015).

IV. Laws on Trademarks and Other Distinctive Signs

same as geographical indications protected under the Korea-EU FTA, and it makes ‘materials that are offered to be used mainly for the production of trademarks, packaging or goods infringing trademark rights’ subject to confiscation.¹⁴⁴⁾

(10) Trademark Act of 2012: Amended by Act No. 11113
(December 2, 2011; Entering into Force on March 15, 2012)

The amendment was made, among other things, to stipulate matters related to the implementation of the Korea-US FTA.¹⁴⁵⁾ In accordance with what have been agreed through the Korea-US FTA, this amendment includes ‘sounds and odors’ into the definition of the term “trademark”, newly introduces the ‘certification mark’ system, and validates exclusive licenses without registration.¹⁴⁶⁾

(11) Trademark Act of 2014: Amended by Act No. 12751 (June 11, 2014; Entering into Force on June 11, 2014)

The amendment was primarily made to: 1) establish the rejection of a trademark registration on the grounds of the breach of the ‘principle of good faith’; and 2) prevent the tarnishment of a trademark that is readily recognized among consumers.¹⁴⁷⁾ Through this amendment, the registration of a trademark may not be granted to applicants who have known that

144) *Id.*

145) Bill No. 1801518, Draft of a Partial Amendment to the Trademark Act, *available at* http://likms.assembly.go.kr/bill/jsp/BillDetail.jsp?bill_id=ARC_F0V8A1A0W1Z3M1H6D1R3J4N1Z8Z4L5 (last visited Oct. 27, 2015).

146) *Id.*

147) Bill No. 1908377, Draft of a Partial Amendment to the Trademark Act, *available at* http://likms.assembly.go.kr/bill/jsp/BillDetail.jsp?bill_id=PRC_P1N3F1P2S0C6D1F4R3P8T0D9L1C1N5 (last visited Oct. 27, 2015).

someone else is preparing for the use of the trademark and who first files an application for trademark registration for the same trademark with no justifiable legal grounds.¹⁴⁸⁾ Also, it prevents the registration of a trademark which might cause confusion with another trademark or which might harm the distinctiveness or reputation of another trademark.¹⁴⁹⁾

C. Trademark Act at a Glance¹⁵⁰⁾

The current Trademark Act, Trademark Act of 2014, is composed of 10 Chapters and 98 Articles.

Chapter I stipulates general provisions, and Chapters II, III and IV provide the requirements and application for trademark registration, the examination of application for trademark registration, and registration fees and trademark registration respectively. Matters related to trademark rights and the protection of trademark right holders are addressed in Chapters V and VI. Matters related to trials are stipulated in Chapter VII, and matters related to retrials and litigations are provided in Chapter VIII. Chapter VIII-2 codifies procedural rules concerning international applications under the Madrid Agreement, and supplementary provisions and penalty provisions are regulated in Chapters IX and X.

148) *Id.*

149) *Id.*

150) The full text of the Trademark Act (English translation) is *available at* http://elaw.klri.re.kr/kor_service/lawView.do?hseq=30765&lang=ENG (last visited Oct. 27, 2015).

Table 8. Trademark Act at a Glance

Chapter	Main Provisions
<p>Chapter I . General Provisions (§§1~5-29)</p>	<p>Purpose, Definitions, Trademark Administrators for Overseas Residents, Scope of Power of Attorney, Calculation of Periods, Effective Date of Submitted Document, Taking Trademark-Related Procedures through Electronics Documents, Notifications, etc. via Information and Communications Networks, etc.</p>
<p>Chapter II . Requirements for Application and Registration of Trademark Registration (§§6~21)</p>	<p>Requirement for Trademark Registration, Unregistrable Subject Matter, First-to-File Doctrine, Trademark Applications, Transfer of Trademark Applications, Corrections to Trademark Applications, Conversion of Applications, Priority Claims under International Treaties, etc.</p>
<p>Chapter III. Examination (§§22~33)</p>	<p>Examination by Examiners, Orders of Examinations and Expedited Examinations, Decisions to Reject Trademark Registration and Notifications of Grounds for Rejection, Publication of Trademark Application, Decisions to Grant Trademark Registration, <i>Ex Officio</i> Corrections, Opposition to Trademark Registration, etc.</p>
<p>Chapter IV. Registration Fees and Trademark Registration (§§34~40)</p>	<p>Trademark Registration Fees, Extension of Payment Period of Trademark Registration Fees, Restoration, etc. of Application for Trademark Registration by Payment of Trademark Registration Fees or Payment of Remainder, Refunds of Trademark Registration Fees, Trademark Register, Issuance of Certificates of Trademark Registration, etc.</p>

Chapter	Main Provisions
<p>Chapter V. Trademark Rights (§§41~64-2)</p>	<p>Duration of Trademark Rights, Registration for Extension of Duration of Trademark Rights, Scope of Protection for Registered Trademarks, Effects of Trademark Rights, Limitations on Effects of Trademark Rights, Exclusive Licenses, Non-Exclusive Licenses, Transfer and Joint Ownership of Trademark Rights, Effects of Registration of Trademarks, Effects of Abandonment of Trademark Rights, etc.</p>
<p>Chapter VI. Protection of Trademark Right Holders (§§65~70)</p>	<p>Right to Seek Injunction against Infringement, Conducts Deemed Infringement, Estimation of Amount of Damages, Claim for Statutory Damages, Presumption of Intention, Recovery of Reputation of Trademark Right Holders, etc.</p>
<p>Chapter VII. Trials (§§70-2~82-3)</p>	<p>Trials on Decision of Rejection, Trials to Invalidate of Trademark Registration, Trials for Revocation of Trademark Registration, Trials for Confirmation of Scope of Rights, Trial Proceedings, <i>Ex Officio</i> Trial Proceedings, Relation to Litigations, etc.</p>
<p>Chapter VIII. Retrials and Litigations (§§83~86)</p>	<p>Petitions for Retrial, Petitions for Retrial on Fraudulent Trial Decision, Period for Filing Petitions for Retrial, Restrictions on Effects of a Patent Reinstated by Retrial, etc.</p>

IV. Laws on Trademarks and Other Distinctive Signs

Chapter	Main Provisions
<p>Chapter VIII-2. International Applications under Madrid Agreement (§§86-2~86-42)</p>	<p><u>Section 1. International Application, etc.</u> International Application, Qualifications for Applicants, Procedures for International Application, Change in Ownership of International Registration, Invalidation Procedures, etc.</p> <p><u>Section 2. Special Provisions on Applications for International Registration of Trademark</u> Applications for International Registration of Trademarks, Special Provision for Business Emblems, Special Provision for Priority Claim under Paris Convention, Effects of Extinguishment of International Registration, etc.</p>
<p>Chapter IX. Supplementary Provisions (§§87~92-9)</p>	<p><u>Section 3. Special Provisions on Applications for Trademark Registration</u> Special Provision for Application for Trademark Registration after Extinguishment of International Trademark Registration, Special Provision for Examination, etc.</p> <p>Trademark Gazette, Indication of Registered Trademarks, Prohibition of False Indication, Submission of Documents, Orders to Maintain Confidentiality, etc.</p>
<p>Chapter X. Penalty Provisions (§§93~98)</p>	<p>Infringement of Trademark Rights, False Indications, Breach of Orders to Maintain Confidentiality, Administrative Fines, etc.</p>

2. Internet Address Resources Act (“Internet Address Act”)

A. Reason for Enactment and Main Provisions

A Bill for the Internet Address Act was introduced in the National Assembly on October 30, 2003, and it was proposed to establish a stable system for managing internet address resources, to prevent the preoccupation and registration of domain names for unlawful purposes and protect persons who have a legitimate source of authority from such preoccupation and registration, and to establish the Internet Address Dispute Resolution Committee conciliating disputes over the registration and use of internet addresses.¹⁵¹⁾ The Bill was passed by the National Assembly on December 29, 2003 and was enacted as Act No. 7142 on January 29, 2004.

The Internet Address Act of 2004, among other things, provides: 1) the formulation and implementation of basic plans for the development, promotion of use and management of internet address resources; 2) the establishment of the Internet Address Policy Deliberation Committee for deliberating on policies for internet address resources; 3) the establishment of the Korea Internet & Security Agency as a dedicating agency for internet address resources and its duties; 4) the prohibition of the preoccupation of domain names for unlawful purposes and the revocation of registration thereof; and 5) the establishment and management of the Internet Address Dispute Resolution Committee (for the conciliation of disputes over the registration and use of internet addresses.¹⁵²⁾

151) Bill No. 162828, Draft of the Internet Address Act, *available at* http://likms.assembly.go.kr/bill/jsp/BillDetail.jsp?bill_id=026708 (last visited Oct. 27, 2015).

152) *Id.*

B. Major Amendments

The Internet Address Act has been amended six (6) times since its enactment. Major amendments which have been made to substantive provisions of the Act are as follows.

- (1) Internet Address Act of 2006: Amended by Act No. 8088
(December 26, 2006; Entering into Force on December 26, 2006)

The amendment was primarily made to add ‘the suspension of the use of internet addresses’ to the sanctions for internet service providers that use their internet addresses to provide harmful media content to youth.¹⁵³⁾

- (2) Internet Address Act of 2009: Amended by Act No. 9637
(April 22, 2009; Entering into Force on July 23, 2009)

This amendment was made to establish an integrated agency called “the Korea Internet & Security Agency (KISA)”, which substitutes for the three internet related agencies, 1) the ‘Korea Information Security Agency’ established under the Act on Promotion of Information and Communications Network Utilization and Information Protection, Etc., 2) the ‘Korea Internet & Security Agency’ established under the Internet Address Act, and 3) the ‘Korea IT International Cooperation Agency’ established under the Framework Act on National Information.¹⁵⁴⁾

153) Bill No. 174525, Draft of a Partial Amendment to the Internet Address Act, *available at* http://likms.assembly.go.kr/bill/jsp/BillDetail.jsp?bill_id=035640 (last visited Oct. 27, 2015); See Article 13.(1).4 of the Internet Address Act.

154) Bill No. 1803052, Draft of a Partial Amendment to the Act on Promotion of Information and Communications Network Utilization and Information Protection, Etc., *available at* http://likms.assembly.go.kr/bill/jsp/BillDetail.jsp?bill_id=PRC_U0Q8I1P2M1N5L1W7W3P3R5K1C0X0F0 (last visited Oct. 27, 2015).

2. Internet Address Resources Act (“Internet Address Act”)

Under the Internet Address Act, the KISA is the ‘Internet Address Management Organizations’ and carries out duties related to the assignment, registration, and etc. of internet addresses.¹⁵⁵⁾ The KISA also performs duties of the other predecessors, the Korea Information Security Agency and the Korea IT International Cooperation Agency.

(3) Internet Address Act of 2009: Amended by Act No. 9782 (June 9, 2009; Entering into Force on September 10, 2009)

Among other things, the amendment, in order to assign internet address resources impartially and reasonably and to provide for healthy environment for utilizing internet address resources, has established a legal ground for ordering the transfer of internet addresses when domain names are possessed and registered for unlawful purposes.¹⁵⁶⁾ In addition, the amendment has required identification of a person who files for domain name registration and adopted compulsory conciliation by the Internet Address Dispute Resolution Committee for disputes over domain names.¹⁵⁷⁾

C. Internet Address Act at a Glance¹⁵⁸⁾

The current Internet Address Act, Internet Address Act of 2013,¹⁵⁹⁾ is composed of five (5) Chapters and 27 Articles.

155) See Article 9 of the Internet Address Act.

156) Bill No. 1802389, Draft of a Partial Amendment to the Internet Address Act, available at http://likms.assembly.go.kr/bill/jsp/BillDetail.jsp?bill_id=ARC_I0Z8Y1W1R2F8N1F7W4S9O4D8R8V9S2 (last visited Oct. 27, 2015); See Article 18-2 of the Internet Address Act.

157) *Id.*; See Articles 11, 11-2, 18 and 20 of the Internet Address Act.

158) The full text of the Internet Address Act (English translation) is available at http://elaw.klri.re.kr/kor_service/lawView.do?hseq=29655&lang=ENG (last visited Oct. 27, 2015).

159) It has been amended by Act No. 11690 (March 23, 2013) and entered into force on March 23, 2013.

IV. Laws on Trademarks and Other Distinctive Signs

Chapter I stipulates general provisions. The implementation of policies on internet address resources is codified in Chapter II. Chapter III provides matters concerning use and management of internet addresses, and Chapter IV stipulates addresses the Internet Address Dispute Resolution Committee. Penalty provisions are regulated in Chapter V.

Table 9. Internet Address Act at a Glance

Chapter	Main Provisions
Chapter I . General Provisions (§§1~4)	Purpose, Definitions, Obligations of State, Scope of Application
Chapter II. Implementation of Policies on Internet Address Resources, etc. (§§5~9)	Formulation and Implementation of Basic Plans, Internet Address Policy Deliberation Committee, Development and Standardization of Internet Address Resources, International Cooperation on Internet Address Resources, Entrustment of Duties of Internet Address Management Organizations
Chapter III. Use and Management of Internet Addresses, etc. (§§10~15)	Assignment of Internet Protocol Addresses, Registration of Domain Names, Prohibition of Registration of Domain Names for Unlawful Purposes, Standing Rules on Management of Internet Addresses, Protection of Personal Information, etc.
Chapter IV. Internet Address Dispute Resolution Committee (§§16~24)	Establishment of Internet Address Dispute Resolution Committee, Conciliation of Disputes, Request for Data, Effects of Conciliation, Procedures for Conciliation, Expenses of Conciliation, etc.
Chapter V . Penalty Provisions (§§25~27)	Penalty Provisions, Administrative Fines, etc.

V. Laws on Plant Variety Protection

1. Act on the Protection of New Varieties of Plants (“Plant Variety Protection Act”)

A. Reason for Enactment and Main Provisions

The Seed Industry Act had not only substantive provisions on the certification of seeds and the management of seed distribution but also procedural provisions on the protection of new plant varieties, which made the Act complicated and difficult to be read.¹⁶⁰⁾ In this regard, a Bill for the Plant Variety Protection Act was introduced in the National Assembly on December 12, 2011, and it was proposed to separately stipulate the procedural matters including the application, examination and registration of a new plant variety and to systematically protect plant breeders’ rights and new plant varieties.¹⁶¹⁾ The Bill was passed by the National Assembly on May 2, 2012 and was enacted as Act No. 11457 on June 1, 2012.

The Plant Variety Protection Act of 2012, among other things, provides: 1) the expansion of protected subject matter to implement the UPOV Convention; 2) the setting of fees and charges in proportion to the delayed period of payment; 3) the grace period for payment of fees and charges and the restoration of plant breeders’ rights; and 4) the strengthening of penalties for infringing plant breeders’ rights.¹⁶²⁾

160) Bill No. 1814156, Draft of the Plant Variety Protection Act, *available at* http://likms.assembly.go.kr/bill/jsp/BillDetail.jsp?bill_id=ARC_N111P1W2J1Q2R1S3O1P8B1D2Z3K0F0 (last visited Oct. 27, 2015).

161) *Id.*

162) *Id.*

B. Major Amendments

The Plant Variety Protection Act has been amended four (4) times since its enactment. Major amendments which have been made to substantive provisions of the Act are as follows.

- (1) Plant Variety Protection Act of 2013: Amended by Act No. 12062 (August 13, 2013; Entering into Force on August 13, 2013)

The Seed Industry Act provides the protection of established varieties (varieties already known at the time of designating a genus or a species of the crops) under certain conditions.¹⁶³⁾ However, this provision was repealed with no transitional provisions upon the enactment of the Plant Variety Protection Act, which does not have such provision. Therefore, a plant variety that had been filed or protected under Article 13-2 of the Seed Industry Act might not be protected or was to be no longer protected when the Plant Variety Protection Act entered into force.¹⁶⁴⁾

This amendment was made to include a transitional provision that provide for protection in such cases into the Act.¹⁶⁵⁾ The revised Plant Variety Protection Act stipulates that Article 13-2 of the Seed Industry Act shall apply to a plant variety filed or protected under Article 13-2 of the Seed Industry Act prior to the entry into force of this Act.¹⁶⁶⁾

163) See Article 13-2 of the Seed Variety Protection Act.

164) Bill No. 1903520, Draft of the Amendment to the Plant Variety Protection Act, *available at* http://likms.assembly.go.kr/bill/jsp/BillDetail.jsp?bill_id=PRC_E1N3K0J1Z3O0L2Q2N3B4L1C2M7D8R0 (last visited Oct. 27, 2015).

165) *Id.*

166) Article 3-2 of Supplementary Provisions under the Plant Variety Protection Act.

1. Act on the Protection of New Varieties of Plants (“Plant Variety Protection Act”)

(2) Plant Variety Protection Act of 2016: Amended by Act No. 13385 (June 22, 2015; Entering into Force on June 23, 2016)

This amendment is made by the recent enactment of the Fishery Seed Industry Support Act (Act No. 13385)¹⁶⁷⁾ that mainly aims to establish legal grounds for the foundation furtherance and the fostering and supporting of the fishery seed industry.

Reflecting the amendment to the Fishery Seed Industry Support Act, the Plant Variety Protection Act will define the term “seed” as ‘a seed under Article 2.1 of the Seed Industry Act and a seed under Article 2.3 of the Fishery Seed Industry Support Act’.¹⁶⁸⁾

C. Plant Variety Protection Act at a Glance

The current Act, Plant Variety Protection Act of 2015,¹⁶⁹⁾ is composed of five (5) Chapters and 137 Articles.

Chapter I stipulates general provisions. Chapter II provides the protection of breeders’ rights, and Chapter III codifies matters related to the name of a plant variety. Supplementary provisions and penalty provisions are regulated in Chapters IV and V.

167) Bill No. 1911838, Draft of the Fishery Seed Industry Support Act, *available at* http://likms.assembly.go.kr/bill/jsp/BillDetail.jsp?bill_id=PRC_M1R4C0I9W2W5N0Y9Y5Q5Z0K8I6M1C0 (last visited Oct. 27, 2015).

168) Article 2.1 of the Plant Variety Protection Act of 2016.

169) It has been amended by Act No. 13407 (July 20, 2015) and entered into force on July 20, 2015.

Table 10. Plant Variety Protection Act at a Glance

Chapter	Main Provisions
Chapter I . General Provisions (§§1~3)	Purpose, Definitions, Subject Matter Eligible for Plant Variety Protection
Chapter II . Protection of Plant Variety Rights (§§29~56)	<p><u>Section 1. General Rules</u> Plant Variety Administrators for Overseas Residents, Power of Attorney, Corrections of Procedures, Submission by Use of Electronic Documents and Digital Signature, Notifications, etc. via Information and Communications Networks, etc.</p>
	<p><u>Section 2. Requirements for Application and Registration of Plant Varieties</u> Requirements for Registration of Plant Varieties, Novelty, Distinctiveness, Stability, Uniformity, Application for Registration of Plant Varieties, Corrections to Applications, First-to-File Doctrine, Right of Priority, etc.</p>
	<p><u>Section 3. Examination</u> Examination by Examiners, Examination of Plant Varieties, Request for Data, Decision to Reject Registration of Plant Varieties and Notification of Grounds for Rejection, Publication of Applications, etc.</p>

1. Act on the Protection of New Varieties of Plants (“Plant Variety Protection Act”)

Chapter	Main Provisions	
Chapter II. Protection of Plant Variety Rights (§§29~56)	<p><u>Section 4. Fees and Registration</u> Registration Fees, Late Payment of Registration Fees, Exemption from Registration Fees, Plant Variety Register, Plant Variety Gazette, etc.</p>	
	<p><u>Section 5. Plant Variety Rights</u> Registration of Plant Variety Rights, Duration of Plant Variety Rights, Effects of Plant Variety Rights, Limitation to Effects of Plant Variety Rights, Transfer of Plant Variety Rights, Exclusive Licenses, Non-Exclusive Licenses, Cancellation of Plant Variety Rights, Pledges, Duty to Maintain Registered Plant Varieties, etc.</p>	
	<p><u>Section 6. Protection of Plant Variety Right Holders</u> Right to Seek Injunction against Infringement, Conducts Deemed Infringement, Presumption of Negligence, Plant Variety Registration Marks, Prohibition of False Indications, etc.</p>	
	<p><u>Section 7. Trials</u> Trials against Rejection or Cancellation of Registration of Plant Varieties, Trials to Invalidate Registration of Plant Varieties, Application of Patent Act, etc.</p>	
	<p><u>Section 8. Retrials and Litigations</u> Petitions for Retrials, Petitions for Retrials against Decisions Obtained by Fraud, Effects of Plant Variety Rights Restored by Retrial, Restrictions on Effects of Plant Variety Rights Restored by Retrial, Lawsuit against Administrative Decisions and Rulings, etc.</p>	

V. Laws on Plant Variety Protection

Chapter	Main Provisions
Chapter III. Variety Names (§§106~117)	Variety Names, Requirements for Registration of Variety Names, First-to-File Doctrine, Filing Opposition against Registration of Variety Names, Filing Opposition against Rejection of Registration of Variety Names, Use of Variety Names, Cancellation of Registration of Variety Names, etc.
Chapter IV. Supplementary Provisions (§§118~130)	Plant Variety Committee, Conciliation of Disputes, Request for Data, <i>Ex Officio</i> Conciliation, Successful Conciliation, Conciliation Fees, etc.
Chapter V. Penalty Provisions (§§131~137)	Infringement, Divulgence of Confidential Information, False Marking, Confiscations, Administrative Fines, etc.

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