

**(i) Exception to the Patent Right (Regarding farmers or use of expected breeding values (EBVs))**

**Korean Patent Act**

Article 96 (Limitations on Effects of Patents)

(1) The effects of a patent shall not extend to the following:

1. Practice of a patented invention for the purpose of research or testing (including research and testing for obtaining permission for items of medicines or reporting items of medicines under the Pharmaceutical Affairs Act or for registering pesticides under the Pesticide Control Act);

**Act on the Protection of New Varieties of Plants**

Article 57 (Scope where Plant Variety Right does not Extend)

(1) A plant variety right under Article 56 shall not be effective in any of the following circumstances:

1. Exploitation of a protected plant variety for private consumption and non-commercial purposes;
2. Exploitation of a protected plant variety for experiment or research;
3. Exploitation of a protected plant variety to breed other plant varieties.

(2) Where a farmer or fisherman saves seeds to re-sow them for production, the Minister of Agriculture, Food and Rural Affairs or the Minister of Oceans and Fisheries may limit the plant variety right to such plant variety.

**Enforcement Decree of Act on the Protection of New Varieties of Plants**

Article 36 (Self-cultivation of seeds by farmers and fishermen)

(1) "Self-cultivation of seeds", for the purpose of self-production according to Article 57(2), means that farmers and fishermen collect seeds from the products grown or cultivated on their own land or in their own aquaculture farms, in order to use them as seeds on the land or in the aquaculture farms.

(2) Where farmers and fishermen collect seeds for self-production according to Article 57(2), the scope of variety protection rights shall be extended to crops notified by the Minister of Agriculture, Food and Rural Affairs or the Minister of Oceans and Fisheries, in consideration of the method of seed propagation, commerciality, etc.

**(ii) Divisional application (requirements, procedure, etc.)**

**Korean Patent Act**

Article 52 (Divisional Patent Applications)

(1)An applicant who has filed a single patent application for two or more inventions may divide the application into two or more applications within the scope of the features described in the specification or drawings accompanying the initial patent application, within either of the following periods: Provided, That if such patent application has been filed in a foreign language, it may be divided only where the patent application has been accompanied by the Korean translation required under Article 42-3 (2)

1.A period during which amendments can be made under Article 47 (1);

2.A period not exceeding three months from the date a certified copy of the ruling to reject the claim of a patent is served (referring to an extension, if the period specified in Article 132-17 has been extended under Article 15 (1));

3.A period of not more than three months from the date when the certified copy of a decision to grant a patent under Article 66 or the certified copy of a trial decision to revoke the decision to reject a patent application under Article 176 (1) (limited to a trial decision made to register a patent but including a trial decision on retrial) is served: Provided, That the period shall end on the day when it is intended to have the grant of a patent registered under Article 79, if the period up to such day is less than three months.

(2)A patent application divided under paragraph (1) (hereinafter referred to as "divisional application") shall be deemed filed at the time the initial patent application was filed: Provided, that a divisional application shall be deemed filed at the time the divisional application is filed in any of the following cases:

1.Where the divisional application constitutes a separate patent application referred to in Article 29 (3) of this Act or a patent application referred to in Article 4 (4) of the Utility Model Act, and Article 29 (3) of this Act or Article 4 (4) of the Utility Model Act shall apply to the divisional application;

2.Where Article 30 (2) applies to the converted application;

3.Where Article 54 (3) applies to the converted application;

4.Where Article 55 (2) applies to the converted application.

(3)A person who intends to file a divisional application under paragraph (1) shall state his or her intention and indicate the patent application to be divided in the divisional patent applications.

(4)If a patent application to be divided is a patent application claiming priority under Article 54

or 55, the priority shall be also claimed with regard to the divisional application at the time the divisional application is filed under paragraph (1); and if any document or written statement submitted under Article 54 (4) with respect to the patent application to be divided exists, the relevant document or written statement shall be deemed to have been submitted.

(5) As for a divisional application deemed to claim priority under paragraph (4), all or part of the priority claim may be withdrawn within 30 days from the filing date of the divisional application, even after expiration of the period specified in Article 54 (7) or 55 (7).

(6) A person who claims priority under Article 54 for a divisional application may submit the documents specified in paragraph (4) of the same Article to the Commissioner of the Korean Intellectual Property Office within three months from the filing date of the divisional application, even after expiration of the period specified in paragraph (5) of the same Article.

(7) If a divisional application is filed in a foreign language, the patent applicant can submit the application translated in Korean under Article 42-3 (2) or another Korean translation under the main clause of Article 42-3 (3) not later than 30 days from the filing date of the divisional application, even after expiration of the period specified in paragraph (2) of the same Article: Provided, That another Korean translation is not allowed in cases falling under any subparagraph of Article 42-3 (3).

(8) With respect to divisional applications filed without stating the claims in the specification accompanying the initial patent application, the patent applicant may make an amendment stating the claims in the specification not later than 30 days from the filing date of the divisional application, even after expiration of the period specified in Article 42-2 (2).

### Patent-Utility Model Examination Guidelines (KIPO)

#### ○ Requirements

- **Person who may file a divisional application:** A person who is entitled to file a divisional application is the applicant who has filed the parent application or his/her successor. Where an application is jointly filed, the applicants of the divisional application should be identical to those who have filed the parent application.
- **Time requirement 1:** (1) Before a certified copy of the grant of a patent is served; provided, however, that if a non-final action is issued, within the following (2) period or simultaneously with (3); (2) Where a non-final action is issued, within the prescribed period for submission of a written argument; (3) When filing a request for reexamination; (4) Within 3 months from the date of a certified copy of a final action being served (the extended period where a period allowed to file an appeal against a rejection decision is extended in accordance with a provision of extension of time limit [Article 15 of the Korean Patent Act]; (5) Within 3 months

after a certified copy of the grant of a patent is served (only before the registration of the establishment of a right)

- **Time requirement 2:** A parent application must be pending before KIPO when the divisional application is filed. Therefore, where a parent application has been invalidated, withdrawn or abandoned or the decision to reject the parent application has become final and binding, the divisional application cannot be filed.
- **Substantive requirement:** An invention eligible for a divisional application is the invention within the scope of subject matter disclosed in the original specification or drawing(s) of a parent application. The inventions described in the specification or drawing(s) of the divisional application should be all disclosed in the specification or drawing(s) of the parent application. If even a single invention among the inventions of the divisional application is not contained in the parent application, the divisional application is deemed to be invalid or have grounds for rejection.

- Procedure of Divisional Application

(1) A divisional application should be filed by attaching the specification or necessary documents prescribed in each paragraph to a request in Form (XIV) according to Article 29 in the Enforcement Rules of the Korean Patent Act. The divisional application should state the purport of the division and indicate the parent application which forms the basis of the division. If the parent application is not indicated at the filing of the divisional application, the divisional application is not recognized as a legitimate division. Moreover, except for obvious errors, amendment of the parent application by amending the indication of the parent application in a written divisional application after division of the application is not accepted.

(2) Normally, along with submission of a divisional application, the applicant should submit the amendment of the parent application to differentiate the invention described in the claims of the parent application from the claims of the divisional application. However, the parent application need not be amended if inventions described in the claims of a divisional application are disclosed only in the description of the invention or drawing(s) in the parent application.

(3) If a grace period is to be claimed for a divisional application, the applicant should state the purport of the divisional application and submit the documents needed for such claim within thirty days from the filing date of the divisional application. [Articles 52(2) and 30(2) of the Korean Patent Act]

If a grace period is claimed by obeying a legitimate procedure when a divisional application is filed, even if a grace period was not claimed when a parent application was filed, where the parent application was filed within 12 months from its disclosure, claim of the grace period is accepted.

(4) When the applicant desires to claim a priority to a divisional application, he/she should state the purport and its parent application on a request to divide an application in case of an application claiming domestic priority. However, in case of an application claiming priority under the Treaty, the applicant should state the purport, the nation where the original application is filed and the date of the application on a request to divide an application and submit any supporting document within the prescribed period of time (within 1 year and 4 months from the earliest priority date or within 3 months from the filing date of a divisional application even after the lapse of the period). If priority is not claimed when the parent application is filed, priority claim is not accepted when a divisional application is filed. Where the purport of the application claiming priority under the Treaty, the nation in which the original application is filed and the date of the application are described in the originally filed application and the supporting document(s) is not submitted within the prescribed period of time but the purport of the application claiming priority under the Treaty, etc. are described in a divisional application and the supporting document(s) are submitted within the prescribed period of time from the date of filing a divisional application, a priority claim of the divisional application is deemed to be legitimate (the case where the procedure of claiming a priority from the originally filed application is invalidated is excepted). On the one hand, in case of a divisional application filed after April 20, 2022, where priority is claimed when the parent application is filed, priority claim to the divisional application is accepted, and where supporting document(s) necessary to claim priority from the parent application is submitted, the supporting document(s) is accepted when claiming priority to the divisional application. In this case, even when time limit for amendment of a priority claim as provided for in Article 54(7) or 55(7) of the Korean Patent Act has elapsed, all or parts of the priority claim may be withdrawn within 30 days from the date when the divisional application is filed.

(5) Where an applicant of a divisional application intends to refer to the evidential documents of a parent application which have been already submitted, the applicant can substitute for the submission of the divisional application by stating the purport of using the parent application in the attached documents of the form. In case of a divisional application, if the evidential documents were submitted at the time of the filing of the parent application, and if the divisional application claimed a grace period or a priority under the Treaty as in the parent application, it is deemed that the applicant has an intention of referring to the evidential documents of the parent application when filing the divisional application. However, Article 10(2) in the Enforcement Rules of the Korean Patent Act stipulates that the intention of reference be stated. Therefore, if the evidential documents were not submitted and the intention of referring to the evidential documents of the parent application was not stated, the examiner requests amendment, citing violation of description formalities in relying on the evidential documents.

#### ○ Effect of Divisional Application

A divisional application retains the same filing date as the parent application. However, it would be unfair to give the retroactive filing date to a divisional application in the following cases. Therefore, in such particular conditions below, a divisional application is deemed to be filed when it is actually filed.

- ① Where a divisional application corresponds to ‘another application’ prescribed in Article 29(3) of the Korean Patent Act or a ‘patent application’ specified in Article 4(3) of the Utility Model Act, inventions in a divisional application are supposed to be disclosed in the specification or drawing(s) originally attached to the parent application. However, new subject matter could be added to the specification or drawing(s) of the divisional application. It would be unfair to let the divisional application enjoy the benefit of the parent application for the new subject matter added thereto. Therefore, a divisional application should not take the filing date of the parent application if it becomes another application mentioned in Article 29 (3) of the Korean Patent Act. This, too, applies to utility model registration applications.
- ② Where an applicant who wants Article 30(1)(i) of the Korean Patent Act to be applied to his/her invention in a divisional application states the purport in the patent application and submits the evidential documents to KIPO Commissioner
- ③ Where an applicant who wants to file a divisional application claiming priority under the Treaty states the purport of priority claim, the nation in which the original application is filed and the date of the application in the patent application
- ④ Where an applicant who wants to file a divisional application claiming domestic priority states the purport of priority claim and the parent application in the patent application

**(iii) Changes in the regulation and case-law regarding “AI inventorship”**

o **LEGAL SYSTEM:** No revision. A natural person only is accepted as an inventor. In other words, AI cannot be named as an inventor.

o **CASE LAW:** The Seoul High Court, the second instance court, confirmed the first instance court’s decision to invalidate Dr. Thaler’s application (May 16, 2024). Please refer to the attached file.

For your reference, IP5’s case laws regarding “AI inventorship”, which were presented at the IP5 Heads of Offices Meeting, are additionally attached.

#### **(iv) SEP-related legislation and policy**

##### **o POLICY**

The Korean Intellectual Property Office (KIPO) has supported academia-public research institutions and SMEs-enterprises of middle standing for creation of SEPs. Specifically, we have supported the aforementioned institutions and enterprises carrying out R&D related to international standard in their strategies of obtaining SEPs, based on the analysis of published patents and standard-related information.

On the one hand, the Fair Trade Commission (FTC) has nationally regulated competition. The FTC has established “The Monopoly Regulation And Fair Trade Act”, “Guidelines on Undue Exercise of Intellectual Property Rights”, etc. for regulating undue exercise and abuse of SEPs.

However, KIPO cannot inform specific criteria applied by the FTC or other SEPs related policies of the Commission because they are beyond our scope of work.

##### **o CASE LAW**

WIPO IB may refer to Ruling 2017Nu48 rendered by the Seoul High Court in 2019.

□ The relevant case is as follows:

Qualcomm rejected/limited licensing of its mobile communication SEPs to other modem chip manufactures, such as Samsung or Intel, etc., and reached a supply contract of modem chip in connection with a patent licensing contract with a mobile phone manufacture.

-> The Seoul High Court decided that the case is subject to unfair competition or abuse of market dominance (Ruling 2017Nu48).

Also, Ruling 2013Du14726 rendered by the Supreme Court in January 31, 2019 noted that where a corporation that has CDMA standard technology and a market dominance in the modem chip supply market at the same time sales modem chips to mobile phone manufactures, provided That certain exclusionary conditions are satisfied, if the corporate provides ‘rebate’ with the exclusive royalty regarding standard technology cut down, the case satisfies the presumptive requirements of exclusive conditional transaction, that is, an act of abuse of market dominance.



**(v) Accelerated examination**

**In addition to the legal provisions previously submitted, we would like to add the following information.**

**o PETITION REQUIREMENT**

- Petitioner: **Any person may file a petition for accelerated examination.** However, when it comes to a patent application concerning the duties of the state or local government (Referring to a patent application concerning the duties of national · public schools in accordance with 「Higher Education Act」, including an application filed by an organization dedicated to technology transfer and commercialization established in national/public schools in accordance with Article 11(1) of 「Technology Transfer and Commercialization Promotion Act」), the state or local government, including organizations dedicated to technology transfer and commercialization established in national/public schools, only may file a petition for accelerated examination.
- Request for examination: An application eligible for accelerated examination should file a request for examination.
- Eligible for accelerated examination: Subject matter described in the scope of claims is eligible for accelerated examination. However, where subject matter is described only in the description of the invention, it is ineligible for accelerated examination. Where a multiple of claims are contained in the scope of claims and any one of the claims is deemed as eligible for accelerated examination, the entire application is accepted as eligible for accelerated examination.

**o SUBJECT MATTER ELIGIBLE FOR ACCELERATED EXAMINATION**

1. A patent application where a third party is recognized to implement the filed invention as an occupation after its publication (Notice, Article 4(i))
2. A patent application requiring rapid handling, as falling into any one of the following items: (Notice, Article 4(ii))
  - A. A patent application concerning defense materials or its manufacturing process specified in Article 34 of 「Defense Acquisition Program Act」, Article 39 of Enforcement Decree of the same Act, Articles 27 and 28 of Enforcement Rules of the same Act
  - B. A patent application directly related to carbon neutrality green technology, which is classified under carbon neutrality green technology eligible for accelerated examination, as announced on

KIPO webpage by KIPO Commissioner

C. A patent application directly related to export promotion: Where its adoption procedure as international standards is in progress or it is already adopted as international standards, the application is deemed to have directly been related to export promotion.

D. A patent application concerning the duties of the state or local government (Referring to a patent application concerning the duties of national · public schools in accordance with 「Higher Education Act」, including an application filed by an organization dedicated to technology transfer and commercialization established in national/public schools in accordance with Article 11(1) of 「Technology Transfer and Commercialization Promotion Act」)

E. Subject to a patent application filed by any one of the following corporations, the filed invention should be related to the corporation's business type and at least one applicant among the applicants originally filing the application should work at the corporation

(1) A corporation confirmed as a venture business in accordance with Article 25 of 「Special Act on the Promotion of Venture Businesses」

(2) A corporation selected as a technology innovation type SMEs in accordance with Article 15 of 「Act on the Promotion of Technology Innovation of Small and Medium Enterprises」

(3) A corporation selected as an outstanding enterprise with respect to a compensation for occupational inventions in accordance with Article 11-2 of 「Invention Promotion Act」

(4) An application filed by SMEs certified for IP management in accordance with Article 24-2 of 「Invention Promotion Act」

F. As an application related to R&D outcomes in accordance with Article 2(i) of 「National R&D Innovation Act」, the application is filed for the ones generated according to a business plan concluded between the head of the relevant central administrative agency and a R&D institution in charge or a joint R&D institution of a R&D project falling into any one of the following items:

(1) R&D project where a SME in accordance with Article 2 of 「Framework Act on Small and Medium Enterprises」 or a middle sized enterprise in accordance with Article 2 of 「Special Act on the Promotion of Growth and the Strengthening of Competitiveness of Middle-Standing Enterprises」 has carried out as a supervised R&D institute or a joint R&D institute

(2) R&D project where patent trends have been searched in accordance with Article 8(1) of 「Enforcement Decree of National R&D Innovation Act」 when carrying out a preliminary search of

a national R&D project and its planning

(3) R&D project where patent strategies have been established through 「IP related R&D Strategy Support Project」 of the Korean Intellectual Property Office (KIPO)

(4) National defense related R&D project conducted in accordance with Article 8 of 「Act on Defense Science and Technology Innovation Promotion」

(5) National strategic technology R&D project in accordance with Article 2(iv) of 「Special Act on the Fostering of National Strategic Technology」

H. As an application where a priority is claimed under the Treaty, patent prosecution thereof is under way in a foreign patent office on the basis of a priority claimed based on the application

Herein, the Treaty includes the Patent Cooperation Treaty (PCT). However, where KR is listed as a designated state after a PCT application is filed claiming the benefit of an earlier-filed domestic application, in other words, where a self-designated international application is filed, the earlier filed KR application and the PCT application are considered the earlier-filed application and the later-filed application, respectively, for a domestic priority application. In this case, the earlier-filed domestic application is deemed to have been withdrawn at the lapse of 15 months after the filing of the earlier-filed domestic application. Therefore, a petition for accelerated examination concerning the earlier-filed application is not allowed.

I. An application where a patent applicant has practiced the filed invention as an occupation or is ready to practice.

In a statement regarding ‘a petition for accelerated examination’, it should be specifically described whether the filed invention is has been [practiced or is ready to be practiced] and it has been [practiced or is ready to be practiced as an occupation], and the applicant must submit ‘evidential documents for business in practice or business preparation’ and ‘evidential documents for business in practice or business preparation as an occupation’ as supporting documents for business in practice or business preparation as an occupation (Please refer to evidential documents, Asterisk 1, Notice regarding a petition for accelerated examination).

However, when an application falls into any one of the followings, the application is deemed to be the one where the applicant has practiced the filed invention as an occupation or is ready to practice.

(1) An application filed by a corporation selected as a specialized leading company in accordance with Article 13 of 「Act on Special Measures to Strengthen Competitiveness and Stabilize Supply Chain of Materials, Components, and Equipment Industry」, provided, however, that the application is limited to any one of the following cases: 1) the filed invention is related to

industries of specialized leading companies or 2) at least one among the applicants who first filed the invention is a specialized leading company.

(2) An application concerning an invention selected at contests or competitions hosted/organized by the state or local government, provided, however, that the application is limited to the one supported by the state or local government for its application or commercialization.

(3) An application filed by a corporation that has received more than 10 million won in contributions or subsidies from the government, regarding technologies development, commercialization, etc. or that has filed the application within 3 years after its starting up based on 50 million subsidies from venture capital, crowd-funding, angel investors, accelerators in accordance with Article 35 of 「Act on Support for Small and Medium Enterprise Establishment」, Articles 11, 12 or Article 15 of 「Act on the Fostering of Self-employed Creative Enterprises」, provided, however, that the application is limited to the case where at least one among the applicants that first filed the invention is the above mentioned corporation.

(4) A patent application filed by a company from which an application for designation as an innovative prototype is confirmed (Limited to an application regarding technologies which requested to be designated as an innovative prototype).

(5) An application that applies for a regulatory sandbox, subject to regulatory exceptions, provided, however, that the filed invention should be related to a product or service that applies for a regulatory sandbox and at least one among the applicants that first filed the invention should be a petitioner applying for a regulatory sandbox.

L. A patent application directly related to specialized projects subject to regulatory exceptions in accordance with Article 55 of 「Act on Special Cases concerning the Regulation of Regulation-free Special Zones and Special Economic Zones for Specialized Regional Development」

M. A patent application related to medical research and development in advanced medical complex submitted by resident medical research and development agencies subject to regulatory exceptions in accordance with Article 26 of 「Special Act on the Promotion of High-tech Medical Complexes」

N. An application, which is mainly related to preventing or removing pollution, concerning an environmental pollution control facility that falls into any one of the followings or environmental pollution prevention measures which the facility is designed to take

(1) Noise and vibration control facilities, soundproofing facilities, or vibration-proof facilities defined in Article 2 of 「Noise · Vibration Control Act」 and Article 3 of Enforcement Regulations of the same Act

(2) Water Pollution Prevention Facility in accordance with Article 2 of 「Act on Water Environment Conservation」 and Article 7 of Enforcement Regulations of the same Act

(3) Air pollution prevention facility defined in Article 2 of 「Act on Clean Air Conservation」 and Article 6 of Enforcement Regulations of the same Act

(4) Wastes disposal facility defined in Article 2 of 「Act on Wastes Control」 and Article 5 of Enforcement Regulations of the same Act

(5) Resource facilities, purification facilities or public treatment facilities in accordance with Article 2 of 「Act on the Management and Use of Livestock Excreta」 and Article 3 of Enforcement Regulations of the same Act

(6) Recycling facility defined in Article 2 of 「Act on the Promotion of Saving and Recycling of Resources」 and Article 3 of Enforcement Regulations of the same Act

(7) Public sewage treatment facilities, human excreta treatment facilities, private sewage treatment facilities in accordance with Article 2 of 「Sewerage Act」 or heavy water in accordance with Article 2(iv) of 「Act on Promotion and Support of Water Reuse」

B-1. The patent application, which relies on Artificial Intelligence, Internet of Things, 3D Printing, Automated Driving, Big Data, Cloud Computing, Intelligent Robot, Smart City, Virtual Augmented Reality, Innovative Medicine, New Renewable Energy, Personalized Healthcare, Drone, Next Generation Communication, Intelligent Semiconductor, Advanced Materials, Block Chain Technology, Smart Manufacturing, NextGen Biomed, where KIPO assigns a new patent classification related to the fourth Industrial Revolution

C-1. International patent application where KIPO carries out international searches in accordance with 「Patent Cooperation Treaty」 as prescribed in Article 198-2 and a request is submitted as prescribed in Article 203 of the Korean Patent Act

D-1. The application related to State-of-the Art technologies, such as semiconductor, etc., significant for strengthening national competitiveness and national economy, announced by KIPO Commissioner by setting an application period and specific inventions eligible for accelerated examination. (herein the State-of-the Art technologies include the ones related to national high-tech strategic industries in accordance with Article 2(ii) of 「Act on Special Measures for Strengthening and Protecting the Competitiveness of National High-tech Strategic Industries」 are included)

3. The application, for which KIPO Commissioner has agreed with its counterpart for accelerated

examination, that falls into any one of the following items, with its petition requirement as prescribed in Asterisk being satisfied (The case is limited to the one that attaches supporting documents as defined in Asterisk 1).

A. The application where earlier date between the date of application filed to a subject nation (hereinafter referred to as "subject nation, etc.", including intergovernmental organization) published on the official webpage of KIPO by KIPO Commissioner and the priority date (hereinafter referred to as "the earliest priority date ") and the earliest priority date of KR patent application is the same

B. The application where earlier date between international application date of the international application where international search or international preliminary examination is conducted in subject nation, etc. and the earliest priority date of KR application is the same

5. As a case where a person who intends to file a petition for accelerated examination has directly searched prior art regarding the filed invention(conception) and submitted the result to KIPO Commissioner, the application that is recognized as necessary for prevention, response, recovery, etc. of a disaster as it falls into any one of the following items:

A. The application directly related to medical and quarantine supplies in accordance with Article 2(subparagraph 21) of 「Act on Infectious Disease Control and Prevention」

B. The application directly related to certified disaster safety products in accordance with Article 16 of 「Act on Promotion of Disaster Safety Industry」

C. The application concerning the subject announced by KIPO Commissioner by defining the time period for a petition for accelerated examination in order to respond a socially and economically urgent situation caused by disasters

*(For more specific information regarding accelerated examination, please refer to 'Patent-Utility Model Examination Guidelines' published on KIPO website)*