

Application Procedure for Patents and Utility models

Overview

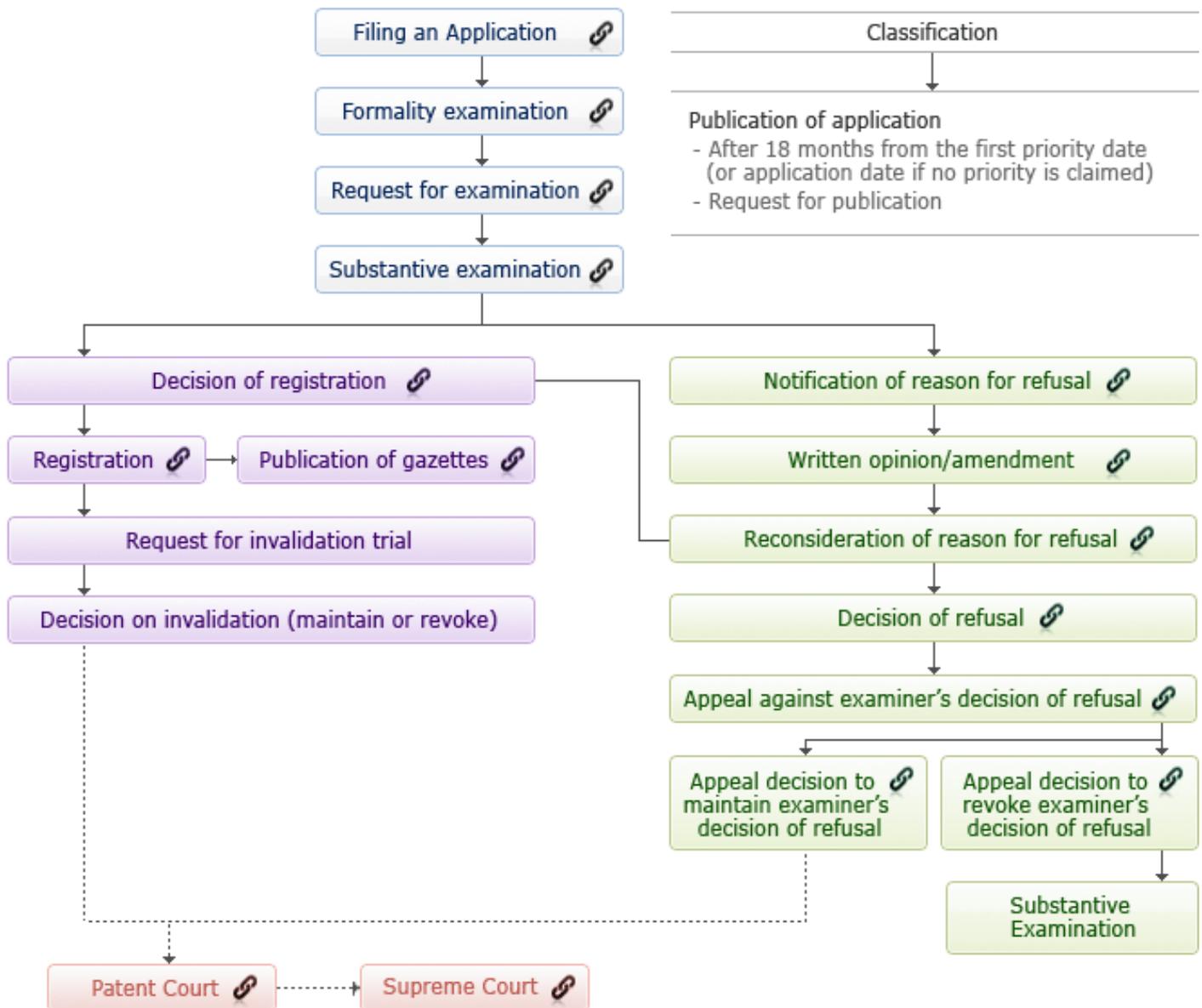
After a patent application is filed with KIPO, a patent right is granted through various steps. The Korean system is characterized by:

- (i) First-to-File Rule;**
- (ii) Publication of Unexamined Application;**
- (iii) Request for Examination**

The procedure for registering a utility model is the same as that of a patent except for some notification periods.

Procedures for Granting a Patent and Utility Model (the Utility Model under Utility Model Act which was entered into on October 1, 2006)

* Click on the button marked () in the flow chart below to see the description for each procedure.



Filing an Application

(i) Applicant

Either the inventor of an invention or his assignee can file a patent application for the invention with KIPO. The applicant may be either a natural person or a juristic person.

(ii) Documents Required

A person who desires to obtain a patent must submit the following documents to the commissioner of KIPO:

- an application stating the name and address of the inventor and applicant, the title of the invention, and priority data (if the right of priority is claimed);
- a specification setting forth the following matters: the title of the invention; a brief description of drawings (if any); a detailed description of the invention; and claim(s);
- drawing(s), if any;
- an abstract;

(e) if the right of priority is claimed, the priority document which is a certified copy of the priority application together with its Korean translation (whenever an applicant is requested to submit a Korean translation of a priority document); and

(f) a power of attorney, if necessary.

(iii) Claim of Priority

In order to enjoy the priority right, an application should be filed in the Republic of Korea within 1 year from the filing date of the priority application. The abovementioned priority document may be submitted within one year and four months from the priority date. If the priority document is not submitted within that period of time, the claim of priority will become null and void.

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Formality Examination

When a patent application is submitted to KIPO, it is checked to ensure that all requirements necessary to accord the application a filing date have been satisfied. Under the Article 11(1) of the Enforcement Regulation of the Patent Act, in any of the following instances the application will be returned to the submitter without any application number being assigned thereto and will be treated as if it had never been submitted:

(i) where the kind of the application is not clear;

(ii) where the name or address of a person (or juristic person) who is initiating the application procedure (i.e. the applicant) is not described;

(iii) where the application is not written in Korean;

(iv) where the application is not accompanied by the specification (including detailed description of the invention) or drawings (only for utility applications) ; or

(v) where the application is submitted, by a person who has no address or place of business in the Republic of Korea, without using an agent in the Republic of Korea.

Once the application has satisfied the requirements, KIPO assigns an application number and examines as to whether or not other formal requirements under the Patent Act have been met. If KIPO discovers that a document or information is missing, such as power of attorney or the name of the representative of the juristic person, it will issue a notice of amendment requesting the applicant to supplement the missing data, within a specified time limit. The applicant may obtain an extension of the designated time period.

If the applicant does not comply with such a request within the designated or extended period, the patent application will be nullified and then considered as having never been filed.

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Request for examination

A patent application will be taken up for examination only if a request for examination is made either by the applicant or by an interested party within 5 years (3 years in the case of a utility model application) from the filing date of the application. If no request for examination is made within this five-year period (3 years in the case of a utility model application), the patent application is deemed to have been withdrawn. Once a request for examination has been duly filed, it cannot be withdrawn. A patent application is taken up for examination in the order of filing the request for examination thereof.

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Laying open of Publication for Public Inspection

Applications that have not yet been published will be automatically laid-open in the official gazette called "Patent Laid-open Gazette" after 18 months from the filing date in the Republic of Korea or, if the right of priority is claimed from an earlier foreign filing, from the priority date.

The laid-open publication may be made, upon the request of the applicant, prior to the eighteen month period. This will provide an earlier protection to a patent application which is being infringed upon.

Once a patent application has been laid-open, any documents relating to the application are made available for public inspection. Any person may submit information relevant to the patentability of the invention concerned together with any supporting evidence to the commissioner of KIPO (information can be provided before a patent application is laid-open).

The Patent Act offers a special legal effect upon a laid-open patent application: under Article 65(1), if the applicant sends a warning letter to an alleged infringer after his application has been laid-open, any subsequent computation of a reasonable amount of compensation will be reckoned from the date when the infringer receives the warning letter. The right to claim compensation cannot be exercised before the relevant patent right is registered.

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Substantial Examination

For a patent to be registered under the Patent Law, it should meet the following requirements;

- (a) It should fall under the definition of invention under the Patent Act
- (b) It should have Novelty, Industrial Applicability, and Inventive Step
- (c) It should not fall into any of the patent categories unable to be registered as prescribed in Article 32 of Patent Act.

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Decision of registration

If the examiner finds a ground for rejection of a patent application, a notice of preliminary rejection will be issued and the applicant will be given an opportunity to submit a response to the preliminary rejection within a time limit designated by the examiner. Such a time limit is extendable upon the request for an extension by the applicant.

In responding to the preliminary rejection, the applicant may file an argument with or without an amendment to the specification and/or claims. If the examiner determines that the argument is without merit and the ground for rejection has not been overcome, he will issue a notice of final rejection of the patent application.

If no grounds for rejecting a patent application are found, the examiner shall grant a patent right.

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Registration

When a patent applicant receives a notice of decision to grant a patent, he should pay the first 3 years' annuities within 3 months from the date of receipt of such notice as a registration fee.

If the applicant fails to pay the registration fee within the three-month period, the registration can still be made by

paying twice the usual fee within 6 months after the expiration of the three-month period. Therefore, if the registration fee is not paid within 9 months from the date of receipt of a notice of decision to grant a patent, the patent application will be deemed to have been abandoned.

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Publication of gazettes

Where the examiners find no grounds for rejection of a patent application, KIPO publishes the patent registration after the patent applicant pays the registration fee. Once a patent has been published in the Patent Registration Gazette, any person may file an opposition against the registration of a patent between the date on which the patent is registered and the date that marks a lapse of three months since the publication date.

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Notification of reason for refusal

If the examiner finds grounds for refusal under Article 62 of the Patent Act, a notice of the grounds for refusal will be issued to the applicant and the opportunity to submit an argument will be given after determining the period.

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Written opinion/amendment

An applicant can amend the description or the drawing(s) attached to the written patent application before the certified copy of the decision to grant a patent is delivered. But, in case the applicant receives a notice of the grounds for rejection from the examiner, the applicant can make amendments within the period of submitting a written amendment based on the notice of the grounds for rejection. In addition, in the case where the grounds for rejection occurred due to an amendment, the application can be amended within the period of submitting the written amendment on the relevant notice or a reexamination is requested.

The amendment can be done within the scope of matters disclosed in the description or the drawing(s) originally attached to the written patent application.

In the case where the grounds for rejection occurred due to an amendment, the amendment is possible only in the event that the claim(s) is limited or deleted, the scope of the claim is reduced by adding to the claim(s), any incorrect description is corrected or unclear description is written clearly within matters disclosed in the description or the drawing(s) originally attached to the written patent application, or the scope of the claim returns to before the amendment, responding to the grounds for rejection on the addition of new matters.

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Reconsideration of reason for refusal

In the event where the grounds for rejection are found as a result of a reexamination after an amendment is submitted, the grounds for final rejection are to be informed. In a case where the grounds for dismissal of an amendment are in an amendment after informing of the grounds for final rejection are found, the examiner dismisses the amendment and examines the previous description.

But, when the grounds for rejection are not found by the examiner after reexamination, the relevant application is accepted for registration. The application is determined to be rejected in cases where the grounds for rejection still exist after the notification.

Decision of refusal

As a result of the reexamination of the amendment submitted after the notice of the grounds for rejection, and in the event that the grounds for rejection under Article 62 of the Patent Act still exist, the application is determined to be rejected.

Appeal against examiner's decision of refusal

A trial will be held when the applicant who has received a decision of rejection wants to appeal the decision and requests to cancel it with the Intellectual Patent Tribunal.

Appeal decision to maintain examiner's decision of refusal

When an appeal of the decision to reject is claimed, an administrative patent judge of the Intellectual Patent Tribunal can decide to dismiss in the event that he or she acknowledges the claim is not reasonable.

Appeal decision to revoke examiner's decision of refusal

When the appeal of the decision to reject is claimed, an administrative patent judge of the Intellectual Patent Tribunal can cancel the decision to reject in the event that he or she acknowledges the claim is reasonable.

Patent Court

An action against a trial decision or dismissal of a request for a trial or retrial of the Intellectual Patent Tribunal can be filed in the patent court, and the court will decide the grounds for the claim(s).

Supreme Court

When the person objects to the decision of the patent court on the patent litigation, he or she can appeal to the supreme court, claiming the decision violates the laws and regulations.

