

## Expedited Examination Programs of IP Offices

### Republic of Korea

The Korean Intellectual Property Office (KIPO) offers several expedited examination options provided for in the Korean Patent Act (“KPA”) and the Enforcement Decree of the KPA. With respect to the KPA, Article 61 states that the Commissioner of KIPO may instruct an examiner to examine a patent application in preference to other patent applications:

- (i) where it is found that any person, other than the patent applicant, is practicing for business purposes the invention claimed in the patent application after it is laid open under Article 64 of the KPA;
- (ii) where it is deemed necessary to urgently process a patent application as prescribed in the Presidential Decree;
- (iii) where a patent application prescribed in the Presidential Decree is deemed necessary for disaster prevention, response, recovery, etc.

With respect to (ii) and (iii), KIPO provided the following information:

#### *Urgent processing of a patent application by necessity*

*Grounds/Qualification:* Grounds for admissibility into this expedited examination program are prescribed in Article 61, subparagraph 2 of the KPA, which include the following:

- (i) patent applications in the area of the defense industry;
- (ii) patent applications directly related to green technology under the Framework Act on Carbon Neutrality and Green Growth For Coping with Climate Crisis;
- (iii) patent applications utilizing technologies related to the fourth industrial revolution, such as artificial intelligence (AI) and the Internet of Things (IoT);
- (iv) patent applications directly related to export promotion;
- (v) patent applications concerning the official duties of the State or local governments (including any patent application concerning the duties of the national and public schools provided for in the Higher Education Act, which is filed by the organization in charge of the technology transfer and industrialization established within the national and public schools pursuant to Article 11(1) of the Technology Transfer and Commercialization Promotion Act);
- (vi) patent applications filed by an enterprise confirmed as a venture business under Article 25 of the Act on Special Measures for the Promotion of Venture Businesses;
- (vii) patent applications filed by an enterprise selected as a technology-innovative small and medium-sized enterprise under Article 15 of the Act on the Promotion of Technology Innovation of Small and Medium Enterprises;
- (viii) patent applications filed by an enterprise selected as an exemplary company in terms of the employee invention compensation system under Article 11-2 of the Invention Promotion Act;
- (ix) patent applications filed by a small or medium-sized enterprise with the certification for management of intellectual property under Article 24-2 of the Invention Promotion Act;

- (x) patent applications concerning the results of national research and development programs under subparagraph 1 of Article 2 of the National Research and Development Innovation Act;
- (xi) patent applications which serve as a basis of a priority claim under treaties (limited to cases where a patent is being processed by a foreign patent office, upon a priority claim based on the relevant patent application);
- (xii) international patent applications on which KIPO conducts international search, as an ISA under the PCT, pursuant to Article 198-2 of the KPA;
- (xiii) patent applications under which an invention is being practiced, or being prepared to be practiced, by the patent applicant;
- (xiv) patent applications on which the Commissioner of KIPO has agreed with the Commissioner of any foreign patent office to conduct preferential examination;
- (xv) patent applications in which a person who intends to file an application for an expedited examination requested a specialized agency, designated and publicly notified as a specialized agency for search and classification, to conduct a prior art search with respect to the invention described in the patent application, and has requested the specialized agency to notify the Commissioner of KIPO of the search results;
- (xvi) patent applications filed by any of the following persons: a) a person aged 65 years or older; or b) a person whose health problem is likely to incapacitate him or her from following the procedure relating to a patent until a decision is rendered as to whether to grant a patent or to reject a patent application, unless it undergoes expedited examination.

*Expedited examination of a patent application deemed necessary for disaster prevention, response, recovery, etc.*

*Grounds/Qualification:* Grounds for qualification under this accelerated examination program are established in Article 61, subparagraph 3 of the KPA, and include the following:

- (i) patent applications directly related to products for medical treatment and disease control under subparagraph 21 of Article 2 of the Infectious Disease Control and Prevention Act;
- (ii) patent applications directly related to disaster safety products certified under Article 73-4 of the Framework Act on the Management of Disasters and Safety;
- (iii) patent applications subject to public notice given by the Commissioner of KIPO for a specified period of applying for an expedited examination to respond to an emergency situation caused by disaster.

*Prioritized Examination of COVID-19 related patent applications*

In the Republic of Korea, prioritized examination of COVID-19 related applications falls under the provision mentioned above, whereby the Commissioner of KIPO is able to decree a specific time period in response to emergencies caused by disasters, within which applications concerning technologies that provide solutions and aid are afforded a prioritized examination.

The following specific time periods were put into place by the Commissioner via public notice, to allow for these requests in response to COVID-19:

- 1<sup>st</sup> public notice (June 23, 2021 ~ June 22, 2022): applications regarding COVID-19 vaccines.
- 2<sup>nd</sup> public notice (June 23, 2022 ~ June 22, 2023): applications regarding COVID-19 vaccines and medicines.

Applicants who filed patent applications concerning these technologies were able to receive a first office action within three months after acceptance of accelerated examination. The payment of a fee was required, i.e., 200,000 KRW for a COVID-19 related patent application and 100,000 KRW for a COVID-19 related utility model application. Startups within three years of their founding were able to have 70 per cent discount on the fee within 10 cases on a yearly basis.