

## Response to C. 9043

April 8, 2021

The updated information have been provided on behalf of:

Country: The Republic of Korea

Office: Korean Intellectual Property Office(KIPO)

Person to be contacted:

Name: Wongyu Song

Title: Deputy Director

Email: wongyu.song@korea.kr

Telephone: +82-42-481-5741

Facsimile: +82-42-472-4743

### (i) Certain aspects of the applicable national or regional patent law

- Regarding Exclusions from Patentable Subject Matter, Korea would like to revise current information as follows:

1. Inventions liable to contravene public order or morality or to injure public health. (by patent law)
2. Those not considered as an invention or to be industrially applicable (by judicial precedents and Patent Examination Guidelines):
  - (a) Laws of nature, mere discoveries
  - (b) Those contrary to the laws of nature
  - (c) Those in which the laws of nature are not utilized (e.g. economic laws, mathematical methods, rules for playing games, mental activities)
  - (d) Mere presentation of information
  - (e) Aesthetic creations
  - (f) Computer programming language or computer program
  - (g) Methods of surgery, therapy or diagnosis of humans

**(ii) National and regional laws on opposition systems and other administrative revocation and invalidation mechanisms**

- Regarding Administrative revocation and invalidation mechanisms, Korea would like to revise current information as follows:

The Republic of Korea provides for a quasi-judicial invalidation trial. The administrative review system is a part of the three instance procedure which consists of the Intellectual Property Trial and Appeal Board (IPTAB) of the Korean Intellectual property Office (KIPO), composed of a president and administrative judges, the Patent Court and the Supreme Court. Its purpose is to promote and strengthen the protection of patents while guaranteeing fair and prompt settlements of patent-related disputes.

According to Article 133 of the Patent Act, an interested party or an examiner may demand a review to invalidate the patent. The grounds for invalidation of a patent are generally the same as reasons for the rejection of a patent application covering, in particular, the substantive patentability criteria. If the patent contains two or more claims, a request for the invalidation trial may be made for each claim.

A trial for invalidation of a patent may be demanded even after the expiration of the patent right. Where a trial decision invalidating a patent has become final and conclusive, the patent right shall be deemed never to have existed; however, where a patent is invalidated by any reason that has arisen after the grant of a patent, the patent right is deemed not to have existed from the time when such reason originated.

According to Article 146, a trial shall be conducted by a board comprised of three or five administrative patent judges. The consultations of the board are not open to the public. The submission by the requester will be submitted to the defendant and the response will be submitted by the presiding administrative judge to the requester. If an administrative judge was an examiner who granted a patent, he/she shall be excluded from the trial. The trial proceedings could be oral or documentary. The oral proceedings are generally public. Evidence may be taken on the request of either party or *ex officio*. The trial decision has *erga omnes* effect, unless the final decision is a dismissal. During the trial proceedings, civil litigation must be stayed.

**(iii) International worksharing and collaborative activities for search and examination of patent applications,**

- Regarding Collaborative search and examination,

Korea would like to remove the item 'KIPO Joint Prior Art Search Program.'

[End of Document]