

## The May 31, 2013 Amendment of the Patent Act

**Article 32** An applicant filing a patent application for invention and a patent application for utility model for the same creation on the same date shall make respective declarations in respect of the said applications. If the patent application for utility model has been granted before an approval decision on the patent application for invention is rendered, the Specific Patent Agency shall notify the applicant to make a selection within a specified time period. The patent application for invention shall not be granted if the applicant fails to make such declarations or selection within the specified time period.

Where the applicant selects the patent application for invention according to the provision set forth in the preceding paragraph, the utility model patent right shall become extinguished on the publication date of the invention patent.

The patent application for invention shall not be granted if the utility model patent right has become extinguished or has been revoked finally and bindingly before a decision is rendered on the patent application for invention.

**Article 41** An invention patent applicant may, after the publication of an invention patent application, claim appropriate compensation against the exploiter who, having been given a written notice by the applicant in respect of the contents of the invention after the laying-open of the invention patent application, continues to commercially exploit the invention after receiving the notice and prior to the publication of the said application.

The claim referred to in the preceding paragraph may also be made against a person who is fully aware that the patent application for invention has been laid open but continues to commercially exploit the invention prior to its publication.

The right to claim compensation as provided in the preceding two paragraphs does not affect the exercise of other rights. However, where an applicant having filed a patent application for invention and a patent application for utility model pursuant to Article 32 of this Act has been granted the utility model patent, the claim against such expoliter shall only be made based either on the right to claim compensation or on the utility model patent right.

The right to claim compensation as set forth in Paragraph 1 and 2 shall become extinguished if not exercised within two (2) years after the publication date of the said invention patent.

**Article 97**

The damages claimed pursuant to the preceding article may be calculated according to any of the following methods:

1. the method as set forth in Article 216 of the Civil Code; if no method of proof can be produced to prove the damages suffered, a patentee may claim damages based on the difference between the profit earned through patent exploitation after infringement and the profit normally expected through exploitation of the same patent;

2. the profit earned by the infringer as a result of patent infringement; or

3. the amount calculated on the basis of reasonable royalties that may be collected from exploiting the invention patent being licensed.

Subject to the preceding paragraph, where the infringement is found to be intentionally committed, the court may, upon request and on the basis of the severity of the infringement, award the damages greater than the loss suffered but not exceeding three (3) times of the proven loss.

**Article 116**

When exercising a utility model patent, the patentee shall not make a warning without presenting the technical evaluation report of

utility model patent.

**Article 159**        The date on which this Act takes effect shall be decided by the Executive Yuan.

                         The May 31, 2013 amendment of this Act is to be implemented on the date of its promulgation.