

Re-examination systems

Republic of Korea

Ex-officio re-examination

Under the current system, erroneous patents could be registered as the examiner could not re-examine the patent even if obvious reasons for rejection are found after a patent is granted. To complement the system, 'ex-officio re-examination' shall come into effect from March 2017 where the examiner shall re-examine the patent ex-officio if obvious reasons for rejection are found after the patent is granted.¹

Under the system, where reasons for rejection are found to be obvious, such as lack of novelty after a patent is granted, the patent will be cancelled, and then the patent shall be re-examined. However, ex-officio re-examination is allowed only before the registration of establishment of a patent right (within three months after a patent is granted) in order to guarantee the stability of patent right.

Re-examination (ex-parte)

A patent applicant may file a request for re-examination under Article 67-2 of the Patent Act of Korea. The re-examination system was expanded through the revised Act that was enforced on April 20, 2022.

In accordance with the former Act, a patent applicant might file a request for re-examination only when the patent application was finally rejected at the examination stage, but under the revised Act, a patent applicant may file a request for re-examination by amending a specification or drawing(s) of a patent application within the time period between the date of a certified copy of the grant of a patent being served and the date of having the establishment of a patent right registered.

The system is intended to prevent a possible dispute between interested parties from being caused and to eliminate bad patents beforehand, by providing an applicant with an opportunity to file a request for re-examination by incorporation with an amendment, where a patent applicant finds minor errors, etc. after a patent is being granted.

¹ Article 66(3) and Article 63 of Patent Act.