

Patent Term Adjustment in case of delays in the granting procedure

KIPO | November 2023

Background

✔ (Intent) To compensate for the unreasonable side-effects of reductions in the patent term caused delays in the granting procedure.

Agreement

✔ Defined in the KORUS FTA Agreement, Subparagraph 6, Article 18.8 (March 15, 2012)

< The KORUS FTA Agreement, Subparagraph 6, Article 18.8 >

- (a). Each Party, at the request of the patent owner, shall adjust the term of a patent to compensate for unreasonable delays that occur in granting the patent. For purposes of this subparagraph, an unreasonable delay shall at least include a delay in the issuance of the patent of more than four years from the date of filing of the application in the territory of the Party, or three years after a request for examination of the application, whichever is later. Periods attributable to actions of the patent applicant need not be included in the determination of such delays.

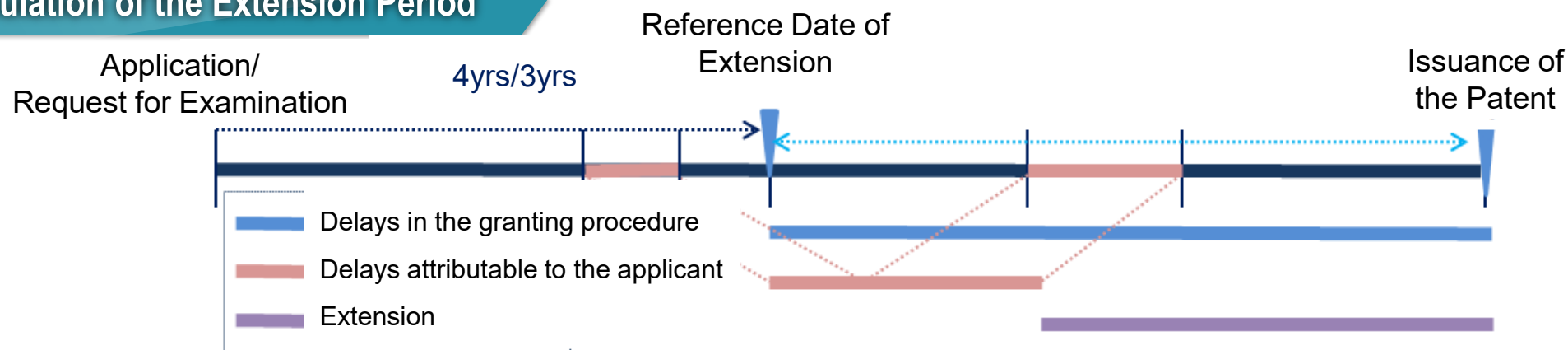
	Revision of the Korean Patent Act (Promulgated on Dec. 2, '11, Effective on Mar. 15, '12)
Extension of the term of a patent to compensate for unreasonable delays in the granting procedure	If the issuance of the patent is delayed due to <u>reason(s) unattributable to actions of the patent applicant</u> , the term of a patent may be extended as much as the delayed period. (Article 92-2~5, KPA)

Overview

Subjects and Requirements

- ✓ **(Subjects)** Patent applications filed in all technological fields after the date of the KORUS FTA being entered into force
- ✓ **(Period/Applicant)** Within 3 months from the date of patent issuance / Patentee

Calculation of the Extension Period



- ✓ **(Calculation of the Extension)** The extension period is calculated by deducting "**delays attributable to the applicant**" from "the period between **the reference date** and **the date of patent issuance**".
 - (Reference Date of Extension) 4 years from the date of filing of the application (or in case of PCT applications, 4 years after entering the Korean national phase) or 3 years after a request for examination of the application, whichever is later
 - * **(Delays attributable to the applicant)** Defined in subparagraphs of 'Enforcement Decrees (§7-2)-Enforcement Rules(§54-5) of the KPA'
 - **(Exceptions)** Excepted where it is **objectively acknowledged** that the delays are **not attributable to the patent applicant** even if they fall under the aforementioned subparagraphs (Enforcement Decrees (§7-2(2)))

Overview

Examples of delays attributable to the applicant

- ✓ **(Delays attributable to the applicant)** Delays are attributable to actions of the patent applicant; however, the cases are not restricted to the ones in which the patent applicant is responsible for the delays (Korean Patents/Utility Models Examination Guidelines)

Examination · Trial			Appeal
<ul style="list-style-type: none"> • <u>Extension of designated period· statutory period</u> • <u>Change of the date for conducting patent-related procedures</u> • <u>Additional payment of patent fees/the payment of the remaining patent fee</u> 	<ul style="list-style-type: none"> • <u>Submission of a written argument and amendment of a specification, etc. after the issuance of an office action of refusal</u> 	<ul style="list-style-type: none"> • <u>Request for exclusion · challenge of an examiner, etc.</u> 	<ul style="list-style-type: none"> • Measures of court for elucidation • Exclusion of a judge
<ul style="list-style-type: none"> • Subsequent completion of procedure • Procedural amendments • Interruption · Suspension of procedure 	<ul style="list-style-type: none"> • Amendment or addition of a priority claim under the Treaty/a domestic priority claim 	<ul style="list-style-type: none"> • Evidence examination/preservation· application for witnesses, etc. in the trial proceeding (§186⑤) 	<ul style="list-style-type: none"> • Completion of litigation • Alteration in claims • Application for examination of evidence, • Objection
<ul style="list-style-type: none"> • Deferral of grant • Deferral of the examination 	<ul style="list-style-type: none"> • Resumption of examination of an earlier filed application, due to withdrawal of a domestic priority claim 	<ul style="list-style-type: none"> • Return of illegitimate application documents, etc. 	<ul style="list-style-type: none"> • Suspension · interruption of appeal procedure • Change of the date designated by the presiding judge or for pleading • Additional period

Delays 'NOT' attributable to the applicant

- ① Where such delay was occurred before the request for examination on the application is filed -> Consequently not delaying the registration of a patent right.
- ② Where the Korean Intellectual Property Office erroneously requests an amendment or notification, etc.
 - * Where it is acknowledged that defects in formalities or reasons for refusal are overcome even without amendment in formalities or in a specification, etc.
- ③ Where the delay is due to causes other than the patent applicant, including a natural disaster, etc.

(Case) Calculation of Patent Term Extension

Application History and Calculation of Extension

Procedure	Notification (Submission) Date	Time Limit	Delayed Period
Patent Application and Examination Request	Mar. 14, '13		
Notification of Reasons for Refusal	May 19, '14	Jul. 19, '14	
Request for Extension of Period (1 month)	Jul. 18, '14	Aug. 19, '14	
Submission of Amendment and Written Argument	Aug. 19, '14		①92 days
Notification of Reasons for Refusal	Dec. 29, '14	Feb. 28, '15	
Request for Extension of Period (1 month)	Feb. 25, '15	Mar. 31, '15	②31 days
Submission of Written Argument	Mar. 31, '15		③0 day
Notification of Reasons for Refusal	Aug. 27, '15	Oct. 27, '15	
Submission of Written Argument	Oct. 27, '15		④0 day
Decision of Refusal	Dec. 29, '15	Jan. 29, '16	
Request for Extension of Statutory Period (2 months)	Jan. 28, '16	Mar. 29, '16	⑤60 days
Appeal against Decision of Refusal	Mar. 29, '16		⑥0 day
Appeal Decision to Grant a Patent	Oct. 24, '17		
Service of a Certified Copy of the Patent Grant		Nov. 23, '17	
Payment of Patent Fees (Issuance of the Patent)	Jan. 29, '18		⑦67 days
	Delays attributable to the Applicant		250 days

< In case of ③, ④ >

Where a **patent is granted without amendment of a specification, etc.** in response to an office action issued by an examiner → **Excepted from** delayed period **attributable to the patent applicant**

< In case of ⑥ >

Where a patent was granted after appeal decision to revoke examiner's decision of refusal, without any amendments to the specification, etc. → **Excepted from** delayed period **attributable to the patent applicant**



②

Delayed period attributable to the patent applicant =

①+②+⑤+⑦ = 250 days

The date of the filing of a patent application	Mar. 14, '13
Date for requesting patent examination	Mar. 14, '13
4 years from the filing date of a patent application (A)	Mar. 13, '17
3 years from the date for requesting examination (B)	Mar. 14, '16
A or B, whichever is later (C)	Mar. 14, '17 RD
Patent issuance date(D)	Jan. 29, '18
① Delayed period of patent issuance	D-C=321 days

[Delayed period of patent issuance = 321 days]

[Delayed period attributable to the patent applicant = 250 days]

**=
Extendable term = 71 days**

To Confirm Patent Term Extension (KIPO Webpage) (1/2)

Source : KIPO - <https://www.kipo.go.kr/ko/kpolframe.do?menuCd=SCD0200691>

The screenshot shows the KIPO website interface. At the top, there is a search bar with the text "검색어를 입력하세요." and a magnifying glass icon. Below the search bar is a navigation menu with the following items: "특허청" (KIPRO), "지식재산제도" (Intellectual Property System), "책자/통계" (Books/Statistics), "정책/업무" (Policy/Business), "민원/참여" (Public Affairs/Participation), "정보공개" (Information Disclosure), and "청소개" (Agency Introduction). The "특허청" item is highlighted with a red box and labeled "Notice".

Below the navigation menu, there is a section titled "알림사항" (Notice) with a plus sign. Under this section, there is a list of items: "특허청뉴스" (KIPRO News), "인터넷공보" (Internet Gazette), and "공시송달 등 기타공보" (Patent Term Extension, etc.). The "인터넷공보" item is highlighted with a red box and labeled "Internet Gazettes".

Below the "인터넷공보" section, there is a list of items: "인터넷공보 안내" (Internet Gazette Guide), "기간별공보 조회" (Search by Period), "특허실용신안" (Patent Utility Model), "디자인" (Design), "상표" (Trademark), "상표이미지 조회" (Search by Trademark Image), "정정공보" (Correction Gazette), "공시송달 등 기타공보" (Patent Term Extension, etc.), and "공보의 주소 게재방식 변경 신청" (Application for Change of Address Publication Method). The "공시송달 등 기타공보" item is highlighted with a red box and labeled "Other Gazettes(Service by Public Notice, etc.)".

Below the list, there is a section titled "공시송달 등 기타공보" (Patent Term Extension, etc.). Under this section, there is a search bar with the text "검색어를 입력하세요." and a magnifying glass icon. Below the search bar, there is a dropdown menu labeled "기타 공보 종류 선택" (Select Other Gazette Type). The dropdown menu is open, showing the option "특허권 존속기간 연장" (Patent Term Extension). Below the dropdown menu, there is a search bar with the text "연장등록출원/원출원번호로 검색" (Search by Extension Registration Application/Original Application Number). Below the search bar, there is a button labeled "도움말" (Help).

Two blue arrows point from the "특허권 존속기간 연장" dropdown menu to the "Patent Term Extension" box on the right. Another blue arrow points from the "연장등록출원/원출원번호로 검색" search bar to the "10-20YY-0012345 or 20YY-0012345" box on the right.

Patent Term Extension

10-20YY-0012345
or
20YY-0012345

(Case) To Confirm Patent Term Extension (KIPO Webpage) (2/2)


특허청

파시 대한민국! 새로운 국민의 나라

검색어를 입력하세요.

소식알림 지식재산제도 책자/통계 정책/업무 인원/참여 정보공개 청소개 특허심판원

알림사항
 특허청뉴스
 인터넷공보

공시송달 등 기타공보
 > 소식알림 > 인터넷공보 > 공시송달 등 기타공보

기타공보 종류 선택: 특허권 존속기간 연장
 연장등록출원/원출원번호로 검색: 1020157010052

검색결과 - 특허권존속기간연장

번호	접수번호	연장등록출원번호	명칭	공보일자
1	B12017012815900	1020170077464	특허권존속기간연장등록출원등록결정공보	2017년 11월 17일
2	B12017006227800	1020170077464	특허권존속기간연장등록출원공보	2017년 06월 28일

Gazette of 'Decisions for patent term extension'

특허권 존속기간 연장등록 등록결정공보

국제특허분류:
연장등록 출원번호: 10-2017-0077464
연장등록 출원일: 2017.06.19
연장등록 권리자: 성명: 애브비 바하마스 리미티드
 주: 바하마 나소 뉴 프로비던스 셸리 스트리트 앤드 빅토리아 애브뉴 시몬 허우스
대리인 성명: 김영, 양영준
원출원번호: 10-2015-7010052
원특허번호: 10-1660360-00-00
발명의 국문명칭: C형 간염 치료용 우라실 또는 티민 유도체
발명의 영문명칭: Uracil or thymine derivative for treating hepatitis C
연장대상 특허청구범위:
 총 청구항수: 2
 연장대상 청구항: 제1항, 제2항
특허법 제89조의 허가등의 내용:
허가등을 받은 일자: 2017.03.17
허가내용(등록내용): 의약품 수입품목허가번호 제28호
유효성분의 화합물명: 나트륨 3-(3-3급-부틸-4-메톡시-5-[6-[(메틸설포닐)아미노]나프탈렌-2-일}페닐)-2,6-디옥소-3,6-디하이드로-2H-피리미딘-1-이드
 다사부비르나트륨
일반명(품목명)의 국문표기: dasabuvir sodium
일반명(품목명)의 영문표기: dasabuvir sodium
제명(상품명)의 국문표기: 엑스비라정(다사부비르나트륨)
제명(상품명)의 영문표기: Exviera tab.(dasabuvir sodium)
효능 및 효과(용도)의 국문표기: 다른 약물과 병용하여 성인의 유전자형 1형 만성 C형 간염 치료
효능 및 효과(용도)의 영문표기: Treatment of chronic hepatitis C genotype I in adults in combination with other medicinal products

To Confirm Patent Term Extension (KIPRIS) (1/3)

✓ Search through search term/word (by way of search formula or smart search)

Click on the "Smart Search" menu to enable the search by item.

The screenshot shows the KIPRIS search interface. At the top, there is a navigation bar with various search categories. Below it, a search bar contains the text '특허실용신안' (Patent Utility Model), which is highlighted with a red box and a circled '1'. To the right of the search bar is a magnifying glass icon and a checkbox for '결과 내 재검색' (Search in results). Below the search bar, there is a section for '검색하스토리' (Search history) showing a recent search for '1020230085489'. The main search area is divided into several sections: '권리구분' (Rights Division), '행정상태' (Administrative Status), '자유검색 (전문)' (Free Search (Full Text)), '내용검색' (Content Search), 'IPC' (International Patent Classification), 'CPC' (Cooperative Patent Classification), '번호정보' (Number Information), '일자정보' (Date Information), '우선권 정보' (Priority Information), and '존속기간연장공보(EX)' (Patent Term Extension Publication). The '내용검색' section is highlighted with a blue box and contains the text 'EX=[Keyword]'. The '우선권 정보' section is highlighted with a red box and contains the text '우선권주장국가(RC) ex) JP and 우선권주장일자(RD) ~ and'. The '존속기간연장공보(EX)' section is highlighted with a red box and contains the text 'ex) 약사법 + 마약류, 제질량지수 and'. A blue arrow points from the search bar to the '내용검색' section, and another blue arrow points from the '우선권 정보' section to the '존속기간연장공보(EX)' section. A red box with a circled '2' is located at the bottom left, containing the text 'Gazette of 'patent term extension''.

권리구분	행정상태	자유검색 (전문)	내용검색	IPC	CPC	번호정보	일자정보	우선권 정보	존속기간연장공보(EX)
			발명의명칭 (TL) 요약 (AB) 청구범위 (CL) 명세서 (DS) 일괄 (CT)	ex) G06Q + H04Q and IPC시소러스	ex)G06Q and	출원번호(AN) 공개번호(OPN) 국제출원번호(FN)	공고일자(PD) 등록일자(GD) 국제출원일자(FD)	우선권주장국가(RC) 우선권주장일자(RD)	ex) 약사법 + 마약류, 제질량지수 and

Gazette of 'patent term extension'

To Confirm Patent Term Extension (KIPRIS) (2/3)

✓ Search by the application number

유사검색식 ☐ 한글-영어 ☒ 특허실용신안 1020157010052 ☒ 결과 내 제

검색이력 1020157010052 EX=[우라실] EX=[엑스비라정] EX=[유도체] EX=[티민]

스마트검색 > 'Smart Search' 항목별 검색을 위해 이곳을 클릭해주세요. 자동스크롤 끄기

☒ 선택보기 ☒ 서지정보 엑셀저장 ☒ 인쇄 ☒ 환경설정 ☒ 초보자검색가이드 ☒ 동영상매뉴얼 페이지당 30개 GO

☐ Total 1 Articles (1 / 1 Pages)

☐ **소셜** [1] C형 간염 치료용 우라실 또는 티민 유도체(Uracil or thymine derivative for treating hepatitis C) 유사특허 ☒ 공보

IPC : C07D 239/22
출원번호(일자) : 1020
최종권리자 : 애브비

C형 간염 치료용 우라실 또는 티민 유도체
Uracil or thymine derivative for treating hepatitis C

상세정보 공개전문 ☒ 공고전문 ☒ **기타공고** ☒ 등록사항 통합행정정보

▶ 존속기간 연장등록 공보 Gazette of 'patent term extension'

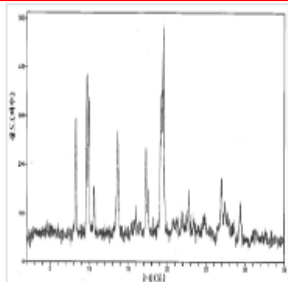
번호	출원번호	발간일자	공보종류
1	1020157010052	2017.06.28	Gazette of 'applications for patent term extension' 특허권존속기간연장등록출원공보
2	1020157010052	2017.11.17	Gazette of 'decisions for patent term extension' 특허권존속기간연장등록출원등록결정공보

Other Gazettes

✓ 출원번호를 통한 검색

☐ Total 1 Articles (1 / 1 Pages)

☐ 소말 [1] C형 간염 치료용 우라실 또는 티민 유도체(Uracil or thymine derivative for treating hepatitis C)

유사특허 

IPC : C07D 239/22 C07D 413/10 Δ61K 31/513 C07D 239/54 C07D 401/10 ...

출원번호(일자) : 10201570100

최종권리자 : 애브비 아일랜드

부임은 2월 14일 가여 바니러스/바

요약 노년은 인생의 마지막 시기이지만, 노년은 여전히 인생의 중요한 시기입니다. 노년은 인생의 마지막 시기이지만, 노년은 여전히 인생의 중요한 시기입니다. 노년은 인생의 마지막 시기이지만, 노년은 여전히 인생의 중요한 시기입니다.

기아에 의해 링크()를 통해 보내져

[illegible]

(5) 산(1)의 경우, 부탄산(9:1)을 얻는다.

[illegible]

의 나열서 및 두심규 나열서(pseudo)

C형 간염 치료용 우라실 또는 티민 유도체
Uracil or thymine derivative for treating hepatitis C

Issuance

상세정보

공개전문

공고전문 기타공고

등록사항

통합해정정보

(특허권 존속기간 연장등록)

연장등록출원연월일 : 2017년 06월 19일

연장등록결정연월일 : 2018년 02월 07일

▶연장대상특허청구범위 : 제1항, 제2항

→ 연 장 기 간 : 169일

허가 또는 등록의 내용 : 의약품 수입품목허가번호 제28호

연장등록이전 존속기간만료일 : 2028년 09월 17일

Application No. for patent term extension

연장등록증원번호 : 10-2017-0077464

연장대상청구항수 : 2

Claims applying for a patent term extension

Period for Extension

Matters of approval or registration

2018년 02월 07일 목요일



특허청

Korean Intellectual Property Office

Thank you!