

needed to stimulate inter-Korean economic cooperation following the signing of the Agreement on the Entry/Departure Procedures and Duration of Stay in Kaesong Industrial Complex and Mt. Kumgang. After identifying these issues, South and North Korean authorities must move to establish follow-up measures and agreements.

Analysis of the North Korean Invention Act

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Abstract

This article conducts an overview of the new Invention Act of North Korea and offers critical comments. North Korea is realistically establishing the recovery of its economy as a national issue, and is establishing and putting into practice systematic defense strategies for economic development. The “powerful and prosperous country” theory being pursued by the Kim Jong Il regime has prioritized economic development as a means for preserving the system. Among these, economic improvements and development are being emphasized via enhancement of science and technology. Guidelines for the close integration of the economy and science and technology were indicated as one of the means to continuously implement the 5-year (2003-2007) Science and Technology Plan newly presented in the National Science & Technology Congress held in Pyongyang on October 31, 2003. While adhering to the principles of socialism, policies for improvement of economic management that pursue the maximum benefit are being applied to the science and technology field.¹⁾ The Invention Act was newly promulgated, and this appears to be part of the movement deciding to adopt the Science and Technology Act in the regular meeting of the Supreme People’s Council on December 15, 1988. This is thought to be a necessary stage for economic recovery.

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1) <http://korea-np.co.jp/news/ViewArticle.aspx?ArticleID=7445> According to the Chosun News, on January 21, 2004, the Internet Chosun News quoted the January 18th Article of the Pyongyang News on the 22nd : “A system

I. Foreword

The Intellectual Property Act refers to a legal scheme that is designed to protect intellectual properties or other intangible assets. It is a fundamental law for protection of “information,” an important asset of a modern information society that includes inventions, industrial designs, trademarks, corporate names, scholarly and artistic creations, computer programs, and semiconductor chips. Intellectual property rights, i.e., rights for protection of these intellectual intangible assets, are categorized into two types, i.e., copyrights (rights with respect to scholarly or artistic creations) and industrial property rights (industrial or marketing property rights). Such rights are deemed as right of ownership vis-à-vis intellectual and intangible goods gained as a result of human intellectual activity and are similar to property rights.

Industrial property rights themselves are divided into rights on designations useful in marketing, including rights, corporate names, trademarks, service marks, and rights on marketing designations on new designs used in industry (i.e. patented inventions or utility models, and aesthetic designs). Among industrial property rights, the patent system provides incentives and motivation for the development of new technologies for businesses by securing comparative advantages in marketability and competitiveness through the exclusive use of technologies and protection of the disclosure of inventions. Accordingly, in the 21st century, where technological development is advancing to ever-higher stages, the development of businesses as well as nations is dependent on who owns the most patents.

has been introduced for the circulation of new scientific and technological achievements via intellectual products (intellectual property) appropriate for the realities of the present age wherein the economy and science are united under national measures.” The article describes intellectual products as “intangible assets that provide technological and economic effects as the result of creative mental activities,” and shall include inventions, creative designs, blueprints, computer programs, technological secrets (i.e. new technology and “know how”), and shall be subject to legal protections in the process of distribution. “Furthermore, the created products shall be first registered at the Science Academy in order to confirm the details and precedent thereof prior to distribution. During distribution, “the circulation price shall be determined in consideration of the profits attained from the use of the product, expenses for the inventor arising in its creation, and compensation for costs.” In particular, a contract shall be drawn between the relevant organizations and businesses, and in special cases, individuals may conclude contracts with places of business. In the contract, “detailed information, including the intellectual product between the researcher and the consumer, the technical details, and the method of payment of the price shall be recorded,” while the article further stated that “mobilization of external experts for the solution of technical problems by places of business or factories is not a form of supportive labor, but is rather the payment of prices corresponding to the contract.”

In the case of South Korea, subsequent to its independence on August 15, 1945, the Patent Office was established pursuant to US Military Order No. 44 on January 22, 1946, and on October 5 of the same year, the Patent Act (containing 12 chapters and 265 articles) was enacted and promulgated based upon US Military Order No 91.²⁾ Such patent system in South Korea was amended ten times until present. As South Korea’s economic power increased and international trade drastically expanded, South Korea’s patent system has been revised to harmonize with changes in the international environment.³⁾

North Korea has recently begun development of its economy by opening its door to the outside world, and policies are being pursued for the recovery and development of the people’s economy. Such North Korean moves have been emphasized as obligations for the modernization of the people’s economy through enhancement of foreign trade, and policy changes pursued under the Kim Jong-II regime are reflected through changes in the legal system.⁴⁾⁵⁾ Accordingly, it is necessary to pay close attention to systems for protection of industrial ownership rights in North Korea in light of the strengthening of North Korea’s science, technology, and trade. North Korea, while enhancing its industrial property rights for the development of its technological industries, is expanding its applications for international patents with respect to industrial property, and is exhibiting keen interest in protection of industrial property rights.⁶⁾

2) At the time, the Patent Office was responsible for duties related to patents, utility models, designs, trademarks, and copyrights.

3) Young-sick Song, Sang-jung Lee and Jong-hwan Hwang, *Intellectual Property Rights Act* (Volume 1), 8th ed, p. 99.

4) Kim Jong-II has stated, “The development of foreign and domestic trade does not contradict economic independence, and in contrast, is an important method for securing incentives for the self reliance, modernization, and improvement of the people’s economy, while strengthening the economic self reliance of the nation and contributing to its might. Even for developed countries, the economy is unable to thrive without communication with other countries via trade.” Jung-hee Choi, “General understanding of industrial ownership rights and systems for protection,” *General Journal of Kim Il Sung University: Law & History*, 2000, No. 2: Science Encyclopedia Publishing Co., 2000, p. 61.

5) Jeong-won Park on the legal apparatus underway as the Kim Jong-II era commenced, “Current Status of Legislative Bodies Under the Kim Jong-II System and Prospects for the Future.”

6) According to the Korea Trade-Investment Promotion Agency(KOTRA), interest in North Korean international patent applications is increasing (“Yeonhap News” August 5, 2000); however, the majority of applications for patents or trademarks are thought to be by foreigners rather than North Koreans. “North Korean

As North Korea exhibits such changes, economic exchanges are increasing in scale between North and South, and examination of the patent law and patent system in North Korea will be meaningful under such circumstances.

II. North Korea's industrial property rights

North Korea uses "industrial ownership rights" as terminology equivalent to "industrial property rights." North Korea defines "intellectual ownership rights" as "ownership rights for intellectual creations made by humans in the ideological, literary, artistic, or scientific fields." Intellectual ownership rights are divided into copyrights and industrial ownership rights.⁷⁾ "Copyrights" mean ownership rights for property in the literary and artistic fields, whereas "industrial ownership rights" means ownership rights for discoveries in the science and technology field, inventions, utility models, industrial designs, and trademarks.⁸⁾

In light of the above, the concept and details of "industrial ownership rights" in North Korea can be understood as corresponding to "industrial property rights" as used in South Korea.⁹⁾ "Industrial property rights" according to the dictionary definition used in North Korea means "rights with respect to inventions (patent rights and invention rights), utility models, industrial designs, trademark rights, and rights for place of origin," and "protection of industrial ownership rights" may be implemented in different ways pursuant to the characteristics of different social

industrial property rights," *North Korea Newsletter*, August 2000, KOTRA, August 9, 2000, www.kotra.or.kr/main/info/nk/research/etc_26.php3

7) "Dictionary of Civil Law," Pyongyang: Social Safety Ministry Publishing Co., 1997, p. 573.

8) In more detail, these are rights on literature, including academic writings and publications, fiction, and poetry, and artistic works, including visual artworks, as well as performances, films, dances, etc., sound recordings, video, and broadcasts, as well as other items created by artistic activities, "Dictionary of Civil Law," *ibid.*, p. 573.

9) In the South Korean case as well, the term "industrial ownership rights" was used in the 1980's, though "industrial property rights" is currently used. In South Korea, "industrial property rights" is a term referring to "patents, de facto new designs, design rights, and trademarks that protect inventions, designs, and trademarks that function as intangible commodities that contribute to industrial development," and such term began to be used domestically after February of 1990. Prior to February of 1990, "industrial ownership rights" was used for patents, de facto new designs, design rights, and trademarks. "Korea Gazette" No. 11476, Jong-Hwan Hwang, "Patent Rights," Hanvit Intellectual Property Center, 2001, p. 3.

systems.¹⁰⁾ According to the Dictionary of North Korean Civil Law, "industrial ownership rights" are "ownership rights for human intellectual creations achieved in various fields in the people's economy and in the areas of science and technology," and are related to "invention rights, patent rights, discovery rights, utility model rights, industrial design rights, trademark rights, and place of origin rights (exclusive rights for specific products from specific areas."¹¹⁾ In contrast to other rights, industrial ownership rights can only take effect after application to and registration with the organization overseeing industrial ownership rights via specific legal proceedings depending on the rights in question, and are protected by laws and regulations.¹²⁾ Furthermore, according to the Dictionary of International Law of North Korea, industrial ownership rights, as "rights for intellectual creations made in the economic and science & technology fields, are a variety of intellectual ownership rights," and cover areas such as industry, commerce agriculture, mining industry, manufactured and natural products (i.e., fruit, leather, mining, mineral water etc.). Specifically, industrial ownership rights consist of "patent inventions, utility models, designs, trademarks, service marks, corporate names, place names for points of origin and production, and prevention of unfair competition."¹³⁾ Based upon such explanation by North Korea, categorization of "invention" and "patent" evolved into "invention & patent (rights)."

Also, "industrial ownership rights" in North Korea are referred to as "individual rights and property rights for creators of intellectual creations in industry, agriculture, commerce, construction & transport, public health, and other economic areas, as well as science and technology fields, where such encompass patent and trademark rights."¹⁴⁾ Here, individual rights means "rights where the creator of the invention and the precedence thereof have been proven," while asset rights refers to "rights for prevention of manufacture, sale, export, or import of products without

10) *Dictionary of the Economy I*, Pyongyang: Social Sciences Publishing Company, 1985, p. 179.

11) In comparison to the definition in the North Korean *Dictionary of the Economy*, the "Dictionary of Civil Law" explains the categories of industrial ownership rights and clearly distinguishes patent rights and invention rights.

12) *Dictionary of Civil Law*, *ibid.*, p. 58.

13) Here, literary, academic, and artistic creations are exempted, *Dictionary of International Law*, Pyongyang: Social Sciences Publishing Company, 2002, p. 25.

14) Jeong-Hee Choi, *ibid.*, p. 61.

the authorization of the inventor.”¹⁵⁾

In North Korea as well, intellectual creations created via intellectual activities (i.e. activities of human mind) are property, and are recognized as entailing ownership rights that can be possessed, used, and disposed of. This appears to be in recognition of the importance of rights to human intellectual creations in the development of human civilization, and North Korea appears to be taking a proactive stance towards legal protection of such rights.¹⁶⁾

III. History and composition of the North Korean Invention Act

A. History of the North Korean Patent Act (Invention Act)

As for the promulgation and subsequent amendments of the laws related to the North Korean Patent Act, the “Regulation on Inventions and Creative Designs of the Democratic People’s Republic of Korea”¹⁷⁾ (hereinafter referred as “Regulation on Inventions and Creative Designs”) was enacted on October 5, 1967. This regulation was partially revised for the first time on December 28, 1978, and was entirely revised as per Subparagraph 45 of the decision of the Invention Committee of the Office of State on June 28, 1986, whereupon they took effect on November 1, 1986. The regulation amended in 1986 consists of the teachings of Kim Il-Sung and Kim Jong-Il, 5 sections and 49 articles. There was also an enforcement decree for the above regulation, i.e., the “Detailed Enforcement Rule on Inventions and Creative Designs for the Democratic People’s Republic of Korea.”

The above Regulation on Inventions and Creative Designs was recently separately enacted and implemented as the Invention Act of June 1998 and the Regulations on Creative Designs.¹⁸⁾ Such transition can be evaluated as an upgrade

15) *Ibid.*

16) Jeong-Won Park, “Analysis of the North Korean Inventions Act,” pp. 113-116.

17) Prior to this, North Korea had promulgated its “Reward System on Creative Designs” in 1959.

18) Section 1 on General Regulations, consisting of 13 articles in the “Regulations on Inventions & Creative Designs” regulates the purpose of the regulations, the scope of applicability, the supervising organization, the definition of “invention” and “creative design,” and invention rights and rights on creative designs. Section 2, composed of 18 articles, regulates application proceedings for registration of inventions and creative designs, and inspection, registration, and disclosure proceedings. Section 3, composed of 8 articles, regulates the provision of

of the legal basis from “regulations” to “law.” The Invention Act corresponds to the South Korean Patent Act, while the Regulations on Creative Designs corresponds to the South Korean Utility Model Act.¹⁹⁾

The North Korean Invention Act, consists of 5 sections and 43 articles, and regulates the mission and concept thereof, the principles of the inventions business (Section 1), the methods and proceedings for registration of inventions, (Section 2), the methods and proceedings of inspection for registration of inventions (Section 3), methods and proceedings for protection of invention rights and patent rights (Section 4), and controls over the invention business (Section 5). Furthermore, North Korea has implemented the Enforcement Rule on Patent Regulations along with the Invention Act from October 1, 2000, and the above Enforcement Rule consists of 5 sections and 68 articles, with Sections 1, 2, and 3 on “Registration of Inspections for Inventions,” Section 4 on “Protection of Invention Rights,” and Section 5 on “Instructions and Guidance on Inventions.” Accordingly, detailed regulations have been prepared in accordance with the provisions of the Invention Act.

The North Korean Constitution states in Article 74 that: “the citizens shall be free to engage in scientific, cultural, and artistic activities. The nation shall act in due consideration of inventors and creative designers. Copyrights, invention rights, and patent rights shall be legally protected.” Patent rights were regulated via new additions made after revision of the Constitution in 1998.²⁰⁾ The foregoing revision

national commendations, titles, and awards for inventors and creative designers in the evaluation of inventions and creative designs. Section 4, composed of 6 articles, regulates assignment of goals between organizations, cooperation between them, and dissemination of inventions and designs in order to encourage inventions and creative designs. Section 5 is composed of 4 articles and regulates disciplinary methods for infringement on invention rights, as well as the effective duration of international agreements, and the date of enforcement thereof.

19) North Korea adopted the “Regulations on Creative Designs” via an internal cabinet decision, and this was explained as “for the development of the People’s economy through modern technology through stronger technological innovation among scientists and engineers with the workers in accordance with the demands of the new century for the enhancement of the socialist economy and the construction of a strong country.”

20) Cf. Article 98 of the 1987 Criminal Code, “persons adjudged as intentionally misevaluating and ignoring copyrights, inventions, creative designs, or cultural and artistic works for motives of greed, jealousy, or other contemptible motives, or persons announcing the creative product of another person as their own shall be subject to up to three years of worker reeducation.” Article 49 of the Labor Act states “... national organizations, businesses, and social collectives shall encourage movements for rationalization of creative designs, and creative designs and reasonable proposals shall be used in production as needed. The nation shall provide national consideration to inventors, creative designers, and production innovators that make substantial contributions to the People’s economy, and shall provide technical qualifications thereto.”

of the Constitution and the revision of the Invention Act appear to be part of the legal and systematic apparatus introduced for the development of North Korea's science and technology industry. From 1998, North Korea has presented an economic development strategy via "science and technology focused policies," and likewise, 1999 was designated as the "Year of Science and Technology."

B. Composition and details of the North Korean Invention Act

1. Introduction

The North Korean Invention Act was adopted on May 13, 1988 by decision No. 112 of the regular meeting of the Supreme People's Council, and on February 11, 1999, the Standing Committee of the Supreme People's Council revised the Act via Order No. 507. Formerly it was not possible to acquire the date of the promulgation thereof or the provisions of the Act and it was only possible to guess the details of the Act by consulting the interpretation provided by the Democratic Chosun on June 11, 1998.²¹⁾ Currently, however, the original has been attained and will be examined as follows:²²⁾

21) "Democratic Chosun" provided the following account of the Invention Act on June 11, 1998: "Recently, the Democratic People's Republic of Korea has adopted the Invention Act. The adoption of the Invention Act will foster innovations in technological innovation, develop the nation's science and technology, and be of great significance in the construction of a socialist economy. Without the development of science and technology, a socialist economy cannot be constructed, and our nation and fatherland cannot become a powerful and prosperous country. The application for registration of inventions, inspections thereon, and the protection of invention rights and patent rights provides solid legal security for ensuring that the invention business is developed in accordance with the demands for real development. The act consists of 5 sections and 43 articles. Section 1 states principles to be adhered to in the invention business, and the concepts and ideology of inventions that underlie the Act. Section 1 states strict systems and order for application for registration of inventions, inspections thereon, and the protection of patent and invention rights, and proclaims that the mission of the law is to contribute to the development of science and technology and the People's economy. Application for registration, inspections thereon, and the protection of patent and invention rights is a basic proceeding for the invention business and rigorous establishment of systems and orders is fundamental to achieving results. The Invention Act, through its proper regulation of its mission, provides legal security that can ensure positive contributions to the People's economy and the development of the nation's science and technology. Section 1 states that: inventions are scientific and technological achievements that have high technical and economic effect that are new and progressive in comparison with already known technologies, and states that: the nation shall provide invention or patent rights regarding the registered invention in question. This legal regulation ensures that biases in the invention business, including inspection and registration, are removed and

accuracy is not compromised. The Invention Act regulates principles to be adhered to in the inventions business. The regulation of principles to follow in the inventions business is an important requirement in the proper development thereof in accordance with the political intentions of the party and the nation, and is the basis for accurate execution of the Act. The Act regulates accurate inspection and registration of inventions as a precondition for ensuring successful application thereof, and states that: protection of invention and patent rights, as an important condition for the development of science and technology, is consistent with the nation's policy. The registration of inventions states proceedings for application, and requires rigorous adherence thereto, while ensuring the protection of objectivity and accuracy in the inspection, enabling the accurate protection of patent and invention rights. It further encourages the inventions business, and enhances technological innovation by the masses, and states that: making the investments necessary for the creation of science and technology and the introduction thereof is an important principle to adhere to in the inventions business. Under this legal regulation, the inventions business has prepared a secure basis wherein it can thoroughly conform to the needs of the nation, the party, and the masses. The Invention Act Section 1 states the principle that the inventions business must develop cooperation and exchange with various countries and international organizations. Section 2 regulates methods and proceedings for application for registration. The Invention Act states that: application for registration is basic security for recognition of priority rights for the technology created, and requires that organizations, places of business, groups, and citizens intending to acquire invention rights or patent rights on their technological achievement must be accurate when making their application. Furthermore, the Act states that: the patent application shall be made at the registering institution, and regulates the formal proceedings and methodology with respect to the application, including the issue of when to separate the applications by content or case. This legal regulation ensures that application for registration is properly made and that valuable technologies are accurately assessed in a prompt fashion. Section 3 regulates methods and proceedings for inspection. The most important thing in the inspection and registration of inventions is the proper review and evaluation of the propriety of the invention as presented. The characteristics, levels, potential for industrial applications, and economic effects must be distinguished and appropriately assessed for the invention to contribute to the development of the nation's science and technology and contribute to the construction of the economy. Accordingly, the Invention Act stipulates that inspection of inventions is an important part of the review and evaluation of the propriety of the invention, and further stipulates detailed methods and proceedings for the organization receiving the invention registration and the application. The protection of invention rights and patent rights encourages the development of science and technology, and is an important part of ensuring the rights thereof. According to the Invention Act, the registering institution and the relevant organization, place of business, or group may correctly use the technology as inspected and registered. Furthermore, the use of the technology for which invention rights have been bestowed shall be enacted by the relevant organization, place of business, or group while the use of patent rights shall be enacted by the holder thereof. Other than this, Section 4 regulates methods and proceedings for the protection of technologies protected by patents made for organizations, places of business, groups, and citizens. This furnishes a basis for securing of incentives for the development of science and technology. Section 5 regulates the issue of the enhancement of national guidance and controls on the investment business. Issues regulated here include firm guidance of the introduction and application of technology by the national science and technology administrative organization, and the planned organization of science and technology discussions, exchanges, and meetings for the improvement of mass science and technology by organizations, places of business, and groups. This legal regulation allows the inventions business to proceed under the unified guidance of the nation and is a method of securing contributions to the development of science and technology and the strength and prosperity of the nation."

22) Cf. National Information Service homepage: www.nis.go.kr, North Korea's laws, "the Invention Act"

2. Basis of the Invention Act (Section 1)

Article 1 of the Invention Act states that “the Invention Act of the Democratic People’s Republic of Korea stipulates rigorous systems and orders for the registration of inventions and the protection of invention and patent rights, and shall contribute to the development of science and technology and the people’s economy.” Article 1 of the South Korean Patent Act states that: “this act shall encourage and protect inventions, and promote the development of technology via the use thereof, and thereby contribute to the development of industry.” Both provisions share a similar focus on the promotion of technological and economic development. Such provisions contrast with the purpose of the Regulation on Invention and Creative Designs which is to pursue the guidelines of Kim Il-Sung and Kim Jung-Il pursuant to Article 1 which provides for the teachings of Comrades Kim Il-Sung and Kim Jung-Il. The exclusion of ideology in the Invention Act is characteristic of the recent trend towards amelioration of the previous ideological orientation in the past in the process of codification.²³⁾

Furthermore, Article 2 defines inventions as “scientific and technological achievements that are new and progressive in comparison with already known technologies and have high technological and economic effect. The nation shall provide invention rights or patent rights of inventions that have been duly inspected and registered.” The previous Article 3 of Regulation on Inventions and Creative Designs stated that, ‘inventions’ shall mean “new technical solutions to specific problems in the scientific, technical, social, and cultural fields. This technical solution must include new basic factors that did not exist previously, and/or comprise positive economic effects. However, scientific discoveries, scientific theories, and mathematical formulae shall be exempted from treatment as inventions.” It appears that the regulations have been revised for brevity. The concept of “invention” as defined in Article 2 of the Invention Act can be seen as requiring novelty, progressiveness, and technical and economic effect in comparison to prior art as a condition for North Korean patents. This is similar to South Korean conditions for patents, which likewise require novelty, progressiveness, and industrial utility.

Application for registration of inventions is a precondition for ensuring that

23) Jeong Won Park, “Analysis of the North Korean Act,” p. 125.

inspection and registration is successfully guaranteed. The nation shall define application proceedings for registration of inventions and shall ensure that such proceedings are rigorously adhered to (Article 3). Accordingly, accurate inspection and registration of inventions is an important condition for the development of science and technology, and shall ensure the objectivity and scientific methodology of the inspection and registration proceedings (Article 4).²⁴⁾ Furthermore, Article 5 of the Invention Act states that “the protection of invention and patent rights is a policy consistent with the Democratic People’s Republic of Korea. The nation shall protect the invention and patent rights holders and ensure that such protection is accurately administered.” Article 6 states that “the nation shall engage in active encouragement of the invention business and ensure that technological innovations for the masses are strengthened, and that investments necessary for the creation and introduction of technology are continuously increased,” while Article 7 states that “the nation shall engage in exchange and cooperation with various countries and international institutions in the invention business.”

3. Application for registration of inventions (Section 2)

Article 8 of the Invention Act states that direct applications for registration of inventions shall be recognized as priority rights for science and technology so created, and shall be the basic security for evaluating the scientific and technical content thereof. It also states that organizations, businesses, groups, and citizens must make their application for registration accurately when applying. Furthermore, Article 9 states that “scientific and technological achievements jointly attained by citizens of the nation with the citizens of other nations shall be in the name of the persons concerned, or in the name of the associated organizations, companies, or groups.”²⁵⁾

24) In accordance with this, the National Science and Technology Administration shall establish a Non Standing National Invention Inspection Committee to ensure objectivity and scientific methodology in the inspection and registration of inventions, and shall provide detailed measures thereon (Enforcement Rule, Article 24).

25) If applications with the same scientific and technical content are received on the same day, the registering institution may demand that the applicants be treated as joint applicants, and if such demand is not complied with within three months, the matter may be handled according to the judgment of the registering institution (Enforcement Rule, Article 24).

The Invention Act states that application for registration of inventions shall be done at invention registration organizations and that in the case of juristic persons and individuals from other countries, applications shall be filed with a patent agency.²⁶⁾²⁷⁾ Applications for registration of inventions must be classified by content and case, however, where the content cannot be classified, the applications for registration of the invention may be made into a single case. The application and the explanation of the technology, etc. shall be attached to the invention registration (Article 11). The organization, place of business, group, or citizen applying for the registration shall present its case to the registering institution, along with samples and models etc; and the registering institution shall send notice of receipt of the application within 20 days thereof (Article 12). The priority date that confirms when invention rights or patent rights were first established shall be the date when the application is first received by the registering institution (Enforcement Rule, Article 21), and applications shall be publicly notified via official report upon their receipt (Enforcement Rule, Article 22).

Furthermore, Article 13 states that “organizations, places of businesses, groups, and citizens intending to receive patents on new technologies shall inquire as to the fixed fee for the patent. The business of defining fees shall be handled by the Central Price Determination Organization.”

4. Inspection and registration of inventions (Section 3)

Article 14 of the Invention Act states that “the registration process for inventions is an important concern for evaluating and inspecting the accuracy of the invention as presented. The registering institution shall distinguish the characteristics, level, industrial applicability, and economic effect of the technology presented. The

26) Organizations, places of business, groups, or citizens that wish to attain patents are known to apply to the Invention Office via eight agencies, including the Pyongyang Patent & Trademark Agency, and the Moranbong Patent & Trademark Agency.

27) Applications shall in principle be made in Korean, and while such applications may be made in English, Russian, Chinese, French, or German, a translation must be provided within 3 months of the date of receipt of the application, and such translation may be entrusted to the patent agency. In addition, when rights for application are entrusted, such shall be presented along with the transfer of the application rights, and if the deadline for filing of the application in question is exceeded, a three month extension may be provided upon remittance of late fees, provided that such applications shall be rendered null and void after 6 months (Enforcement Rule, Article 18).

technological evaluation, testing, and analysis of a specialized institution may be relied upon as necessary.”²⁸⁾ Furthermore, Article 15 states that “priority rights for an invention shall be based on the date on which the application was first received by the registering institution. If priority rights are being asserted pursuant to international agreements, such shall be complied with.” This appears to be identical with the South Korean “first to file system.”

On the other hand, the registering institution can perform an on-site assessment as to the details of the registration of the invention while the applying organization, place of business, group, or citizen ensures that the necessary conditions for the assessment are met (Article 16).²⁹⁾³⁰⁾ The nation shall form a Non Standing National Invention Deliberation Committee in the National Science and Technology Administrative Organization in order to ensure that accurate deliberations are made on inventions and shall enable the formation of a Non-Standing Invention Inspection Committee for the necessary departments (Article 17).

The registering institution must send notification of registration of the invention or refusal thereof to the relevant applicant, and must accurately reveal the grounds thereof when sending rejection letters (Article 18).³¹⁾ Registered inventions shall be registered at the registering institution, and where approved, shall be registered there. The registering institution shall provide certificates to the holder of invention and patent rights and provide an invention medal and award to the owner of the invention rights (Article 19).³²⁾

Article 20 of the Invention Act, in principle, mandates disclosure by stating that “the registering institution must disclose the registration of the invention, provided

28) Inspections shall proceed via pre-inspection on the format of the application as well the main inspection itself (Enforcement Rule, Article 25).

29) “Assessment” shall mean “determination of the circumstances or form,” *Dictionary of the Korean Language I*, Pyongyang, Social Sciences Publishing Company, 1992, p. 981.

30) In this case, tested and corroborated technological details and tested and introduced forms, as well as the inventor shall be confirmed, and in this process, the application may be revised and supplemented (Enforcement Rule, Article 28).

31) The inspection period shall be 15 months from the date of receipt of the application, and this period may be exceeded where one year has been allotted to review the effectiveness of the invention or where the application is to be supplemented or revised.

32) Although an invention reward of up to 600 Won may be provided along with a certificate to the owner of the invention irrespective of the results of introduction thereof, the reward money shall be deducted from the reward for introduction (Enforcement Rule, Article 32).

that, it may not disclose the invention if necessary.”³³⁾ As with South Korea, this appears to be the adoption of an open publication system for registration although the question of whether this constitutes an open application system is unclear. Article 21 states that “organizations, places of business, groups, and citizens may present their opinions with respect to the results of the inspection to the registering institution. The registering institution shall review such opinions as they are presented.”³⁴⁾ This appears to be the granting of opportunities for contesting disposal by the registering institution, or the allowance of the expressions of opinion by interested parties with respect to the registration. Nevertheless, as only opinions can be presented, it appears that this policy is lacking in any substantive effect. Furthermore, organizations, places of business, groups, and citizens may apply for patent rights on new science and technology in other countries, and in this case, the consent of the registering institution must be attained, and the services of a patent agency must be used (Article 22).³⁵⁾

5. Protection of invention rights and patent rights (Section 4)

The Invention Act contains 13 articles on the protection of invention rights and patent rights. Article 23 states that “the protection of invention rights and patent rights is part of the pursuit of the development of science and technology, and is a necessary prerequisite in the securing of rights. The registering institution and the relevant organization, place of business, or group shall ensure that use rights for the registered technology for the invention shall be accurately established.” Furthermore, use of technologies for which invention rights have been acquired shall be enacted by the organization, place of business, or group in question; provided that, technologies for which patent rights have been attained shall be used by the owner thereof (Article 24; Enforcement Rule, Article 37). The duration of the patent rights protection period shall be 15 years from the date of receipt of priority rights, and in accordance with the application of the holder of the patent rights, the patent rights protection period may be extended for an additional 5 years (Article 25;

33) Disclosure shall in principle be as per the items recorded in the official report thereof.

34) Opinions on the decision shall be presented within 3 months of the date of issue of notification, while opinions on the official report of the invention shall be presented within 6 months of the date of issue of the report.

35) Detailed methods and proceedings are as per Article 24.

Enforcement Rule Article 39). The holder of the patent rights must inquire as to the fees needed to protect such rights and the business of defining such fees shall lie with the Central Price Determination Organization (Article 26).³⁶⁾

The Invention Act regulates the following as instances where patent rights are to be forfeited ① the patent rights holder has given up said rights ② the patent rights protection fees have not been remitted in the stipulated time frame, or ③ a decision of the National Invention Inspection Committee or the Court has been reached rendering the patent rights in question null and void (Article 27).³⁷⁾ Furthermore, Article 28 states that “[if] organizations, places of business, groups and citizens wish to use their protected technology to produce products, they must attain the permission of the patent rights holder. The technology for which patent rights have been attained may not be transferred to a third party without the permission of the rights holder.” Article 29 states that “patent rights may be transferred or the underlying technology used with the proper permission.” In this case, the holder of the patent rights shall “conclude the appropriate contract and register with the registering institution” (Enforcement Rule, Articles 42 and 43). Article 30 states that “joint rights holders may not use the technology in question without the permission of the other patent rights holder or holders. However, if patent rights are to be transferred or their use authorized to a third party, the agreement of the other joint patent rights holders must be attained” (Enforcement Rule, Articles 44 and 45).

For technologies for which patent rights have been acquired which are necessary for social benefit, the nation may offer patent rights or use of the underlying technology, however, in such case, equivalent compensation shall be provided to the rights holder (Article 31).³⁸⁾ Furthermore, while patent rights may be changed to invention rights at the request of the rights holder, invention rights may not be

36) The base amount of protection fees per annum shall be determined by the National Price Determination Organization upon the attainment of approval of the National Science and Technology Administration by the registering institution.

37) The Enforcement Rule adds cases where patent protection fees are not remitted in the specified time period (Enforcement Rule, Article 41).

38) Compensation and the conditions and methods thereof shall be separately determined, and transfer of use rights shall be determined when the technology is not used after more than 5 years after the patent has been acquired, when it is absolutely required for the development of the people’s economy or for the nation’s economic policies, or when it is needed in national defense.

changed to patent rights (Article 32).³⁹⁾

Cases where the underlying technology for which patent rights have been attained without permission of the rights holder are: ① the technology is used as a means of servicing and repair of means of transport from other countries temporarily stationed in North Korea, ② the technology is used in experiments for scientific research, or ③ the technology is used in the production of medications necessary for treatment of patients under a doctor's prescription (Article 33; Enforcement Rule, Article 47). Furthermore, Article 34 states that "if use rights for technologies endowed with invention rights, or related information or products are to be transferred to another country, the consent of the Central Science and Technology Administration shall be attained" (Article 34).⁴⁰⁾

6. Leadership and control of the invention business (Section 5)

The provisions of the Invention Act in the section on guidance and control of the invention business constitute grounds for North Korea's high prioritization of the development of science and technology. Article 35 states that "enhancement of guidance and control of the invention business constitutes basic security for the accurate supervision of the nation's science and technology policies. The nation shall enhance guidance and control of the invention business." Furthermore, Article 36 states that "the invention business shall be under internal cabinet guidance and shall be consistently handled by the Central Science and Technology Administration. The Central Science and Technology Administration shall provide accurate invention goals and the implementation and the introduction thereof shall be regularly and

39) Patent rights holders intending to change patent rights to invention rights must present their application to the registering institution prior to the elapse of 5 years in the patent protection period. The reason for the conversion of the invention rights, as well as the agent, the agent's address, the transfer of patent rights & authorization of use, and the format of changes in the legal circumstances presented during the patent protection period must be revealed. If patent rights are changed to invention rights, the appropriate compensation shall be provided to the patent rights holder in accordance with stipulations separately made (Article 49).

40) When consent is requested, the name of the eligible technology and the form and method thereof, the details of the certificate of invention rights (number, date, inventor, applicant, organization, or company name), necessity (grounds), benefits, and the grounds thereof, and the core details of the technology should be revealed, and the necessary data should be attached. The National Science and Technology Administration shall provide its consent or opinion within 30 days of the receipt of the request for consent (Enforcement Rule, Article 50).

firmly guided."⁴¹⁾

Organizations, places of business, and groups shall plan and organize science and technology discussion groups, technology research innovation exhibitions, experience exchange meetings, and prize competitions for the reform of technology for the masses (Article 37). The necessary labor, materials, and funds for an invention business shall be provided as needed to national planning institutions, labor Administrations, materials supply organizations, and financial & banking organizations (Article 38).⁴²⁾ The nation shall accord preferential social treatment and valuation to persons introducing science and technology via registered inventions that contribute to the development of the people's economy (Article 39).

Furthermore, Article 40 states that "control of the invention business shall be handled by the Central Science and Technology Administration and the relevant supervisory organizations. The Central Science and Technology Administration and the relevant supervisory organization shall maintain order in the application and registration of inventions and enhance supervision and control of the protection of invention and patent rights." If invention rights or patent rights are infringed, such infringement shall be compensated for (Article 41).⁴³⁾ Any organization, place of business, group, or individual found liable for violating the Invention Act shall be subject to administrative or criminal liability (Article 42; Enforcement Rule, Article 67).⁴⁴⁾ Article 43 states that "differences of opinion with respect to the invention business shall be resolved through negotiations. Where such disputes cannot be resolved, they shall be presented to the arbitration organization or the court for resolution."

41) National consideration for meritorious service in the pursuit of scientific development and the technology revolution shall be emphasized along with national responsibilities. In accordance thereto, if benefits are accrued to the country, a national award of Workers' Medal or above shall be bestowed, and science and technology development funds and technological innovation awards, as well as introduction awards and invention incentives shall be accumulated and bestowed.

42) Cf. Enforcement Rule, Articles 59-63.

43) Litigation may be presented to the court, and in this case, the effective term shall be 2 years from the date of the infringement, and any profits incurred by such infringement shall be adjudged as compensatory damages in accordance with the severity of the infringement (Enforcement Rule, Article 64).

44) The Socialist Labor Act (1978) states that: "scientists, technicians and producers shall enhance creative cooperation and engage in technical innovation movements for the masses. National organizations, places of business, and social collectives shall encourage creative designs and rationalization movements. Creative and rationalization designs shall be taken up in production as needed. The nation shall provide national consideration and

Compared with the South Korean Patent Act, where the infringer is subject to civil measures, including injunction against infringement and compensatory damages, as well as criminal penalties, including up to 5 years imprisonment and up to 20 million Won in fines, the North Korean protection of patent rights is highly insufficient.

With regard to guidance and control of the protection of invention and patent rights, there is a need to understand the particulars of the administrative organization for such rights in North Korea. As is generally known, North Korea removed officials from the Administration upon revision of the Constitution in 1998, via internal cabinet revision, and the relevant administrative organization has undergone changes. Duties for invention rights and patent rights appear to be administered under the aegis of the Academy of Science, the associated Invention Office, and the Standards and Industrial Design Center under the External Planning and Quality Supervision Office.⁴⁵⁾ Duties for the establishment of domestic and foreign policy on patents and inventions overall and the revision thereof are pursued in the Science Academy. The Invention Office handles establishment and execution of policy on inventions and creative designs, and handles applications, inspections, and registrations on industrial property.⁴⁶⁾

technical qualifications to inventors, creative designers, and production innovators who have made substantial contributions to the development of the People's economy" (Article 49). Furthermore, the North Korean Constitution states in Article 98: "persons adjudged as intentionally misevaluating and ignoring copyrights, inventions, creative designs, or cultural and artistic works for motives of greed, jealousy, or other contemptible motives, or persons announcing the creative product of another person as their own shall be subject to up to three years of worker reeducation."

45) The North Korean internal cabinet is composed of 2 committees, 27 ministries, 1 institute, 1 office, and one bank. "North Korean Almanac," *Yoenhap News*, Nov 10, 2001, p. 426.

46) The Regulations on Inventions and Creative Designs stated that the invention and creative design business should be handled by the Invention Committee. Gyu-Woo Gweon, based on the WIPO National Seminar on Trademarks (Pyongyang, 2000.4-5), introduces the Invention Inspection Office in the "Current Status of North Korean Industrial Property Rights & North/South Cooperation and Exchanges," *Intellectual Property 21*, Volume 64, Patent Office, Jan 2001, pp. 38-50

C. Characteristics of the North Korean patent system - invention rights

1. Concept of patent rights

Patent rights in North Korea are legal rights providing exclusive rights to the production and sale of an invention for a specific period to the person inventing the new means of production. These exclusive rights are not only for the introduction and use of such means, but also include rights for disposal. Patent rights are publicly disclosed exclusive rights subject to legal protection, and as exclusive rights held only by the holder of the technology in question under legal protection, they cannot be used by anyone without permission of the rights holder. Accordingly, if technologies protected as patent rights are to be used, the patent rights or the use rights themselves must be transferred from the rights holder themselves.⁴⁷⁾

2. Concept of invention rights

In North Korea, invention rights are based on the invention rights system, while patent rights are explained as being protected in parallel.⁴⁸⁾ North Korea describes invention rights "as scientific and technological achievements that are new and progressive in comparison with already known technologies and have high technical and economic effect."⁴⁹⁾ Simultaneously, the inventor, as the creator of the invention, shall maintain priority rights on the scientific and technological content of the invention, as well as rights to certain national and social treatment. Here the inventor means the creator of the invention (or the joint inventors), who, as the person resolving the essential problem inherent to the invention, resolves scientific and technological problems through the application thereof, solves such problems via realization of the inventor's idea, and presents and realizes a method of execution thereof.⁵⁰⁾

47) Jeong-Hee Choi, "General Understanding of Industrial Ownership Rights & Protection Systems," *Kim Il Sung University Journal: History & Law*, 2000 Vol. 2 (Pyongyang: Science and Technology Publishing Co., 2000) p. 61.

48) *Ibid.*, p. 62.

49) *Ibid.*, "Dictionary." p. 252.

50) Dong-Gyu Na, "Regarding North Korean Invention and Patent rights," *Intellectual Property 21*, Volume 57, Patent Office, Nov. 1999, p. 2.

3. Difference between invention rights and patent rights

North Korea's invention rights and patent rights define the details and application of the recognition of the creator of inventions as a legal form of protection thereof, as well as the details of inventions, priority rights, and the guaranteeing of rights on inventions. Application methods and proceedings for applying for registration and protection to the nation, as well as methods, forms, and inspection proceedings and criteria thereon are almost identical. However, there is an essential difference between invention rights and patent rights.⁵¹⁾

First, invention rights and patent rights have different holders of use rights for the invention. Use rights for patent rights lie with the owner thereof, while use rights for invention rights lie with organizations, places of business, and groups, even where held by the inventor (Invention Act Article 24).⁵²⁾ Accordingly, the nation shall not have rights to introduce or use registered inventions nor sell them in other countries without the approval and agreement of the inventor, and a contract therewith.

Second, persons endowed with invention rights are enjoined from canceling or forfeiting such rights, nor may they transfer them to other persons. In contrast, for patent rights, use rights for the invention are exclusive to the rights holder. During the effective duration of the patent rights, rights may not be used by any person, organization, place of business, or nation, without the permission of the patent rights holder. Furthermore, the patent rights holder may forfeit patent rights, and may sell them entirely or transfer them for a specified period to another person, organization, place of business, or country. For registered rights, revisions and transfers of the registration shall be regulated by the patent organization. Registration shall be made from a foreign country to the North Korean patent organization. When inventions that have been patented are transferred to third parties via patent trades, not only must the North Korean patent organization be informed, but its approval must be attained as to the details of the contract made with the purchaser. The reason for this is that registered patent rights or use rights thereon are being transferred to another person, and the consent of the patent from the (administering) organization endowing such rights must be attained. This is likely for the prior prevention of any

51) Jeong-Hee Choi, *op. cit.*, pp. 62-63.

52) These are generally referred to as "application rights" in South Korea.

infringement on the patent rights of third parties that may arise.

Third, while invention rights cannot be converted into patent rights, patent rights can be converted into invention rights as per the application of the rights holder.⁵³⁾

Fourth, while invention rights in general have an unlimited duration, patent rights have a duration of 15 years. While North Korea grants exclusive invention rights, invention rights are more like rights guaranteeing compensation and credit for inventions, rather than exclusive property rights.

Fifth, invention rights and patent rights fundamentally differ as to the bearing of expenses with respect to registration. When invention rights are registered, application fees or other fees are not required, while patent registrations require various fees (including application fees, new application fees, revision notification fees, etc.). After the registration is made, a non-trivial protection annuity must be remitted for the duration of the patent.⁵⁴⁾ Furthermore, when registering invention rights, political, moral, and material favors are to be granted by the nation (i.e. national commendations, certificates, awards, technical qualifications & promotions, plaques, and badges).⁵⁵⁾ The number of material favors is to be determined in accordance with the scale of economic results achieved by the underlying technology. In light of this point, North Korea is encouraging an invention rights system, rather than a patent rights system, and has taken favorable systematic measures for this purpose.⁵⁶⁾

Accordingly, North Korea is enhancing invention rights concepts with respect to patents, and this is explained as a separate right. North Korea stresses invention rights more than patent rights. The reason for this lies in North Korea's prohibition of individual business activities based on the principle of socialist ownership of the means of production. Accordingly, rights holders with inventions protected by patent rights have fundamental limitations in the establishment or operation of individual businesses via the introduction of the invention in construction or production.⁵⁷⁾ In brief, while North Korea treats invention rights and patent rights with almost the

53) For North Korea, this is 15 years, and for South Korea, 20 years.

54) Jeong-Hee Choi, *op. cit.*, p. 62.

55) *Ibid.*, pp. 62-63.

56) Dong-Gyu Na, "Regarding North Korean Invention and Patent Rights," *Intellectual Property* 21, Volume 57, Patent Office, 1999.

57) North Korea explains that patent rights are protected to make invention rights respond to the inherent requirements of Korean socialism. Jeong-Hee Choi, *op. cit.*, p. 63.

same formal attitudes and proceedings, the invention rights system demonstrates the characteristics of social ownership of the means of production. North Korea's invention rights system is something that does not exist in capitalist countries based on private ownership of the means of production.⁵⁸⁾ As North Korea does not recognize private ownership, it does not recognize private ownership of patent rights, and such recognition would at any rate be meaningless.

IV. Current status of North Korea's entrance into international agreements

North Korea is a very active participant in international agreements on industrial property rights on patents and designs as the core method for protection of inventions and ideas. With the exception of the Paris Convention, North Korea has entered into almost all agreements before South Korea, and is a signatory to the Madrid, Hague, and Locarno agreements, all of which South Korea has yet to approve.⁵⁹⁾⁽⁶⁰⁾⁽⁶¹⁾⁽⁶²⁾

58) *Ibid.*, p. 62.

59) Paris Convention for the Protection of Industrial Property (1883). Currently 162 countries are signatories to this Agreement, with South Korea entering on May 4, 1980, and North Korea entering on June 10 of the same year. The main details of this Agreement established (i) principles of equal treatment for domestic and foreign citizens, (ii) claims systems for priority rights, and (iii) common rules for patents, trademarks, company names, point of origin designations, unfair competition, and administrative obligations for allied countries.

60) The Madrid Agreement Concerning the International Registration of Marks (1891) has 52 signatories as of 2001. This Agreement regulates international registration proceedings for marks (ie trademarks and service marks) to the international business office of the WIPO. In order to attain the benefits of international registration in accordance with this Agreement, the applicant must be a citizen of a signatory, have a residence in one of the signatory countries, or have a domestic or regional trademark registered with the trademark office in an actual industrial country among the signatories. Afterwards, the applicant will be able to register internationally via the domestic or regional office. If international registration is effectively achieved, the international business office shall publicly disclose the fact thereof, and notification shall be provided to the countries wherein the applicant desires protection (the "Benelux" office for Belgium, the Netherlands, and Luxembourg). If the trademark is unable to be protected in the signatory notified (or Benelux), the grounds for decision must be specified and promulgated within the year. If this declaration is not made within one year, the international registration shall be effectively established in the country in question. The application shall be made in a single language (eg. French). For the purposes of convenience, the international office has published a "Guide to the International Registration of Marks."

61) The Hague Agreement Concerning the International Deposit of Industrial Designs (1925). Among the

North Korea's proactive attitude towards international organizations and treaties with respect to industrial property is closely related to its policy goals that prioritize the enhancement of the development of science and technology and the improvement of the invention business. At any rate, North Korea is exhibiting a positive attitude towards its entry into international agreements that form the basis of industrial property rights systems, and at the very least, this can furnish the beginnings of some measurable interest on the part of North Korea in the improvement and modernization of its industrial property system. Nevertheless, for international agreements in which both North and South have entered, there are continuing issues to be resolved between the authorities of both Koreas with regard to the question of its indiscriminate application to citizens.⁶³⁾

The table on the next page illustrates the current status of both Koreas in international organizations and treaties with regard to industrial property rights.

North Korea appears to be reflecting enhanced international protective measures on industrial property in the midst of rapid developments in technology trade due to the development of modern scientific civilization with respect to international protection of industrial ownership rights. North Korea is acknowledging the emergence of the regional nature of the effect of patent rights and trademarks etc. on the protection of industrial property rights. North Korea also knows that patent rights & trademarks are limited to the territory of the country in which such rights are

Hague Agreements, the Acts of 1934 and 1960 were concluded. In July of 1999, the Geneva Act was additionally concluded in Geneva.

62) Locarno Agreement Establishing an International Classification for Industrial Designs (1968). This Agreement was concluded in 1968 and was revised in 1979, and had 40 signatories as of 2000. This Agreement established classification systems on designs. Design Offices of each signatory shall display the appropriate classification systems on its public announcements and publications on entrustment and registration of designs. Classification under this Agreement shall consist of 32 main classes and 223 sub classes. Furthermore, such classes and subclasses shall be arranged in alphabetical order as per the product list, and the list shall in each period be composed of approximately 6,320 indications of each class. Even though only 38 countries are signatories hereto, approximately 40 countries have adopted the classification system from the patent office. WIPO's business office and the Benelux Design Office has also adopted this system.

63) With regard to this portion, the head of the WIPO (World Intellectual Property Organization) Business Office has expressed the belief that cooperation from the WIPO is feasible when premised on joint effort by both North and South in consideration of the special political circumstances there between. In contrast with the WTO/TRIPS agreement, such agreements have no binding power on the member countries, and the performance thereof is contingent on the intentions of the member countries.

Current Status of Entry Into International Organizations and Treaties on Industrial Property Rights for North and South Korea

Agreement	Date of entry	
	South	North
WIPO Establishment agreement	1979.3.1	1974.8.17
Paris Convention on Protection of Industrial Property Rights (1883)	1980.5.4	1980.6.10
Patent Cooperation Treaty (1970)	1984.8.10	1980.6.10
Madrid Agreement on International Registration of Trademarks (1891)	-	1980.6.10
Madrid Protocol on international registration of trademarks (protocol)	2003.1	1989.6.28
Hague Agreement on International Deposit of Designs (1925)	-	1992.5.27
Locarno Agreement on international distribution of designs (1958)	-	1997.6.6
NICE agreement on international distribution of product services (1957)	1998.10.8	1997.6.6
Budapest Agreement on microorganisms in patents and other international approvals (1977)	1988.3.28	-

Source: Public Notice of Export/Import, Annex 9.

granted. In other words, while industrial ownership rights that arise in one country cannot be freely introduced and used in another country, as the necessity for expanding such exclusive rights to other countries arises, measures to prepare proposals for international protection thereon also arise, and the country is displaying increased interest in compliance with international practices and regulations.

In light of this, North Korea, via its understanding of the systems for protection of industrial property rights, has enhanced various measures in the construction of its “strong country” policy via its formal expression of compliance with international organizations and treaties, and by contributing to the enhancement and expansion of foreign trade; however, it is difficult to ascertain the real position of the country with respect to international practices and standards.

Furthermore, while North Korea is increasing applications for patents in international society for the protection of industrial property rights, this is because its intent to show international attitudes for the protection of industrial property rights cannot be measured. Accordingly, a positive evaluation of the North Korean

international attitude towards industrial property rights requires a prudent position, and it will be necessary to confirm this attitude via real evaluations in international society along with increased exchanges on protection of industrial property rights and other exchanges with South Korea.

V. Conclusion

North Korea is realistically establishing the recovery of its economy as a national issue, and is establishing and putting into practice systematic defense strategies for economic development. The “powerful and prosperous country” theory being pursued by the Kim Jong Il regime has prioritized economic development as a means for preserving the system. Among these, economic improvements and development are being emphasized via enhancement of science and technology. Guidelines for the close integration of the economy and science and technology were indicated as one of the means to continuously implement the 5-year (2003-2007) Science and Technology Plan newly presented in the National Science & Technology Congress held in Pyongyang on October 31, 2003. While adhering to the principles of socialism, policies for improvement of economic management that pursue the maximum benefit are being applied to the science and technology field.⁶⁴⁾

64) <http://korea-np.co.jp/news/ViewArticle.aspx?ArticleID=7445> According to the Chosun News, on January 21, 2004, the Internet Chosun News quoted the January 18th Article of the Pyongyang News on the 22nd : “A system has been introduced for the circulation of new scientific and technological achievements via intellectual products (intellectual property) appropriate for the realities of the present age wherein the economy and science are united under national measures.” The article describes intellectual products as “intangible assets that provide technological and economic effects as the result of creative mental activities,” and shall include inventions, creative designs, blueprints, computer programs, technological secrets (i.e. new technology and “know how”), and shall be subject to legal protections in the process of distribution. “Furthermore, the created products shall be first registered at the Science Academy in order to confirm the details and precedent thereof prior to distribution. During distribution, “the circulation price shall be determined in consideration of the profits attained from the use of the product, expenses for the inventor arising in its creation, and compensation for costs.” In particular, a contract shall be drawn between the relevant organizations and businesses, and in special cases, individuals may conclude contracts with places of business. In the contract, “detailed information, including the intellectual product between the researcher and the consumer, the technical details, and the method of payment of the price shall be recorded,” while the article further stated that “mobilization of external experts for the solution of technical problems by places of business or factories is not a form of supportive labor, but is rather the payment of prices corresponding to the contract.”

The Invention Act was newly promulgated, and this appears to be part of the movement deciding to adopt the Science and Technology Act in the regular meeting of the Supreme People's Council on December 15, 1988. This is thought to be a necessary stage for economic recovery.⁶⁵⁾

However, patent rights from capitalist countries are used as one of the main methods for ensuring stability for the huge investments made by capitalists, and the distinction between North Korea's patent system and the patent rights system of capitalist countries is emphasized.⁶⁶⁾

The North Korean explanation states that the protection of patent rights, i.e. industrial property rights, originates in the distortion of the original intent and purpose of protection of industrial property rights. This can be regarded as an explanation that contradicts the acknowledgement of "exclusive rights for the production and sale for a specified period of an invention granted to the inventor of the new method of production." This North Korean explanation originates in the essence of the socialist system of North Korea, which denies private ownership of the means of production. Accordingly, personal use of patent rights is regulated in North Korea. Social ownership of the means of production in North Korea, as stipulated by socialism, does not permit business management activities by individual citizens, and the holder of patent rights is enjoined from introducing his patented invention into production or construction, and establishing and operating his own company. Accordingly, it is difficult to regard the systematic apparatus as being significantly effective under the current North Korean socialist system.

As the era of separation and confrontation between North and South Korea gives way to an era of mutual exchanges and reconciliation, cooperation and exchange are being enhanced for the completion of the historical mission for unification, the desire of the Korean people. North and South Korea have, via the Sixth North/South High Level Conference of December 9, 1991, enacted the North/South Basic Agreement, and the Joint Declaration on Nuclear Non Proliferation on The Korean Peninsula, as well as its Accessory Agreement. They later adopted the June 15 Joint

65) The Science and Technology Act was revised and supplemented via the order of the standing committee of the Supreme People's Council on May 6, 1999.

66) In other words, capitalists invest massive amounts of capital, and as one's own technology ages with the introduction of newer technologies, patent rights are used in order to forego obsolescence. Capitalists thus have cause to prevent the use of new technologies in production. Jeoung-Hee Choi, *op. cit.*, p. 63.

Declaration after the regular North/South conference after 55 years of division on June 15, 2000. The adoption of the four agreements on North/South economic cooperation (guarantees on investment, liquidation settlement, prevention of double taxation, and resolution of commercial disputes) also took effect. Furthermore, North Korea's doors are continuously opening, including overland tours to Keumkang Mountain, and entry into the Kaesong Industrial Complex, and the scale of economic exchanges between North and South Korea is expanding.

Accordingly, domestic businesses will likely face increasing needs to apply and register intellectual property rights within North Korea, even while patents cannot yet be applied for directly within North Korea. This is due to the fact that North and South Korea do not recognize each other as nations. Currently, the method for applying for patents in North Korea is directly via the patent and trademark agency within North Korea, via the patent office in China, and via companies authorized for intellectual property rights related business by North Korea. A few businesses have registered patents within North Korea in the name of a local subsidiary established in third countries.

Although this paper has examined the patent system in North Korea, including the Invention Act, there are nevertheless numerous gaps in its coverage. This is due to the continuing impossibility of access to information on North Korea, and the lack of accurate and recent information. Further research is expected as North Korea opens its doors in the future.