

The Path Forward for IP Arbitration in Korea (with Lessons from Hong Kong and Others)

By Arie C. Eernisse, C. K. Kwong¹⁾

Introduction

Historically, intellectual property (IP) disputes have been taken to national courts for a variety of reasons, including, among others, that (1) dispute resolution by arbitration is contractual in nature, and many disputes relating to IP issues lack a contractual relationship, (2) national laws limit the scope of arbitrability of IP issues and (3) parties dislike the inability to appeal arbitral awards.²⁾ Recently, however, the number of IP disputes going to arbitration has increased substantially.³⁾ The graph below published by the World Intellectual Property Office (WIPO) shows the increase in cases of IP disputes being arbitrated, mediated, or submitted to expert determination.

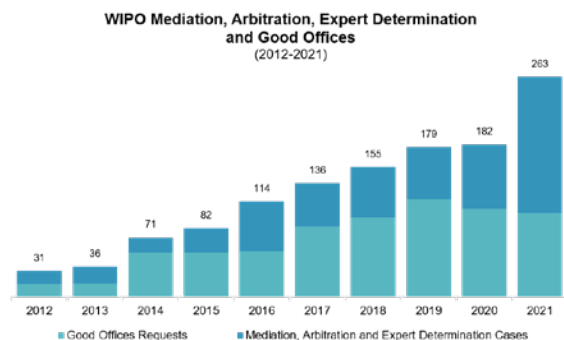


Figure 1. IP Disputes Over the Years⁴⁾

Among the reasons for the growing popularity of IP arbitration are its confidentiality, efficiency, and procedural flexibility, as well as the enforceability of awards and the specialist knowledge of arbitrators.⁵⁾ However, several potential limitations exist for arbitration in international IP disputes, including the potentially limited coercive power of arbitral tribunals to issue critically important interim relief, the inability of arbitral tribunals to invalidate registered IP rights with *erga omnes* effect and the related difficulty of binding non-signatories to an arbitration agreement, sometimes unsatisfactory evidentiary features and potential arbitrability obstacles.⁶⁾

Parties hailing from or having business in the Republic of Korea (Korea) often encounter IP-related disputes, and, given the substantial improvements in Korea's general arbitration infrastructure over the past several years, now is the time for Korea to proactively push forward with innovations that will stimulate activity in the important specialty area of IP arbitration. One of the co-authors, C. K. Kwong, has had extensive experience carrying out such initiatives as part of Hong Kong's vigorous campaign to improve its own IP arbitration infrastructure.

1) The authors would like to thank John Gee for his valuable research assistance for this article.

2) John V. H. Pierce and Pierre-Yves Gunter, 'Introduction', in Global Arbitration Review, *The Guide to IP Arbitration* (2021) (1st ed.) (available at <https://globalarbitrationreview.com/guide/the-guide-ip-arbitration/first-edition/article/introduction>) (accessed on 7 February 2022).

3) *Id.* (noting that the number of filings at WIPO has increased by 450% since 2012).

4) 'WIPO Caseload Summary: WIPO Mediation, Arbitration, Expert Determination Cases and Good Offices Requests' (available at <https://www.wipo.int/amc/en/center/caseload.html>) (accessed on 7 February 2022).

5) David H. Herrington, Zachary S. O'Dell and Leila Mgaloblishvili, 'Why Arbitrate International IP Disputes?', in Global Arbitration Review, *The Guide to IP Arbitration* (2021) (1st ed.) (available at <https://globalarbitrationreview.com/guide/the-guide-ip-arbitration/first-edition/article/why-arbitrate-international-ip-disputes>) (accessed on 7 February 2022).

6) *Id.*

In this article, first, we will explain the dynamics of the current situation for IP arbitration in Korea; second, we will explore some of the lessons to be learned from Hong Kong's experience; and, third, we will highlight three specific innovations that Korea would do well to consider.

Fertile Ground for IP Arbitration in Korea but Still Waiting for Growth

As regular readers of this publication are well aware, in the past decade and especially from 2016 onward, the Korean government, Korean Commercial Arbitration Board (KCAB), and other stakeholders have made huge strides in terms of increasing the attractiveness of Korea as a seat of arbitration in general. This has been accomplished through amendments to the Arbitration Act of Korea (Act), enactment of the Act on the Promotion of the Arbitration Industry, amendments to the KCAB Rules, creation of KCAB INTERNATIONAL, and other forms of support such as an arbitration-friendly and strong judiciary.⁷⁾

Korea's legislature first passed the Arbitration Act of Korea (Act) in 1966 but amended it wholesale in 1999 to adopt the 1985 UNCITRAL Model Law. In 2016, the legislature made further amendments to the Act in order to adopt key elements of the 2006 amendments to the UNCITRAL Model Law. The 2016 amendment of Article 3(1) of the Act expanded the scope of arbitrable disputes to include disputes based on non-monetary property rights that parties can resolve through settlements. Although the amended Act does not expressly clarify that disputes over the validity of IP rights

are arbitrable, Article 3(1) arguably has this effect, at least as between the parties to the arbitration agreement themselves.⁸⁾ However, more clarity on this is needed.

It was stated in a *Korean Arbitration Review* article in 2017 that the amendment would make more IP disputes arbitrable, at least in principle, and 'should facilitate the increase in IP disputes in international arbitration from Korea.'⁹⁾ Now, approximately five years later, it is still unclear whether this change will result in substantially more IP arbitration cases seated in Korea. The most recent KCAB Annual Reports from 2019 and 2020 suggest that it will not, as they state, respectively, that only 3.4% and 2.2% of the KCAB's cases involved IP disputes.¹⁰⁾ As noted in the aforementioned article, 'the general view in Korea has been that issues such as the validity of IP rights are not arbitrable.' Until this view is definitively reversed, there may still be a dearth of IP arbitration in Korea compared to what is possible.

This state of affairs is not ideal. Besides revising the Act to more explicitly make IP disputes arbitrable (as Hong Kong has done with its Arbitration Ordinance – see the section below), other adjustments would also generate more confidence in arbitration as a dispute resolution

7) Young Seok Lee, '50 Years of Arbitration in Korea and Recent Trends', *Korean Arbitration Review*, 7th Issue (2017), at pp. 4-10; Hi-Taek Shin, 'Changing Scene in International Arbitration and Notable Developments in Korea', *Korean Arbitration Review*, 9th Issue (2018), at pp. 4-8.

8) Doo-Sik Kim, Jae Min Jeon and Arie C. Eernisse, 'Commercial Arbitration: South Korea', *GAR Know-How* (2021) (available at <https://globalarbitrationreview.com/insight/know-how/commercial-arbitration/report/south-korea>) (accessed on 6 February 2022).

9) John Rhie and Harold Noh, 'Resolving IP Disputes through International Arbitration', *Korean Arbitration Review*, 7th Issue (2017), at pp. 11-15.

10) KCAB INTERNATIONAL Annual Report 2020, at p. 14; KCAB INTERNATIONAL Annual Report 2019, at p. 14 (both available at http://www.kcabinternational.or.kr/user/Board/comm_notice.do?BD_NO=174&CURRENT_MENU_CODE=MENU0017&TOP_MENU_CODE=MENU0014) (accessed on 6 February 2022). It is, of course, understood that such cases could have been filed under the auspices of other international arbitration institutions, but one can at least use the KCAB statistics as a proxy for all arbitration cases seated in Korea.

mechanism for IP disputes involving a Korean nexus, such as the three innovations discussed later in this article.

The Hong Kong Experience (and Beyond)

The Hong Kong experience provides a useful roadmap for Korea to consider carefully. The Hong Kong Government established a Working Group on Intellectual Property Trading (Working Group) in 2013. Co-author of this article C. K. Kwong was appointed as the Convenor of the specialist sub-group on IP Arbitration and Mediation to look into the strategic area of IP Alternative Dispute Resolution (ADR) with a view of developing Hong Kong into an IP ADR hub.

In March 2015, the Working Group published a report that provided recommended actions.¹¹⁾ One of those recommendations was a proposal by C. K. Kwong to ‘study the need for legislative amendments to clarify the arbitrability of IP disputes’. Thereafter, an Arbitrability Working Group was set up by the Hong Kong Department of Justice (DOJ) that included C. K. Kwong, representatives from the DOJ, Hong Kong Government Intellectual Property Department, and Hong Kong International Arbitration Centre (HKIAC), as well as other experts in the area. Operating on the premise that arbitrability issues ought to be clear from the commencement of an arbitration, the Arbitrability Working Group supported the proposal to give statutory guidelines on arbitrability of IP rights in view of the fact that (as in Korea) no specific provisions addressing the arbitrability of disputes over IP rights existed in the Hong Kong Arbitration Ordinance and there was

no authoritative judgment in Hong Kong on the arbitrability of IP rights.

The Arbitration (Amendment) Ordinance 2017¹²⁾ was passed after 19 drafts and rounds of consultation with stakeholders. It came into operation on 1 January 2018, giving clear statutory guidance that disputes over IP rights (including the validity of registered rights) are arbitrable and that it is not contrary to the public policy of Hong Kong to enforce arbitral awards involving IP rights. A new part, 11A, was added to the Arbitration Ordinance with 10 sections (Sections 103A to J) to provide for arbitration relating to IP rights. The new law is facilitative and neutral in nature. It does not give power or jurisdiction to an arbitral tribunal to override the authority of the courts or relevant IP registries of the contracting states under the New York Convention. It merely removes the concerns related to potential jurisdictional challenges under Articles V(1)(a) and (2)(b) of the New York Convention¹³⁾ for those choosing Hong Kong law to govern the arbitration agreement and/or a Hong Kong seat. The conceptual basis and practical needs of the new provisions also found support

11) Report of the Working Group Report on Intellectual Property Trading, at pp. 51-55 (available at https://www.cedb.gov.hk/assets/resources/citb/councils-boards-and-committees/Final_Report_Eng.pdf) (accessed on 7 February 2022).

12) Hong Kong Arbitration (Amendment) Ordinance 2017 (available at <https://www.gld.gov.hk/egazette/pdf/20172125/es1201721255.pdf>) (accessed on 7 February 2022).

13) To paraphrase, Article V(1)(a) provides, in relevant part, that recognition and enforcement of the award may be refused, at the request of the party against whom it is invoked, if the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made. Article V(2)(b) provides, in relevant part, that recognition and enforcement of an arbitral award may also be refused if it would be contrary to the public policy of the country where recognition and enforcement are sought. New York Convention, Art. V (available at <https://www.newyorkconvention.org/11165/web/files/original/1/5/15432.pdf>) (accessed on 7 February 2022).

from practitioners and other legislative bodies.¹⁴⁾

Singapore was quick to recognize the benefit of Hong Kong's new legislation and introduce their own corresponding Intellectual Property (Dispute Resolution) Act 2019¹⁵⁾ to clarify that IP disputes are arbitrable in Singapore. They would then refer to this as one of the selling points of choosing Singapore as an arbitration venue. The practical benefits of the new law are clear given the numerous sets of laws applicable to international arbitration (including the law governing the arbitration agreement, law of the seat, law governing the merits of the case, and law of the place of enforcement) and the difficulties that may arise when the issue of arbitrability of IP disputes is raised at different stages, namely:

- (a) at the commencement of the arbitration when the respondent may challenge the jurisdiction of the arbitrator, the validity of the arbitration agreement (especially when a counterclaim is made against the validity of the registered IP rights, e.g. patents, trademarks, registered designs);
- (b) during the course of the arbitration; and
- (c) even after the award is made when the arbitral award is enforced.

It may only be a matter of time before statutory

14) See, e.g., Interim Award in Case No. 6097 (1989), The ICC International Court of Arbitration Bulletin, Vol. 4, No. 2, 1993, at pp. 76-79 (discussed in Therese Jansson, 'Arbitrability Regarding Patent Law – An International Study', *Juridisk Publikation 1/2011*, at pp. 67-68 (available at http://juridiskpublikation.se/wp-content/uploads/2014/10/12011_Therese-Jansson.pdf) (accessed on 7 February 2022); Rule 11.2 of the Rules of Procedure of the United Patent Court (18th draft on 19th October 2015) ('The Court shall, if requested by the parties, by decision confirm the terms of any settlement of arbitral award by consent....., including a term which obliges the patent owner to limit, surrender or agree to the revocation of the patent'.) (available at <https://www.unified-patent-court.org/sites/default/files/UPC-Rules-of-Procedure.pdf>) (accessed on 7 February 2022).

15) Singapore Intellectual Property (Dispute Resolution) Act 2019 (available at <https://sso.agc.gov.sg/Acts-Supp/23-2019/Published/20190911?DocDate=20190911>) (accessed on 7 February 2022).

guidance on the arbitrability of IP disputes eventually becomes an essential component in any jurisdiction aiming to attract IP ADR business.

Innovation No. 1: Mimic 'The Arrangement'

Interim measures are a key component of arbitration cases as they permit the preservation of the subject matter of the arbitration – allowing 'equities to be balanced pending a potentially lengthy dispute.'¹⁶⁾ Despite the significance of interim measures, though, not all jurisdictions will entertain applications for interim measures in aid of foreign-seated arbitration.¹⁷⁾ An important example of this, especially in the context of IP-related disputes, is Mainland China,¹⁸⁾ which, of course, is a relevant jurisdiction for many IP disputes involving Korean companies.

Previously, the domestic laws of Mainland China did not provide any mechanism for their courts to enforce an interim measure made by a tribunal in a foreign-seated arbitration.¹⁹⁾ However, the situation has recently improved to some extent with the introduction of the Arrangement Concerning Mutual Assistance in Court-Ordered Interim Measures in Aid of Arbitral Proceedings

16) Shaneen Parikh, 'Obtaining Interim and Permanent Relief in International IP Arbitration', in *Global Arbitration Review, The Guide to IP Arbitration (2021) (1st ed.)* (available at <https://globalarbitrationreview.com/guide/the-guide-ip-arbitration/first-edition/article/obtaining-interim-and-permanent-relief-in-international-ip-arbitration>) (accessed on 6 February 2022).

17) Craig I. Celniker et al., 'Arbitration of intellectual property and licensing disputes', in *Global Arbitration Review, The Asia-Pacific Arbitration Review 2021* (available at <https://globalarbitrationreview.com/review/the-asia-pacific-arbitration-review/2021/article/arbitration-of-intellectual-property-and-licensing-disputes>) (accessed on 7 February 2022).

18) *Id.*

19) Dong Long and Suraj Sajjani, 'Mainland China-Hong Kong Interim Measures Arrangement One Year On: Crossing the River by Feeling the Stones', *Kluwer Arbitration Blog*, 10 August 2020 (available at <http://arbitrationblog.kluwerarbitration.com/2020/08/10/mainland-china-hong-kong-interim-measures-arrangement-one-year-on-crossing-the-river-by-feeling-the-stones/>) (accessed on 6 February 2022).

(HK Arrangement) executed by Mainland China and Hong Kong.²⁰⁾ This authorizes parties to Hong Kong-seated arbitrations administered by institutions such as the HKIAC and the International Chamber of Commerce (ICC) to obtain interim measures from Chinese courts in aid of the foreign-seated arbitration. Under Article 1 of the HK Arrangement, ‘interim measure’ includes, (i) in the case of Mainland China, property preservation, evidence preservation and conduct preservation, and (ii) in the case of Hong Kong, injunctions and other interim measures with a purpose of maintaining or preserving the status quo pending determination of the dispute; taking or refraining from taking action that would prevent or likely to cause current or imminent harm or prejudice to the arbitral proceedings; preserving assets, or preserving evidence that may be relevant and material.²¹⁾

Up to the writing of this article, Hong Kong is still the first and only seat of arbitration outside Mainland China in which parties can apply to the Chinese Courts for interim measures in aid of arbitral proceedings seated in Hong Kong. As a result, rights holders with Hong Kong arbitration agreements have an unparalleled advantage in disputes with Chinese entities. This HK Arrangement has been used actively as well. As of February 2021, the HKIAC had processed 37 applications filed to China for interim measures.²²⁾

20) 關於內地與香港特別行政區法院就仲裁程序相互協助保全的安排 (original Chinese version) (available at https://www.doj.gov.hk/tc/legal_dispute/pdf/arbitration_interim_c.pdf) (accessed on 7 February 2022) and Arrangement Concerning Mutual Assistance in Court-ordered Interim Measures in Aid of Arbitral Proceedings by the Courts of the Mainland and of the Hong Kong Special Administrative Region (courtesy English translation) (available at https://gia.info.gov.hk/general/201904/02/P2019040200782_307637_1_1554256987961.pdf) (accessed on 7 February 2022) [hereinafter, HK Arrangement].

21) HK Arrangement, Art. 1.

22) HKIAC Releases Statistics for 2020 (available at <https://www.hkiac.org/news/hkiac-releases-statistics-2020>) (accessed on 7 February 2022).

Of these, 34 applications were for the preservation of assets, two were for the preservation of evidence and one was for the preservation of conduct.²³⁾ There are 24 published decisions issued by the People’s Courts, with 22 applications granted and two rejected.²⁴⁾ Of all the applications, 27% were made by parties from the Mainland and 73% by parties outside of the PRC.

The KCAB and prominent Korean arbitration practitioners should advocate for the adoption of a similar arrangement between Mainland China (i.e., the People’s Republic of China) and Korea. While it is acknowledged that the relationship between China and Korea is not synonymous with that between Mainland China and Hong Kong, nonetheless, China and Korea have long enjoyed extremely close economic ties that are only accentuated further by their close geographical proximity.

A potential arrangement between Korea and China would closely replicate the HK Arrangement. As noted above, the HK Arrangement empowers Chinese courts to grant three types of interim measures: the preservation of property, the preservation of evidence, and the preservation of conduct.²⁵⁾ These measures encompass orders such as bank account freezes, assets and evidence seizures, and a variety of injunctions. As in the HK Arrangement, the applicant would need to demonstrate the substantial threat that the applicant is facing and how the measure will prevent irreparable damage.

Korea and China share very close economic ties with China being South Korea’s largest trading

23) *Id.*

24) *Id.*

25) HK Arrangement, Art. 1.

partner, import source, and export destination. In 2019, China and Korea's bilateral trade hit USD 284.54 billion with Korea investing in 2,108 projects in China. Given the sheer volume of transactions between the two countries, disputes frequently arise – including IP disputes. If an arrangement were to be worked out between Korea and China, parties entering into deals with Chinese parties could be more confident of having interim measures enforced by Chinese courts. Korea would not be the sole country to benefit, either, as this arrangement would allow China to shed the negative perceptions that surround it in the international arbitration community as it has done with the HK Arrangement.²⁶⁾ In recent years, China has actively demonstrated a willingness to nurture an arbitration-friendly environment so that the nation can foster healthier economic ties with other countries.²⁷⁾ As such, an arrangement with Korea would help in that regard as it would help signal a development toward cultivating a more arbitration-friendly environment, specifically concerning Korean parties.

Another possibility is now prompted in China's latest draft revisions of its Arbitration Law published for public consultation by the Ministry of Justice on 30 July 2021 (Draft Law).²⁸⁾ Article 12 opens the door for the establishment of foreign arbitration institutions in Mainland China for 'foreign-related arbitration business'. Article 19 of the Draft Law

permits ad hoc (i.e., non-institution administered) arbitration for Mainland China-seated foreign-related arbitration. Articles 43 to 49 of the Draft Law empower the arbitral tribunal to order interim relief directly, as opposed to through an application to the court. The situation is, however, confined to Mainland China-seated arbitrations.

Admittedly, replicating the Arrangement will not be an easy task. Putting such an arrangement in place will require foreign policy initiative and extensive effort on the part of Korea's legislators and diplomats. Still, if a deal or arrangement with China could be forged, a significant obstacle to enforceability would be circumvented. The results would make the effort worthwhile, as claimants based in Korea would eagerly embrace a mechanism that would allow them to obtain interim relief in China in support of ongoing IP (and other) arbitrations seated in Korea, and parties from Mainland China would likewise benefit for the reasons described above.

Innovation No. 2: Replicate IP Office Efforts and Open a WIPO Center in Korea

The core contributors to the growth and success of IP arbitration in a country are the legislatures and arbitral institutions. However, the IP offices of countries can also have an impact. For example, the Intellectual Property Office of Singapore (IPOS) has been a key player behind Singapore's rise as the hub for IP dispute resolution. In 2019, IPOS launched the Enhanced Mediation Promotion Scheme (EMPS). Essentially, EMPS is an initiative that provides funding for 'defraying the costs of mediation' and providing up to S\$12,000 (USD 8,870)

26) Jung Won Jun, 'The 2019 Hong Kong-Mainland China Arrangement on Mutual Assistance in Court-ordered Interim Measures: A Major Breakthrough for Hong Kong-seated International Arbitral Proceedings', *Journal of Korea Trade* (October 2020) (available at <https://www.koreascience.or.kr/article/JAKO202018248596501.pdf>) (accessed on 7 February 2022).

27) Jingzhou Tao and Mariana Zhong, 'China', in *Global Arbitration Review, The Asia-Pacific Arbitration Review 2018* (available at <https://globalarbitrationreview.com/review/the-asia-pacific-arbitration-review/2018/article/china>) (accessed on 7 February 2022).

28) The Draft Law can be found here (in Chinese): <http://www.moj.gov.cn/pub/sfbgw/zwxgk/zfxxgkzc/index.html> (accessed on 7 February 2022).

toward the funding of each mediation case.²⁹⁾ Korea's Ministry of Culture, Sports, and Tourism has already adopted a similar scheme by funding the mediation of copyright and content disputes.³⁰⁾ However, the Korea Intellectual Property Office (KIPO) could take an extra step and, like IPOS, expand the funding for any mediation case.

Another initiative that KIPO could undertake is to lobby for WIPO to open an external office in Seoul. WIPO has an office in Singapore that works closely with IPOS and has developed a very efficient partnership to mediate IP disputes.³¹⁾ (WIPO and the Korea International Mediation Centre (KIMC) have already begun such a relationship in February 2021 for the joint administration of international mediation cases.³²⁾ If WIPO were to operate an external office in Seoul, WIPO and KIPO would be able to collaborate and offer an array of expedited and effective services. For example, as in Singapore, WIPO and KIPO could develop a fast-track IP dispute resolution procedure for parties that use their services.³³⁾ A fast-track system such as this would appeal to parties who wish to conduct a speedy and efficient arbitration.

An additional advantage to a WIPO/KIPO

collaboration would be the presence of WIPO's panel of expert arbitrators. The WIPO Center in Singapore currently lists a number of mediators, arbitrators, and experts from Singapore that can be appointed by the WIPO Center for disputes pending before IPOS.³⁴⁾ If WIPO were to open a WIPO Center in Korea, parties could also rely on a panel that is authorized and endorsed by WIPO.

Innovation No. 3: Establish an Expert IP Panel

One additional consideration is for the KCAB to establish a specific panel of international arbitrators who are accomplished and proven experts in the IP field.³⁵⁾ Establishing such a panel will allow parties to an IP dispute to easily identify and confidently nominate competent arbitrators for their Korean IP arbitration disputes. By way of comparison, the Singapore International Arbitration Centre (SIAC) has an IP specialist arbitrator panel that currently features 26 IP specialists. Following the recommendations in the Working Group Report,³⁶⁾ a Panel of Arbitrators for Intellectual Property Disputes was set up by the HKIAC, currently comprising 52 panelists including the co-author C. K. Kwong.³⁷⁾ The Silicon Valley Arbitration & Mediation Center (SVAMC) in the United States also has a separate panel of 'The World's

29) Mark Lim, 'Behind the scenes at IPOS: why Singapore is becoming the new global hub for IP dispute resolution', *World Trademark Review*, 30 June 2020 (available at <https://www.worldtrademarkreview.com/governmentpolicy/behind-the-scenes-ipos-why-singapore-becoming-the-new-global-hub-ip-dispute-resolution>) (accessed on 7 February 2022).

30) *Id.*

31) *Id.*

32) 'WIPO-KIMC Collaboration: Mediation for International Disputes in the Republic of Korea' (available at <https://www.wipo.int/amc/en/center/specific-sectors/adrcollaborations/korea/index.html>) (accessed on 7 February 2022).

33) Thomas Legler and Andreas Schaffler, 'A Look to the Future of International IP Arbitration', in *Global Arbitration Review, The Guide to IP Arbitration* (2021) (1st ed.) (available at <https://globalarbitrationreview.com/guide/the-guide-ip-arbitration/first-edition/article/look-the-future-of-international-ip-arbitration>) (accessed on 7 February 2022).

34) 'WIPO Expert Determination for Proceedings Instituted in the Intellectual Property Office of Singapore (IPOS)', (available at <https://www.wipo.int/amc/en/center/specific-sectors/ipos/expert-determination/>) (accessed on 7 February 2022).

35) *Accord* John Rhie and Harold Noh, 'Resolving IP Disputes through International Arbitration', *Korean Arbitration Review*, 7th Issue (2017), at pp. 11-15.

36) Report of the Working Group Report on Intellectual Property Trading, at pp. 51-55. (available at https://www.cedb.gov.hk/assets/resources/citb/councils-boards-and-committees/Final_Report_Eng.pdf) (accessed on 7 February 2022).

37) See <https://www.hkiac.org/arbitration/arbitrators/panel-arbitrators-intellectual-property> (accessed on 7 February 2022).

Leading Technology Arbitrators and Mediators'.³⁸⁾ Panels such as these give extra assurance and confidence to parties when it comes to nominating or accepting appointments of arbitrators. If KCAB were to establish its own panel of IP arbitrators, collaborative efforts and information exchange with WIPO, HKIAC, SIAC, SVAMC, and other institutions would be helpful to ensure the adoption of best practices.

Conclusion

Korea has made great strides in terms of enhancing its reputation as an attractive venue and seat for arbitration in general. However, with respect to IP arbitration specifically, first, Korea should consider adopting some of the legislative reforms enacted by Hong Kong and Singapore to ensure the arbitrability of IP disputes and, second, there are at least three specific innovations that Korea can and should take to improve its functionality and stature as an IP arbitration hub.

38) See <https://svamc.org/2021-tech-list/> (accessed on 7 February 2022).



Arie C. Eernisse
(Shin & Kim)

Arie C. Eernisse is a senior foreign attorney in the International Dispute Resolution Practice Group at Shin & Kim. He has advocated on behalf of a diverse array of Korean and foreign clients in arbitration matters governed by the rules of the International Chamber of Commerce (ICC), Korean Commercial Arbitration Board (KCAB), Hong Kong International Arbitration Centre (HKIAC), Singapore International Arbitration Centre (SIAC), London Court of International Arbitration (LCIA) and other institutions, as well as ad hoc arbitration matters governed by the UNCITRAL rules. He is also listed on the KCAB INTERNATIONAL Panel of International Arbitrators and the HKIAC List of Arbitrators.

The subject matter of the commercial and investment arbitration disputes handled by Mr. Eernisse is wide-ranging and includes mergers and acquisitions, sale of goods, resource exploration, construction, oil and gas, distribution agreements, financial investments, real estate, maritime, intellectual property, military and defense procurement, tortious conduct and more.

Mr. Eernisse is a Fellow of the Chartered Institute of Arbitrators (CI Arb), a Fellow of the Hong Kong Institute of Arbitrators (HKI Arb), and a Member of the Singapore Institute of Arbitrators (SI Arb). He is also a co-chair of the Trade & Customs Committee of the American Chamber of Commerce in Korea (AMCHAM), a member of the KCAB Next Steering Committee, and an Associate Editor of the *Kluwer Arbitration Blog*.

Mr. Eernisse has been recognized as a leading practitioner in the area of international arbitration in Korea by Chambers & Partners and Legal 500. He is an alumnus of Duke University School of Law, where he was a staff editor of the *Duke Journal of Comparative & International Law*, and is qualified to practice law in New York.



C. K. Kwong JP
(SFKS CK Kwong, Solicitors)

C. K. Kwong JP (Justice of the Peace) is a Senior Partner of SFKS CK Kwong, Solicitors. He is the current President of the Hong Kong Institute of Arbitrators (HKI Arb) and an International Past President of the Asian Patent Attorneys Association (APAA). His practice covers intellectual property (registration, licensing, and enforcement of patents, designs, copyrights, and trademarks) and injunction proceedings, arbitration, mediation, public and private corporate transactions, China projects, and complex commercial litigation.

Mr. Kwong is a Chartered Arbitrator and Fellow of the Chartered Institute of Arbitrators (CIArb London), a WIPO appointed Neutral and Domain Name Panelist and Panelist for the Legal Rights Objections (LRO) under ICANN's New gTLD Program, Centre for Efficient Dispute Resolution (CEDR) Accredited Mediator, a Notary Public and a solicitor of Hong Kong, Australia (Victoria), England and Singapore. He is on the Panel of Arbitrators for Intellectual Property and Adjudicators, and the List of Arbitrators, of the Hong Kong International Arbitration Centre (HKIAC).

He was a member of the Hong Kong Government Advisory Committee on Patent System Reform and Convener of its Working Group on Interim Measures, member of the Working Group on Intellectual Property Trading, and Convener of its sub-group on IP Arbitration and Mediation. He is a member of the Steering Committee on Mediation, Vice Chairman of its Regulatory Framework and Accreditation Sub-committee and Special Committee on Evaluative Mediation set up by the Department of Justice. He proposed the idea of legislative guidance on arbitrability of IP rights, which was accepted by the Government and now provided for in the Arbitration (Amendment) Ordinance 2017. He is also a director of Nano and Advanced Materials Institute (NAMI) and a member of the Innovation and Technology Venture Fund (ITVF) Advisory Committee.

Mr. Kwong was Deputy Chairman of the Copyright Tribunal, member of the Administrative Appeals Board, Member of the Panel of the Inland Revenue Board of Review, Member of Steering Committee on Review of IP Issues in the Innovation & Technologies Sector. Mr. Kwong has been named a Leading Lawyer in Intellectual Property by Asia Law.