
South Korean IP Insights: Navigating the Unique Legal Landscape

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While South Korea's intellectual property (IP) system is broadly aligned with international frameworks, key differences remain—particularly in litigation procedures—which may seem unfamiliar or even unexpected to foreign rights holders. To help foreign businesses and their counsel navigate these challenges, Shin & Kim's IP Group has prepared this newsletter as a practical and accessible guide to the essential aspects of acquiring and enforcing IP rights in Korea. We hope the insights and analysis shared here will serve as both a useful reference and a strategic resource for managing IP interests in Korea.

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South Korea's Intellectual Property Legal Framework

- Korea's IP system is governed by a set of foundational statutes that provide protection for key categories of IP, including the Patent Act, Utility Model Act, Trademark Act, Design Protection Act, and Copyright Act. These statutes offer comprehensive protection for traditional IP, including inventions, utility models, trademarks, designs, and copyrighted works. In addition, Korea has enacted several special laws that complement the Patent Act, including the Act on the Protection of New Varieties of Plants, which safeguards new plant varieties, the Act on the Layout-Designs of Semiconductor Integrated Circuits, which protects the layout designs of semiconductor chips, and the Invention Promotion Act, which governs rights related to employee inventions.
- Beyond traditional IP rights, Korea also enforces the Unfair Competition Prevention and Trade Secret Protection Act (commonly referred to as the "Unfair Competition Prevention Act"), which extends protection to well-known and/or famous marks, geographical indications, domain names, country-of-origin labeling, data, publicity rights, and trade secrets. The Unfair Competition Prevention Act also prohibits unfair practices, such as passing off as another's product, imitation of product configurations, misappropriation of ideas during business negotiations, and unauthorized exploitation of another's achievements or efforts.
- While trade secrets are covered under the Unfair Competition Prevention Act, Korea has adopted

additional legislation to strengthen protection in strategic sectors. These include the Act on Prevention of Divulgence and Protection of Industrial Technology and the Act on Special Measures for Strengthening the Competitiveness of, and Protecting National High-Tech Strategic Industries.

II Distinctive Features of IP Rights in South Korea

[1] Patent Eligibility and Patentability

- **Patent Subject Matter:** The Korean Patent Act defines an ‘invention’ as a highly advanced creation of a technical idea that utilizes the laws of nature. Contemporary innovations, such as software, DNA sequences, business methods, and microorganism-related inventions, are recognized as patentable subject matter, provided they meet the applicable legal requirements.
- **Patentability:** In Korea, while diagnostic, surgical, and therapeutic methods intended for non-human animals are eligible for patent protection, such methods intended for use on humans are excluded from patentability. However, medical devices and pharmaceuticals intended for use in the diagnosis, treatment, or surgery of humans remain patent-eligible.
- **Specialized Categories of Inventions:** Korea recognizes several specialized categories of patentable inventions, including selection inventions, use inventions, dosage-regimen inventions, parameter inventions, and numerical limitation inventions. For these categories, demonstrating a special technical effect attributable to the invention and ensuring that such effect is adequately disclosed in the specification are key factors in satisfying the patentability requirements.

[2] Patent Prosecution and Examination Standards

- **Non-prejudicial Disclosure and Grace Period:** Korea has adopted non-prejudicial disclosure provisions under which inventions disclosed to the public prior to filing may, under certain conditions, be deemed not to have been disclosed. A uniform 12-month grace period applies to patents, utility models, and designs. To benefit from this exception, applicants must file a formal claim of exception and submit supporting evidence within the prescribed timeframes, except in the case of design applications.
- **Novelty-Destroying Earlier Applications:** Under Korean law, the novelty of a later-filed application may be negated by an earlier application, even if the earlier application is published after the filing date of the later one, provided the invention disclosed in the earlier application is identical to that in the later-filed application. This rule is analogous to Article 54(3) of the European Patent Convention (EPC), with a key distinction: unlike Article 54(3) of the EPC, Korean law does not apply this novelty-destroying effect where the inventor or applicant is the same in both the earlier and later applications.
- **Inventive Step:** The inventive step of an invention is evaluated from the perspective of a person skilled in the art, taking into account the invention's purpose, composition, and technical effects. Among these factors, the difficulty of composition, mainly whether the invention's composition would have been obvious in view of the prior art, is typically regarded as the most important criterion. Where

such compositional difficulty is not readily apparent, the distinctiveness or technical significance of the invention's effects may serve as a critical factor in determining inventiveness.

- **Disclosure Requirements:** Generally, the standards for sufficient disclosure in Korea are more stringent than in many other jurisdictions. For example, disclosure of the pharmacological effects of the claimed invention in the specification is a key requirement when assessing sufficiency of disclosure for medical use or dosage-regimen inventions.
- **New Matter:** Korea applies comparatively more lenient standards regarding the addition of new matter during amendments or in divisional applications, as compared to the strict 'gold standard' adopted by the European Patent Office (EPO). Accordingly, the likelihood of a patent being rejected or invalidated due to the introduction of impermissible new matter during amendments or in divisional applications is relatively lower in Korea than in Europe or other jurisdictions.

[3] IP Rights Challenges and Enforcement

- **Invalidity Challenges:** In Korea, there are two principal avenues for challenging the validity of a granted patent: patent cancellation petitions and patent invalidation trials. Patent cancellation petitions, which closely resemble opposition proceedings before the EPO, must be filed within a prescribed period following the patent grant. Any person may file such petitions, including anonymously. However, the grounds for cancellation are narrowly limited to prior art disclosed through publications or online sources. By contrast, patent invalidation trials are available only to parties with a legitimate interest, but may be initiated at any time, even after the patent has expired. Invalidation trials do not impose the same evidentiary limitations on admissible prior art as cancellation petitions.
- **Patent Term Extensions:** In Korea, patent term extensions are permitted only in two limited circumstances: (i) where there is a delay in the examination process (comparable to patent term adjustment in the United States), and (ii) where the regulatory approval process delays the commercial exploitation of a pharmaceutical or agrochemical invention. In the latter case, the scope of the extended patent right is strictly limited to the specific product that was the subject of regulatory approval.
- **Doctrine of Equivalents:** Korea recognizes the doctrine of equivalents in determining patent infringement. Unlike in Germany, the question of whether a person skilled in the art could have readily substituted a specific element of a patented invention with a variant is assessed based on the time of infringement, rather than the time of filing.
- **Relaxed All Elements Rule:** Korea generally applies the all elements rule in determining patent infringement. However, even if not all elements of a claim are practiced, an act may still constitute indirect infringement if the exclusivity requirement for practicing the patented invention is satisfied. Furthermore, in the context of system patents, where multiple parties respectively practice different components of the claimed invention, joint infringement by multiple actors may be recognized under conditions analogous to those established in the *Akamai V* decision.
- **Invalidity Defense:** Korea's IP litigation system generally follows a bifurcated model, under which infringement and invalidation proceedings are handled separately. However, defendants in

infringement actions are permitted to raise invalidity arguments as a defense, typically under the doctrine of abuse of rights. As a result, a plaintiff's infringement claim may be dismissed on invalidity grounds, even in the absence of a separate invalidation proceeding.

- **Practicing the Prior Art Defense:** Korea recognizes a defense in patent infringement actions that is functionally equivalent to Germany's 'Der Einwand des freien Standes der Technik,' which precludes infringement liability where the allegedly infringing product or method is readily derivable from the prior art. Unlike in Germany, where this defense is limited to cases of equivalent infringement and unavailable in instances of literal infringement, Korean courts permit this defense in both literal and equivalent infringement cases, resulting in a broader application of the practicing the prior art defense under Korean law.
- **Prior Use Defense:** In Korea, the prior use defense is recognized in relation to the infringement of most IP rights and trade secrets.
- **Claim Amendments in Invalidation Proceedings:** In invalidation proceedings involving patents or utility models, the rights holder may respond by amending the disputed claims. Unlike the European system, which allows multiple auxiliary requests to be submitted in a numbered and ranked sequence, Korea permits only one proposed amendment at a time. A revision to such previously proposed amendment may be allowed, but only if it satisfies strict procedural and substantive requirements. Accordingly, rights holders must exercise particular caution in formulating their amendment strategy, as opportunities for revision are severely constrained.
- **Criminal Enforcement of IP Rights:** Korea imposes criminal penalties for most forms of IP infringement. Infringement of patents, utility models, trademarks, designs, copyrights, and most acts of unfair competition may be subject to criminal prosecution. As such, the filing of a criminal complaint can serve as an important enforcement tool for IP rights holders. In trade secret disputes in particular, criminal proceedings often play a critical role, as they allow for search and seizure measures that can be essential in obtaining key evidence.

[4] Remedies and Relief

- **Remedies:** In Korea, IP rights holders have access to several remedies in response to infringement, including injunctive relief (covering both prohibition and prevention of infringement), claims for damages, and requests for the restoration of the patentee's reputation. Notably, injunctive relief to prohibit infringement may be sought either in a preliminary proceeding or as part of the main proceeding. Such injunction may be granted regardless of whether the infringer had knowledge of the infringement.
- **Mental Element Requirements in IP Damages Claims:** Under Korean law, asserting a claim for damages arising from IP infringement generally requires proof of the infringer's intent or negligence. However, most IP-related statutes contain provisions that either presume or deem the existence of such intent or negligence, thereby easing the evidentiary burden on rights holders seeking damages.
- **Damages Calculation:** In Korea, damages for IP infringement may be calculated using one or more of the following methods: the rights holder's lost profits, the infringer's profits, a reasonable

royalty, or any other amount the court deems appropriate. Of these, the most commonly applied approach involves calculating damages based on the infringer's profits or amounts determined by the court derived from those profits. A statutory damages system is also available for trademark and copyright infringement when it is difficult to quantify actual damages, allowing for compensation in predetermined amounts as provided by law.

- **Enhanced Damages:** Since mid-2019, Korea has recognized enhanced damages for IP infringement. Courts may award up to five times the base amount in cases involving infringement of patents, utility models, and trade secrets, and up to three times the base amount for infringement of trademarks and designs. However, effective July 22, 2025, the cap on enhanced damages for trademark or design infringement will also increase to five times the base amount.

[5] Ownership and Licensing

- **Joint Ownership:** Where IP rights are jointly owned, any transfer of a co-owner's share, creation of a security interest over that share, or grant of a license in respect of that share requires the consent of all co-owners. In contrast, each co-owner may independently bring an infringement action and seek damages.
- **Licensing:** In Korea, IP rights licenses are classified as either exclusive or non-exclusive. The right to independently enforce licensed rights through legal action is generally limited to exclusive licenses that are duly registered with the Korean Intellectual Property Office (KIPO). An exception applies in the case of trademarks, where a contractual exclusive license may confer standing to sue even without registration. Additionally, any registered license, whether exclusive or non-exclusive, enables the licensee to assert the validity of its rights against, for example, a new right holder in the event of a transfer of the underlying IP.

[6] Specialized Systems and Regulatory Controls

- **Exhaustion Doctrine and Parallel Imports:** Korea recognizes the doctrine of international exhaustion without territorial limitations, in contrast to the European Union, where exhaustion applies only within the European Economic Area (EEA). As a result, parallel imports of genuine goods are generally permitted across most industries. A notable exception is the pharmaceutical sector, where parallel imports are effectively blocked by administrative regulations. This means the prohibition could be lifted through amendments to subordinate regulations, without the need for legislative amendments—similar to the case of cosmetics, where a procedure to demonstrate sameness with genuine products, akin to the European 'Simplified Procedure,' was adopted without requiring legislative amendment to permit parallel imports. Accordingly, whether parallel imports of pharmaceuticals will be permitted in Korea remains a matter of regulatory policy and is ultimately subject to government discretion.
- **Mandatory Compensation for Employee Inventions:** Korea imposes a non-waivable obligation on employers to compensate employees for certain inventions, resulting in frequent litigation over employee invention compensation. This requirement applies when an employer acquires rights to, or obtains an exclusive license for, a patent, utility model, or design developed by employees' efforts. To comply with this obligation, many Korean companies implement structured compensation

schemes that typically include filing rewards, registration rewards, implementation compensation, and licensing/transfer compensation. Most disputes and resulting litigation arise over the amounts awarded for implementation or licensing/transfer compensation. Because employee invention compensation systems are uncommon in many other jurisdictions, foreign companies acquiring Korean businesses should carefully assess the acquired company's potential compensation liabilities during the due diligence process.

- **Patent Linkage System for Pharmaceuticals:** Since 2015, Korea has implemented a patent linkage system for pharmaceuticals. Unlike the U.S. system, under which the approval process for generic drugs is stayed upon the initiation of patent litigation, Korea allows the regulatory approval process to proceed, while imposing a post-approval marketing ban on the generic product during the pendency of the dispute. This marketing prohibition period is shorter than in the U.S., lasting nine months. Korea also provides a first generic exclusivity period, which likewise lasts nine months, longer than the 180-day exclusivity period available in the United States. However, the practical impact of Korea's system has been relatively limited. In most cases, generic manufacturers file for marketing authorization only after successfully challenging the relevant patents in advance, typically through invalidation proceedings. As a result, patentees rarely exercise their rights under the patent linkage system. Moreover, the criteria for obtaining first generic exclusivity are relatively easy to satisfy, enabling most generic manufacturers planning a launch to qualify. Consequently, the system's intended incentives and deterrents have had limited practical effect in Korea.
- **Export Controls:** In Korea, national core technologies and advanced strategic industrial technologies are subject to protections that exceed those afforded to ordinary trade secrets. The export of such technologies is strictly regulated and requires prior government approval. Unauthorized exports may result in criminal penalties. Importantly, these restrictions are not limited to the physical transfer of technical materials. They also apply to foreign acquisitions of companies that possess such technologies, where the acquisition results in foreign ownership exceeding specified statutory thresholds.

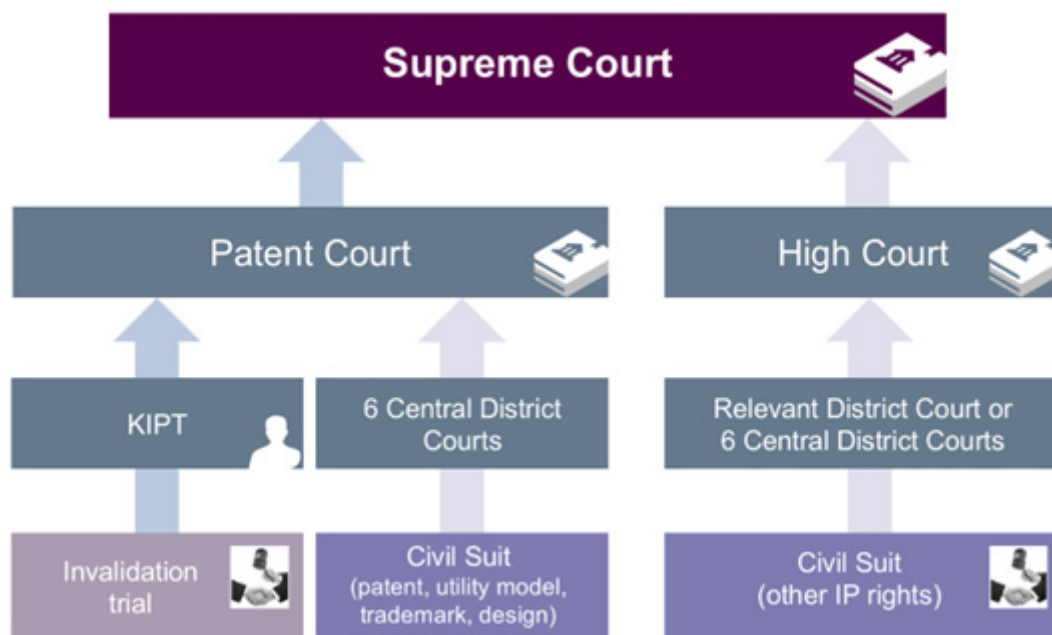
III Characteristics of IP Litigation in South Korea

[1] General Framework

- **Overview of the IP Protection System:** Korea provides robust IP protection, offering a range of remedies through civil, administrative, criminal, and arbitration channels. When IP infringement occurs, selecting the most appropriate enforcement mechanism for specific circumstances is essential.
- **Bifurcation System:** Korea employs a bifurcated approach to IP disputes, separating the adjudication of invalidation from the enforcement of rights against infringement. The Korean Intellectual Property Trial and Appeal Board (KIPT) has exclusive jurisdiction over invalidation proceedings for registered IP rights. These invalidation proceedings may only be initiated by parties with a vested interest in

the validity of the IP right and typically take approximately 6 to 12 months to reach a decision. By contrast, remedies for IP infringement, such as damages or injunctive relief, are sought through civil litigation before the courts. Although invalidity arguments may be raised in civil infringement proceedings under the legal doctrine of abuse of rights, the court's finding of invalidity in this context does not have erga omnes effect, meaning it is not binding on the public at large.

- **Jurisdiction:** Infringement litigation involving patents, utility models, trademarks, and designs must be filed with a district court located in one of six regions where a high court sits, provided that for cases falling under the jurisdiction of the Seoul High Court, cases must be filed with the Seoul Central District Court. Notably, the Seoul Central District Court also has nationwide jurisdiction over such IP matters, allowing plaintiffs to file there regardless of territorial jurisdiction. Invalidation proceedings for registered IP rights are handled by KIPT, while infringement actions are adjudicated by the civil courts. Appeals from both types of proceedings follow a unified appellate route through the Patent Court and, ultimately, to the Supreme Court. For other categories of IP, such as copyright, unfair competition, and trade secrets, cases must be filed with courts having general civil jurisdiction, typically based on the defendant's domicile or the location of the alleged infringing acts. Alternatively, plaintiffs may elect to file in a district court located in any of the six high court regions. Appeals in these cases proceed through the relevant high court and then to the Supreme Court.



[2] Remedies and Relief

- **Injunctive Relief:** IP rights holders may seek injunctive relief to prohibit or prevent the manufacture and sale of infringing products, as well as to request the destruction of infringing materials and the removal of equipment used in infringing activities. Such relief may also be pursued through preliminary injunctions, provided certain legal requirements are met. In Korea, preliminary injunctions are generally regarded as the fastest and most effective means of securing interim relief

in IP infringement disputes. Injunctive relief, including preliminary injunctions, may be granted regardless of whether the infringing conduct was intentional or negligent.

- **Damages Claims:** Claims for damages may only be pursued through main litigation and are not available in preliminary injunction proceedings. While IP rights holders must establish that damages have occurred, they may seek compensation equivalent to reasonable royalties even without proving actual economic loss in patent and utility model infringement cases.

[3] Litigation Procedures

- **General Litigation Process:** Both main proceedings and preliminary injunction proceedings involve the rights holder and the alleged infringer as opposing parties. A distinctive feature of Korean IP litigation is the use of multiple sequential hearings that begin early in the process, often before evidence has been fully collected or submitted. Main proceedings typically involve 3 to 6 hearings, with intervals of approximately 4 to 6 weeks between sessions. For preliminary injunction proceedings, courts generally hold 1 to 3 hearings, with shorter intervals of about 2 to 3 weeks. Although main proceedings do not incorporate formal discovery procedures, they allow for various forms of evidence gathering, including document production, testimony, expert appraisals, fact-finding inquiries, and site inspections. In contrast, preliminary injunction proceedings generally limit admissible evidence to written documents and materials that parties can submit directly. First-instance judgments in main proceedings may include provisional execution orders, which defendants can suspend by filing an appeal and posting a cash bond as security. By contrast, preliminary injunction orders are rarely suspended in practice, making them particularly effective enforcement tools.
- **Timeline and Structure of Civil Litigation:** After the complaint and answer are filed, the first hearing is typically scheduled within 3 to 6 months. During this interim period, the parties may submit briefs. At the first hearing, the parties present summaries of their core arguments, identify the key disputed issues, and offer opinions on procedural matters and plans for presenting evidence. Multiple sequential hearings are held, and parties may submit additional briefs at any point up to the final hearing. New arguments and evidence may be introduced at any stage, provided they do not cause undue delay. Technical presentations may be conducted to explain technical details of the subject matter, and witness examinations, if necessary, usually occur in the later stages of the case. The entire process, from filing to first-instance judgment, generally takes between 1 to 2 years.
- **Procedural Flexibility:** Korean IP infringement litigation offers more procedural flexibility than many other jurisdictions. For example:
 - New claims may be added during litigation (e.g., a damages claim may be introduced after initially seeking only injunctive relief);
 - The amount of damages claimed may be increased after the initial filing;
 - Courts may begin assessing damages before making a final determination on infringement;
 - New patents may be added to the cause of action while proceedings are ongoing;
 - Defendants may raise invalidity arguments under the doctrine of abuse of rights, and the underlying grounds for invalidation and/or supporting prior art may be subsequently supplemented or

amended during the course of the proceedings;

- Expert testimony is permitted to the extent a written expert opinion is submitted, although it is not commonly used in practice; and
- When civil infringement proceedings and invalidation trials before the KIPT are concurrently pending, courts often wait for the outcome of the invalidation trial, although formal stays are rarely granted.

[4] Invalidation Proceedings

- **Invalidation Trial Procedures:** Invalidation trials in Korea are conducted in an inter partes manner between the petitioner (typically the alleged infringer) and the rights holder. Key features include:
 - The respondent must file a response within 30 days of receiving the invalidation petition (extendable). During this period, the respondent may also amend the patent claims.
 - The trial panel sets deadlines for written submissions, which are generally stricter than those in civil litigation.
 - Petitioners may raise new invalidation grounds or introduce new prior art during the proceedings.
 - The trial panel may examine invalidation grounds not raised by either party, but must provide both parties with an opportunity to comment on such issues.
 - Opportunities to amend claims may arise when new invalidation grounds or prior art are introduced, or when the panel requests opinions on issues raised ex officio.
 - Various forms of evidence collection are permitted that mirror those of civil litigation; however, most evidence is submitted in documentary form.
 - Oral hearings may be held but are typically limited to a single session per case. However, parties may continue to submit written opinions following the hearing for the panel's deliberation.
 - When the panel determines that most issues have been discussed during the hearing and the relevant evidence submitted, it sets a deadline for any additional briefs and evidence. Submissions received after this deadline will not be considered. Then, once the panel concludes that the case is ready for decision, it issues a notice of conclusion of examination. A decision is typically issued within two to three days of the conclusion date.
 - Where prior art is submitted, the whole process typically takes 6 to 12 months from filing the petition to final decision. In cases without prior art or where expedited procedures are granted, the timeline may be shortened to 4 to 6 months. Expedited procedures are usually granted when related litigation, such as a civil infringement lawsuit, is already pending between the parties.

For Questions or Comments

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