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PATENT

The Korean Intellectual Property Office Elevated to Full Ministry Status

By Hyewon KANG and Raymis H. KIM

Effective October 1, 2025, the Korean Intellectual Property Office (KIPO) has been elevated to full ministry status, and will now be known as the Ministry of Intellectual Property (MOIP) under the Prime Minister's Office.

Previously, KIPO operated as an external agency under the Ministry of Trade, Industry and Energy, primarily responsible for the examination and registration of patents, trademarks, and designs. However, tasks related to the protection, creation, and utilization of intellectual property rights—including domestic and international dispute resolution—were divided across multiple ministries, such as the Ministry of Science and ICT. This division posed challenges in delivering comprehensive and integrated responses to intellectual property issues.

The elevation of KIPO to MOIP signifies a strategic reorganization, positioning the agency as the central authority for intellectual property policies. A key reform is the establishment of the "Intellectual Property Dispute Response Bureau," upgraded from a division to a bureau-level entity. This bureau is tasked with providing timely and coordinated national responses to intellectual property disputes. Additionally, MOIP will oversee and coordinate various intellectual property-related tasks, which were previously dispersed across different ministries, thereby eliminating protection gaps and enhancing measures for emerging types of intellectual property.

Furthermore, the former Industrial Property Policy Bureau, which was responsible for policies and the creation and utilization of intellectual property rights, has been renamed the "Intellectual Property Policy Bureau." A new Intellectual Property Transaction Division has also been established within the bureau. This initiative aims to secure high-quality intellectual property through R&D, facilitate revenue generation from IP transactions and commercialization, and reinvest earnings into further R&D, thereby establishing a "virtuous cycle ecosystem" for intellectual property.

The transformation of KIPO to MOIP underscores a strategic commitment to bolster national innovation competitiveness by establishing and comprehensively coordinating government-wide intellectual property policies, proactively managing intellectual property disputes, and promoting vigorous intellectual property transactions.

Recent IP High Court Decision Awarding Damages for Functionally Related Components

By Soohoon LEE, Sooho LEE and Dongkwang KIM

On March 13, 2025, the IP High Court rendered a decision in a patent infringement case, awarding damages based not only on the patented product itself but also on related components deemed functionally inseparable. This decision is significant as it was the first time the IP High Court included functionally related components in calculating damages, setting an important precedent for future cases. This decision is final and conclusive as neither party appealed the IP High Court's decision.

Background

In this case, the plaintiff filed an infringement action against the defendant before Seoul Central District Court based on two patents related to a joint kit connecting two bus ducts. A bus duct is a system for distributing electrical power as an alternative to traditional cable and conduit systems. The plaintiff's joint kit mechanically and electrically connects two bus ducts. The plaintiff sought both injunctive relief and monetary damages.

The district court issued a decision in favor of the plaintiff based on the finding that (i) the defendant's infringement of the patented joint kit impacted the sale of the patentee's bus duct and (ii) the installation services constituted an act of practicing the patented joint kit.

While the IP High Court affirmed, ordering the defendant to destroy all infringing joint kit products and awarding damages of KRW 1.5 billion, it developed a more systematic and refined legal criteria that can be applied to future cases involving functionally related components or services.

IP High Court Review and Damages Calculation

The main question in the case on appeal before the IP High Court was whether functionally related components should also be part of the patent infringement damages calculations. So far, the IP High Court had not answered this question in the affirmative. For this determination, the IP High Court applied the following criteria:

- Whether a functionally related component should be included as an exception rather than the norm in the damages calculation;
- A component cannot qualify as functionally related merely because it is sold or assembled by the same entity for marketing or transactional convenience;
- A component qualifies as functionally related if it is an integral part necessary for achieving the goals of the patented product; and
- It must be reasonably foreseeable – considering factors such as market share, the status of competitors, the availability of alternatives, and the prevailing forms of transactions – that the patent holder would have made sales of the functionally related component but for the patent infringement.

In light of the above criteria, the joint kit and the bus duct were treated essentially as a single product, forming an integrated package for the purpose of safely supplying electricity in buildings. Both components are installed simultaneously by the same installer, and both the plaintiff and the defendant – who are direct competitors in this field – have sold and installed these products in the same manner. Therefore, the IP High Court recognized damages suffered by the plaintiff with respect to the bus duct (as a functionally related component) and installation services (as a functionally related service) caused by the defendant's infringing act.

For calculation of damages, the plaintiff requested damages to be based on its lost profits under former Patent Act, Article 128, Paragraphs 2 and 3. However, the IP High Court found these provisions to be inapplicable to functionally related products and instead ruled that the amount of profits gained by the infringer is presumed to be the amount of damages suffered by the patent holder according to Article 128, Paragraph 4 of the same Act. Accordingly, the IP High Court held that the marginal profit obtained by the defendant from the joint kit, bus duct, and installation services constitutes damages suffered by the plaintiff, and calculated the defendant's sales and marginal profits due to the patent infringement that occurred from 2012 to 2022, as shown in the table below.

	Defendant's Revenue (KRW) (2012~2022)	Defendant's Contribution Margin (KRW)	Defendant's Contribution Margin Rate (%) (= Contribution Margin/Revenue)
Joint Kit and Bus Duct	30.4 billion	4.8 billion	15.98
Installation	8.9 billion	2.7 billion	30.52
Total	39.3 billion	7.6 billion	19.27

In addition, since the defendant's product includes components other than the two patented components, the IP High Court determined that the plaintiff's patents contributed 20% to the value of the joint kit, bus duct, and installation services with each patent contributing 10%. Accordingly,

the IP High Court assessed damages based on 20% of the total contribution margin (KRW 7.6 billion), awarding KRW 1.5 billion to the plaintiff.

Implication

This decision by the IP High Court is significant in that it broadens the scope of damages for patent infringement to include not only the infringing product but also functionally related products and services. By doing so, the ruling more accurately reflects how patented technologies are utilized in real-world industrial applications. Moving forward, it will be important to closely monitor the potential impact of this decision on future cases.

Supreme Court Ruling Clarifies the Scope of the Effect of the Self-Disclosure Exception in Patents and Utility Models

By Soo Jung CHOI, Katherine Jungyun SOHN, Hyun-Jin CHANG and Cheonwoo SON

Korea's Supreme Court recently held that where a party entitled to a patent right has made multiple disclosures, but asserts the prior disclosure exception solely with respect to the earliest disclosed invention, the effect of the prior disclosure exception extends to subsequent disclosures, provided that such later disclosures are within the same scope as the earliest disclosed invention (Supreme Court Decision No. 2023Hu10712, May 29, 2025).

As a general rule, Korea's Patent Act ("Patent Act" or the "Act") prohibits the granting of patents for inventions that were publicly disclosed prior to the filing date or inventions that would have been obvious to a person of ordinary skill in the relevant technical field based on such prior knowledge. However, a rigid application of the novelty and inventive step requirements has been viewed as imposing undue hardship on inventors inexperienced with the patent system, undermining the Act's objective of promoting industrial progress through the protection of inventions. To address this concern, the Patent Act provides a specific exception: where a party entitled to a patent has disclosed the invention themselves within the twelve months preceding the patent application date, they may invoke the prior disclosure exception, which effectively treats the invention as undisclosed. The applicant must expressly claim the exception during the filing or prosecution of the patent and submit the requisite supporting documentation.

In the decision at issue, the plaintiff held a utility model right for an "in vitro diagnostic specimen filter case" invented for use in the in-vitro diagnostic kits for both humans and animals, including testing kits for COVID-19. The plaintiff invoked the prior disclosure exception with respect to an "in vitro diagnostic specimen filter case" that was disclosed before utility model's filing date. However, the plaintiff did not invoke the exception for identical "in vitro diagnostic specimen filter cases" disclosed in other diagnostic kits. The opposing party argued that, when an inventor makes multiple disclosures but invokes the prior disclosure exception only for the earliest disclosure, the exception should apply exclusively to disclosures that are closely and inseparably connected to that initial disclosure. Therefore, they contended that the exception did not extend to identical "in vitro diagnostic specimen filter cases" disclosed in other diagnostic kits, and therefore, the novelty of plaintiff's utility model should be denied.

The Korean Intellectual Property Trial and Appeal Board (IPTAB) ruled that the utility model lacked novelty and was therefore invalid. However, the Supreme Court and the IP High Court (Court of Appeals) reversed and held that where a person entitled to a patent right has made multiple disclosures but has asserted the disclosure exception only for the earliest disclosed invention, the effect of the exception extends to other inventions, provided those inventions are within the same scope as the earliest disclosed invention.

While the Supreme Court has previously articulated analogous principles under the Design Protection Act (Supreme Court Decision No. 2014Hu1341, January 12, 2017), this case represents the first express application of such reasoning to patents and utility models. Since the enactment of the Patent Act, the scope of exceptions recognized under the prior disclosure exception provision has progressively expanded to include additional grounds, such as inventive step, alongside novelty, and the relevant disclosure period has been extended from six months to one year. These amendments have transformed the provision from a simple safeguard for inventors unfamiliar with patent procedures into a robust mechanism that effectively protects applicants' substantive rights as inventors. The Supreme Court has now acknowledged the scope of the prior disclosure exception in this decision, consistent with the intent of the relevant legal provisions.

This decision allows an inventor who has made multiple prior disclosures of the same invention before filing a patent application to invoke the prior disclosure exception based solely on the earliest disclosure, while nonetheless benefiting from the protective effect of the exception with respect to subsequent disclosures. As such, the criteria for judging the scope of self-disclosure exceptions applicable to patents and utility models has now been made consistent with the purpose of the relevant legal provisions, enabling inventors and creators to assert the prior disclosure exception through more efficient procedures and thereby more effectively safeguard their intellectual property rights.

MOIP Lengthens Preliminary Rejection Response Period, Allows Deferred Examination for Divisional Applications

By Miyoung NOH and Aeree KO

Recent amendments to the Enforcement Rules of the Korean Patent Act took effect on July 11, 2025, which should provide more time for applicants to take certain actions with their applications during prosecution in Korea.

Extended Response Period from Two to Four Months

The amendments include a change to the initial period to respond to a preliminary rejection, which had previously been two months. Under the new rule, applicants now have an initial **four months** to respond to a preliminary rejection before any extension is needed. Applicants may still further extend the initial deadline up to four additional months by paying extension fees, as before.

The two-month initial period to submit a response was relatively short compared to other IP5 offices, since the United States Patent and Trademark Office (USPTO) and the Japan Patent Office (JPO) each set an initial three-month response deadline, while the National Intellectual Property Administration of the People's Republic of China (CNIPA) and the European Patent Office (EPO) each provide for a four-month initial deadline. The longer response period in Korea as a result of the amendments should make it easier to thoroughly review and respond to the grounds of preliminary rejection, without the need to incur fees for additional extensions. However, that the initial response deadline to a final rejection is unchanged by the amendments, and remains three months.

An unintended side effect of these amendments may be to further delay prosecution in Korea, since in practice, examiners tend to wait until the response deadline passes before issuing any office action, even if the applicant submits its response early. Applicants who wish to expedite prosecution will likely need both to submit the response to the preliminary rejection early, and also to file a request for a shortened examination period, to encourage early action on the response by the examiner without waiting for the full four-month initial response period to expire.

Deferred Examination Now Available for Divisional Applications

Until now, divisional applications have been examined relatively quickly compared to original application filings, with a shorter timeframe for filing the request for examination. However, the Ministry of Intellectual Property (MOIP; formerly KIPO) has implemented some changes recently that are likely to substantially slow down examination of divisional applications. One such change is its recent amendment to the Enforcement Rules of the Korean Patent Act to change the examination order for new applications such that all applications in Korea are now examined in the order that the request for examination of the application itself is filed. This is a significant change for divisional applications because until now, divisional applications have been examined based on when the request for examination of the parent application was filed. Since this effectively means that all divisional applications will now be treated as new applications for determining examination order, this will mean that the timeframe for the first office action in a divisional application will also be similar to new applications (around 16-18 months after filing).

In addition, the MOIP has amended its regulations to allow requests to defer examination of divisional applications until at least 24 months after the request for examination is filed, if the request to defer examination is filed within nine months of the request for examination. The request to defer examination must designate a date between 24 months from the request for examination date and five years after the effective filing date of the priority application for the divisional application (or five years after the international filing date, if involving a PCT application). The initial office action will then be issued within about three months from the designated examination commencement date. This deferred examination procedure may be useful for applicants seeking to delay prosecution in Korea to wait for examination results in other countries, or the development of the relevant market.

In addition, applicants may request that the MOIP defer the final decision on patentability for divisional applications up to twelve months after the filing date of the divisional, if needed. This has been enacted since there are sometimes cases where applications are granted unusually early in Korea, particular divisional applications, so this is a way of ensuring the prosecution does not move forward too quickly without actually deferring the examination of the application. A request to defer the final decision must be filed within six months from the filing date of the divisional application.

These recent amendments by the MOIP should give greater procedural flexibility to applicants who wish to strategically time the examination of their divisional applications in Korea relative to business considerations or foreign prosecution proceedings, and may be particularly useful in sectors such as standard-essential patents, pharmaceuticals, and biotechnology, where patent timing can significantly impact commercialization and market entry strategy.

***En Banc* Supreme Court Rules that Royalties Paid for "Use" of Technology Patented Only Outside Korea Are Now Taxable in Korea, Overturning Decades of Precedent**

By Jae Chan PARK, Dong Wook KIM, Jin Ho LEE and Anseop SIM

The Supreme Court handed down a groundbreaking decision regarding the issue of whether royalties for the use of patents not registered in Korea constitute domestic source income taxable in Korea under the Korea-U.S. Tax Treaty (hereinafter the "**Treaty**") (Supreme Court *en banc* Decision No. 2021Du59908 rendered on September 18, 2025). The *en banc* Decision overturns previous Supreme Court precedents dating back to 1992 (Supreme Court Decision 91Nu6887 and 2012Du18356, etc.), in which royalties paid by a Korean tax resident to a U.S. tax resident for the use of patents unregistered in Korea have been consistently determined not to constitute Korean source income under the Treaty. According to the Court's new holding, if royalties are paid in consideration for use in Korea of patented manufacturing methods, technology, information, etc. ("**Patented Technology**"), regardless of whether the relevant patents are registered in Korea, the royalties constitute Korean source income and are subject to Korean withholding taxes.

Background of the Case

In June 2011, U.S. Corporation A, an NPE, filed a patent infringement lawsuit against Korean Corporation B in the U.S., which was eventually settled on December 23, 2013, on the condition that Korean Corporation B would enter into a worldwide license agreement with U.S. Corporation A, and would pay royalties for 40 patents registered in the U.S. Korean Corporation B subsequently paid corporate withholding tax on the royalty payment to the Korean tax authority for FY 2014.

On June 9, 2015, Korean Corporation B filed a request for correction seeking a refund of the withheld corporate tax from the Korean tax authority (the NTS), on the ground that the royalty was consideration for the use of patent rights not registered in Korea, and thus did not constitute domestic source income. However, the NTS rejected the request for correction, so Korean Corporation B sued the NTS on February 25, 2019.

The High Court followed previous Supreme Court precedents and eventually ordered the NTS to rectify the taxation on the ground that the royalties at issue were payments for patents not registered in Korea and did not constitute Korean source income. (Suwon High Court Case No. 2021Nu10237 decided on November 5, 2021.)

Supreme Court Precedents

Unlike Korea's tax treaties with many other countries, the Korea-U.S. Tax Treaty provides that royalties are treated as income sourced in one of the Contracting States only if the royalties are paid for the use of, or the right to use, property within that Contracting State. In determining whether a patent right is "used" in Korea, the Supreme Court previously looked at whether the patent was "licensed within the territory where the exclusive rights on the patent are in effect," rather than whether Patented Technology under the patent was actually used in Korea, applying the principle of territoriality of patent rights. The Supreme Court reasoned that since patent rights are "effective" only within the country of registration, patent rights that are not registered in Korea cannot conceptually be "used" in Korea, so royalties paid in consideration for the use of patents not registered in Korea could not constitute Korean source income in the context of the Treaty.

Notably, on December 26, 2008 the Korean government specifically amended a provision of the Corporate Income Tax Law (the "CITL") (Article 93, Subparagraph 8 of the former CITL cited in the Supreme Court *en banc* Decision) to include a provision that "if a patent, etc. has been registered overseas and has been used for manufacturing, sale, etc. in Korea, such patent, etc. shall be deemed to have been used in Korea regardless of whether it was registered in Korea," but the Supreme Court has consistently ruled until now that royalties for patents not registered in Korea under the Treaty do not constitute Korean source income (Supreme Court Decision No. 2012Du18356).

Summary of Supreme Court *en banc* Decision

The Supreme Court's *en banc* decision specifically took the position that the meaning of "use" in the Treaty should be interpreted in accordance with the CITL, given that the Treaty does not expressly define the term. As such, based on the language of Article 93(8) of the former CITL ("patent rights shall be deemed to have been used in the Republic of Korea, irrespective of whether they were registered in the Republic of Korea, if the relevant patent rights were registered overseas and have been used for manufacture, sale, etc. in the Republic of Korea"), the Court held (i) that the "use" of a patent right should be deemed to mean the use of the Patented Technology subject to the patent right, not the use of the patent right itself, and (ii) that even if the patent right is not registered in Korea, the relevant royalty income constitutes Korean source income if the related Patented Technology is used in Korea. Therefore, the Supreme Court held that the lower

court's decision was unlawful as it did not examine whether the Patented Technology was used in Korea, even if the patents were unregistered in Korea.

The Supreme Court reasoned as follows:

- A treaty must be interpreted in good faith in light of the text and the subject and purpose of the treaty, including the recitals and annexes, in accordance with the ordinary meanings given to the text of the treaty, but it was difficult to find a basis in the text of the Treaty, agreements related to the Treaty, records of negotiation, the circumstances at the time of execution, and the context of the Treaty, to rule out that a patent unregistered in Korea can still be used domestically, or that royalties might be paid for such use.
- Article 14(4)(a) of the Treaty defines "royalties" as consideration for the use of various intangible assets, including both intangible assets that require registration as a requirement for creation of rights, such as patents, designs, and utility models, and intangible assets that do not require registration to have force, such as copyrights, secret processes, knowledge, and functions. Therefore, "use" should be considered the "use" of technology or information, etc. that make up the contents of intangible assets, and not the "use" of a right that has an exclusive effect through registration, since only this interpretation would apply to all intangible assets.
- The Supreme Court has previously considered the "actual use" of technical information comprising intangible assets in Korea as the basis for determining domestic source income with respect to royalties on intangible assets that do not require registration such as know-how, while it has used the territoriality principle as the basis for the meaning of "use" only for patents not registered in Korea. However, the territoriality of patent rights only means that the domestic use of Patented Technology does not constitute infringement of overseas patents in Korea. The principle of territoriality of patent rights neither blocks the payment of royalties for the use of Patented Technologies because they have no property value, nor restricts the execution of contracts for the payment of royalties for the use of Patented Technologies not registered in Korea under the principle of freedom of contract.

Who bears the burden to prove domestic use of patented technology?

The minority dissenting opinion to this *en banc* decision pointed out that the burden of proof for the existence of taxation requirements lies with the NTS, so therefore the burden of proof of use of Patented Technology that may be in the scope of patent rights not registered in Korea also lies with the NTS. However, understanding Patented Technology may requires a high level of expertise, and proving the use of Patented Technology can be a very difficult task even with the help of an expert, so whether the NTS can fully prove this in practice is doubtful.

The concurring opinion stated that after this ruling, a situation will arise where domestic source income and foreign source income must be distinguished according to the new criteria set by this decision. However, the concurrence said the criteria for allocating the burden of proof of the existence of domestic source income should be established sequentially in the future in practice, and are not an issue directly addressed in this case, while presenting an exemplary set of criteria for allocating burden of proof referring to the US model. After the NTS proves that Patented Technology included in the scope of patent rights not registered in Korea is actually used in Korea, the entire royalty income for the patent is presumed to be domestic source income, and the taxpayer must then prove that part of the royalty is foreign source income.

Implications

The Supreme Court's *en banc* decision is expected to trigger fierce disputes in the lower courts, including the proceedings for the cases reversed and remanded by the Supreme Court, concerning whether Patented Technology at issue is "used in Korea" and how much of the royalties are paid as "consideration for use in Korea." For example, if a number of patents unregistered in Korea are involved, key issues would be which of the Patented Technologies are actually "used in Korea" and how much of the royalties should be treated as consideration for the "use in Korea" of the Patented Technologies. In the remanded case, how effectively the taxpayer or the tax authority can argue and prove these issues will be a key.

At the same time, the *en banc* decision further emphasizes the need for taxpayers to closely review the tax withholding provisions of patent royalty agreements they seek to enter into with U.S. licensors. The following are potentially important negotiation terms and conditions when entering into a patent royalty agreement: whether to specify the consideration for domestic use of patents not registered in Korea; the criteria for allocation thereof; and which party between the Korean licensee and the U.S. licensor should bear the burden of taxation based on the use of a patent that is not registered in Korea or the risk of a dispute. Further, it is expected to increase the need to seek alternative dispute resolution procedures for resolving withholding tax issues, such as Mutual Agreement Procedures between the competent authorities of the US and Korea.

As a result of this *en banc* Supreme Court decision, a new tax criterion for patents has been established, and Korean licensees and U.S. licensors that have entered into patent royalty agreements face potential tax risks. To effectively address these complex issues, careful and comprehensive discussions with tax experts and intellectual property experts are required.

IP High Court Publishes Its Standard Procedures for Reviewing Civil Cases

By Won KIM, JeongSub KIM and Mikyung (MK) CHOE

On July 11, 2025, the IP High Court published its "Standard Procedures for Reviewing Civil Cases." The Standard Procedures contain detailed provisions regarding the parties' discussion on procedural matters, request for information, and hearing procedures, including 52 pages of forms relating to these topics, reflecting the objectives of recent amendments to the Civil Procedure Act and the Rules of Civil Procedure to streamline the appellate review process at the IP High Court and enhance focus on the substantive grounds for appeal.

The IP High Court (formerly known as the Patent Court) is the Korean intermediate appellate court with exclusive jurisdiction over most intellectual property infringement appeals in Korea. The Patent Court originally enacted its Manual for Appellate Examination of Infringement Actions on March 16, 2016, which applied to all appellate infringement proceedings at the court (see [Summer/Fall 2016 IP Newsletter of Kim & Chang](#)). The Manual was first amended on September 1, 2018 and renamed the "Patent Court Guidelines for Appeals of Civil Cases." The manual has been amended in its entirety this time after seven years and renamed as "Standard Procedures for Reviewing Civil Cases," which sets forth more detailed guidance on how the IP High Court should handle appellate infringement cases, including a number of detailed standardized forms for handling specific procedures.

Key amendments are as follows:

1. Determining whether the grounds for appeal are timely filed and sufficiently specific

The recent amendments to the Civil Procedure Act expand the court's dismissal authority to appeals of first instance judgments, and requires that anyone filing an appeal after March 1, 2025 must submit its reasons for appeal within 40 days of receiving notice that the court has received the record of the first instance proceedings (with one one-month extension which can be available if requested).

This amendment to the Civil Procedure Act is now reflected in the Standard Procedures. The Standard Procedures provide criteria for the grounds of appeal, and clarify that if the ground

for appeal merely states generally that the lower court's decision misunderstood facts, misapprehended legal principles, lacked grounds, was based on inconsistent grounds, or was unreasonable, but fails to substantively specify the points of dispute in detail, it will not be considered a valid ground for appeal.

2. More emphasis and adherence to initial procedural agreements between the parties

Once the parties have both filed initial substantive briefs in the appeal, the IP High Court will decide whether the case is one in which (i) a preparatory hearing is necessary to discuss and establish procedures for the appeal, (ii) a hearing date can be immediately scheduled without a procedural discussion, or (iii) the case can be referred for early mediation proceedings.

Where a preparatory hearing is deemed necessary, the IP High Court will recommend that the parties voluntarily engage in discussions to agree on relevant procedures, or else will proceed to conduct a preparatory hearing to discuss such procedures. These discussions can include agreement on the number and date of hearings, as well as regarding "methods of submitting arguments and evidence" in the case, such as limits on the number of submissions allowed per hearing and in the litigation as a whole, deadlines for submitting arguments, and other issues such as whether to schedule a technology explanatory presentation session or Markman hearing with the court, or to appoint an expert to review specific issues. If the parties agree on particular deadlines for submissions, and one party submits an argument after an agreed deadline, the presiding judge may reject that party's submission. By specifying the details and methods of such procedural discussions and providing relevant forms to simplify these discussions, the Standard Procedures seek to ensure that the court can conduct trials in a prompt and faithful manner by focusing on the relevant substantive issues.

3. Clarification of procedures for handling requests for information

In a patent infringement lawsuit, the party claiming infringement may request the court to order the defendant to submit materials necessary either to prove infringement or to calculate the amount of damages, pursuant to the Patent Act. In the request, the claiming party must specify the materials requested, and show that the materials are necessary to prove infringement or calculate damages, and that the defendant indeed possesses these materials. The court then reviews the request for information, and in response to the request, the party from whom materials are requested may claim that such materials are its "trade secrets," and claim that they must not be disclosed to the other party. The Standard Procedures allow the court to more actively utilize orders to submit materials, even though the materials include trade secrets, in examining evidence in patent infringement cases where confidentiality order

can be issued. For a request to submit materials under the Patent Act, the party requested to submit materials can assert "trade secrets," but must also show that it has justifiable reasons for not disclosing the requested materials to the other party or for minimizing the scope and content of what must be submitted, and the court can conduct *in camera* proceedings to review the materials and determine whether such "justifiable reasons" for non-production actually exist.

The Standard Procedures provide details on how such *in camera* proceedings should be conducted. For example, *in camera* proceedings are usually conducted *ex parte* between the court and the party from whom information is requested, and the Standard Procedures provide detailed instructions on how the review should be conducted. Interestingly, the Standard Procedures also expressly provide for *inter partes in camera* procedures, if the party subject to the request consents to participation by the requesting party. Since it seems highly unlikely that any party producing discovery would give such consent, it remains to be seen whether or how these procedures are implemented by the courts in practice.

In addition, to the extent not contrary to other provisions in the law, the above provisions apply *mutatis mutandis* to review of a request for (i) an order to submit materials necessary to calculate the amount of remuneration for an in-service invention (pursuant to the Invention Promotion Act), and (ii) an order to submit materials or documents necessary to calculate the amount of damages caused by infringement of trademark, design, or exclusive (licensing) rights, unfair competition, or trade secrets misappropriation (pursuant to the Trademark Act, the Design Protection Act, or the Unfair Competition Prevention and Trade Secret Protection Act), and thus may be flexibly used in all IP-related litigations.

The IP High Court's Standard Procedures for Reviewing Civil Cases have the purpose of giving parties to IP litigation greater predictability and making such proceedings more efficient, particularly by requiring greater specificity in the pleadings and issues discussed at litigation hearings. By requiring parties to agree on specific procedural details of conducting the appeal and narrowing down the scope of review to arguments submitted by the parties in accordance with the agreed procedures, the IP High Court is taking steps to prevent excessive delay in appellate IP proceedings. Parties to IP appeals in Korea will need to consider from the beginning how to clarify the relevant issues at an early stage in order to ensure their arguments on appeal are effectively heard.

It remains to be seen exactly how the IP High Court will apply these Standard Procedures to court proceedings in the future, since adjusting to more strict procedural rules for appellate litigation will likely take the IP High Court some time, and these new Procedures are a significant change to how appeals are currently handled. However, it is clear that these Standard Procedures are intended to make appeals in Korea more focused in their review of lower court decisions. Companies in IP

disputes in Korea are advised to consult with legal experts well-prepared to apply the new appellate procedures before or in the course of appealing IP infringement actions in Korea.

Lee Jae-myung Administration Completes National Agenda Planning

By Ji Woo KIM, Raymis H. KIM and Ho Yeon LEE

On September 16, 2025, the government finalized 123 national policy tasks proposed by the National Policy Planning Committee. This committee had been established on June 16, 2025 to review major national policy tasks over a 60-day period, along with their management plan.

The finalized National Agenda framework consists of five major national goals: political unity, an innovative economy, balanced growth, a solid social foundation, and diplomacy and security centered on national interests. The framework encompasses a total of 123 national policy tasks organized into 23 strategic areas, including advancing AI to become a global top-three powerhouse, strengthening national sovereignty and democracy, advancing the capital market, and promoting balanced regional development.

Although no independent agenda for the IP system was presented, we have outlined a few items that could have an impact on it, as follows.

Eradication of Technology Theft & Introduction of Korean Discovery System

Among the national policies aimed at achieving balanced growth, the eradication of technology theft from small and medium-sized enterprises (SMEs) has been identified as a key priority. To this end, the government has proposed the introduction of a Korean discovery system.

The specific measures to combat technology theft and the details of the proposed Korean discovery system were not officially announced this time. However, there was a Cabinet meeting on August 12, 2025 to discuss measures to eradicate technology theft from SMEs. In particular, the Minister of SMEs and Startups reportedly outlined the following three major measures currently under consideration at the meeting, and it is expected that the government will develop detailed plans and proposals based on these measures going forward:

1. Introduction of a Korean discovery system

In order to ease the burden of proof for SMEs harmed by technology theft, the government is considering introducing a Korean discovery system. Under this system, at the request of the affected party, court-designated experts would investigate and collect materials necessary to prove technology theft and calculate damages.

2. Increasing the cap on compensation and improving the method of calculating damages

For enhanced deterrence against technology theft, the government is considering including R&D costs in the calculation of damages and raising the cap on compensation amounts.

3. Introduction of administrative fines

To strengthen penalties against technology theft, elevation of existing administrative measures, which are currently limited to corrective recommendations, to corrective orders and administrative fines is being considered.

Additionally, the Korea Fair Trade Commission plans to strengthen its authority for ex officio investigations so that it can immediately launch on-site inspections. The Ministry of Intellectual Property (MOIP; formerly KIPO) is also pushing to amend the Unfair Competition Prevention and Trade Secret Protection Act to increase the level of criminal penalties for trade secret misappropriation.

Following the announcement of the 123 national policy tasks on September 16 by the government, the responsible government ministries are expected to establish detailed implementation plans for action tasks and carry out assigned tasks. These tasks will be reflected in the mid-term plans, budget allocations, and legal and institutional reforms of the government ministries, with a planned fiscal investment of KRW 210 trillion and 951 legislative tasks over the next five years. Accordingly, it is important to closely monitor the implementation of these policy tasks and to develop appropriate response plans. Our firm will continue to track ongoing developments and provide timely updates on relevant legal and policy support measures.

TRADEMARK, DESIGN, COPYRIGHT & UNFAIR COMPETITION

Melona Prevails: High Court Recognizes Packaging Distinctiveness in Korean Ice Cream Market

By Won Joong KIM and Beth JANG

A recent Seoul High Court ruling in favor of a market-leading ice cream bar brand against a competitor's copycat product is attracting considerable attention across Korea's food industry. This decision is especially relevant as "Me-Too" products are pervasive in this sector, and demonstrating similarity in packaging has been a notoriously challenging task.

Case Background

The Plaintiff's "Melona" is a melon-flavored ice cream bar, first introduced in 1992, which has long held a leading position in the market. The packaging of this product ("Plaintiff's Packaging") has evolved over time but has consistently maintained the following features since around 2004:

- A light green to green gradient background;
- The product name "Melona" prominently centered on the rectangular packaging and displayed in bold, straight black letters outlined in white for emphasis;
- An image of two whole melons positioned to the left of the product name, with images of the ice cream bar and a melon slice to the right;
- "Melon Flavored Ice Bar" in small black English text and a distinctive yellow horizontal stripe beneath the product name resembling an underline.

Plaintiff's Product, "Melona"



In contrast, the Defendant's similarly melon-flavored ice cream bar, named "Melonbar," has been sold since 2014. Over the years, its packaging has evolved to increasingly resemble the Plaintiff's design, as illustrated below:

Year	Defendant's Product "Melonbar" Packaging
2014	
Current	

The Plaintiff filed a lawsuit against the Defendant, seeking injunctive relief, arguing that the Defendant's packaging amounted to unfair competition under the Unfair Competition Prevention Act ("UCPA"). The Plaintiff claimed the packaging caused consumer confusion, diluted the distinctive source-identifying function of its packaging, and unfairly capitalized on the Plaintiff's business success, thereby violating the principles of fair competition.

While the first-instance court ruled in favor of the Defendant last year, the Seoul High Court overturned this decision on appeal, fully endorsing the Plaintiff's claims.

Overall Design, Not Just Individual Elements, Defines Secondary Meaning; The Famous Product Name Does Not Undermine This

The Plaintiff acknowledged that individual elements of its packaging might be common within the industry, but argued that the unique combination of these features functions as a distinctive source identifier —backed by long-term exclusive use, substantial advertising, sales exceeding 15.65 billion units since 2014, and consumer recognition confirmed by survey results.

The Defendant contended that the overall packaging image is simply the sum of standard elements that are common in the industry and that, aside from the famous product name, the packaging as a whole lacks distinctiveness.

The lower court sided with the Defendant, emphasizing that the green shades, the melon imagery, and the layout are in the public domain and not protectable on their own. It further reasoned that consumer attention was primarily drawn to the product name rather than the packaging design.

In contrast, the appellate court held that the overall combination of elements functioned as an independent source identifier as a result of the Plaintiff's exclusive, prolonged use. The court further observed that although the product name itself is highly distinctive, it also functions as a key visual element that contributes to the overall impression of the packaging design. Therefore, the

distinctiveness of the product name does not preclude recognizing the distinctiveness of the packaging as a whole.

Consumer Confusion and Defendant's Intentional Copying

The appellate court found the compared packaging sufficiently similar in their shared combination of elements. The court also considered the retail environment, noting that ice cream bars are relatively inexpensive and that consumers tend to rely on the overall appearance of the packaging when selecting products from freezers stocked with various options. This was supported by the results of the Plaintiff's consumer survey in which a large majority of respondents correctly identified the Plaintiff's packaging when it was shown without the brand name, and confused the Defendant's packaging for the Plaintiff's when it was similarly presented.

Additionally, the court noted that the Defendant's modifications to its packaging which made it increasingly resemble the Plaintiff's over time demonstrated an intent to free-ride on the Plaintiff's established market presence and fame.

Based on these findings, the court concluded that the Defendant's use of its packaging was likely to cause consumer confusion and was a violation of the UCPA.

The Defendant has appealed the decision to the Supreme Court.

In the confectionery industry, it has long been common to use images of raw materials and the finished products, alongside colors associated with those materials, in packaging design to encourage purchases. This practice has fostered a widespread belief that unique confectionery packaging designs are difficult to achieve. Should the Supreme Court uphold the appellate court's ruling, it will serve as a powerful precedent to combat the prevalence of copycat products in the industry, especially as Korean foods become increasingly popular worldwide.

Supreme Court Confirms the Decision to Dismiss Claim of Plagiarism Against the "Baby Shark" Song

By Dong-Won KIM, Hyung Ji KIM and Clare Ryeojin PARK

The Supreme Court has upheld the lower court's rejection of Johnny Only's claim that the Pinkfong Company's song "Baby Shark" infringed his copyrights and dismissed the American composer's appeal.

The songs at issue were both based on a nursery rhyme originating in North America ("Subject Nursery Rhyme"). The key issue in dispute was whether Johnny Only's song warranted protection as a distinct derivative work. For a work to be protected as a derivative work, the court noted that it must "maintain a substantial similarity to the original work but have been creatively modified or altered to the extent that the work can be recognized as a new work in view of social norms."

In the court of first instance, Johnny Only argued that he had made distinct creative changes to the original song by using different melodies from the Subject Nursery Rhyme, adding new rhythms, using different harmonies and new instruments, example. However, based on an appraisal provided by the Korean Copyright Commission in response to a fact inquiry, the lower court held that Johnny Only's song could not be recognized as a new work since its level of creativity was relatively weak overall, even though there were some parts that were unique. The Supreme Court agreed with this view.

The Supreme Court's holding reaffirmed the existing legal principle that a work cannot be regarded as a unique (derivative) work and protected under the Copyright Act, if only minor modifications or adjustments have been made to it.

As to the credibility of the Korea Copyright Commission's appraisal which was disputed by Johnny Only, the Supreme Court's position is that unless there was a substantial error (due to the method of appraisal being unreasonable or against established practices, for example), the results must be respected. Applying the above standard, the lower court held that Johnny Only's argument that the Korea Copyright Commissions' appraisal results could not be trusted had not been sufficiently substantiated.

Since Johnny Only's claim of copyright infringement could not be established without his song being recognized as a derivative work, the Supreme Court did not separately assess whether the Pinkfong Company's song was substantially similar to Johnny Only's song and infringed his copyrights.

Amendment to the Design Examination Guidelines

By Hyun Joo HONG and Alexandra BÉLEC

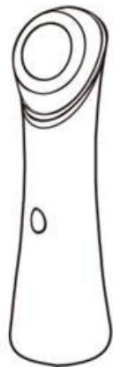
The Design Examination Guidelines of the Ministry of Intellectual Property (MOIP; formerly KIPO) have been revised, effective as of June 16, 2025. Some of the more notable changes are outlined below.

Correction of the Standard Practice for Evaluating the Similarity between Entire Designs and Partial Designs

Prior to the entry into force of the amendment, the MOIP examiners would systematically deem a partial design, which only claimed some features of an article, dissimilar to a design that claimed all the features of an article, regardless of whether the compared designs were actually similar, despite the fact that nothing in the law justified this practice.

Over the years, this practice led to the registration of overlapping rights by different parties and at the same time, made it impossible for a design rights owner to register a partial design as a related design to a design registration for an entire article (and vice versa), even though the designs were similar.

For example, under the previous practice, the below two designs were regarded as dissimilar and thus registration for these designs could be obtained by different parties, while it would not be possible for the design owner to register either of them as a related design of the other:

	
Skin massage apparatus (Entire Design)	Skin massage apparatus (Partial Design)

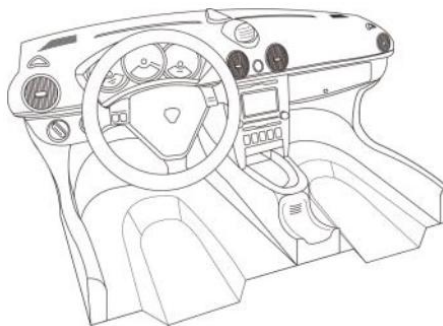
The amendment was introduced to correct this practice and the MOIP examiners must now review in every case whether the claimed parts of a partial design are actually similar or not to a design for an entire article.

Clarification of the Practice for Automobile Interior Design Applications

Under Korean practice, it is possible to obtain separate design registrations for the features of an automobile, e.g. a design registration for the steering wheel, a design registration for the console box, etc. as each feature is recognized as an independent article. However, prior to the amendment, there was some disagreement among the MOIP examiners as to whether the combination of two or more automobile interior design features could be registered as a single design. Some examiners accepted such applications while others refused them.

The amendment clarifies that where a design claims various interior features of an automobile to the extent that such features integrally perform one particular function, the design should be recognized as a single design capable of being registered.

In its revised guidelines, the MOIP provides the following design as an example of a design claiming various interior features of an automobile that would be recognized as a single design capable of being registered:



Automobile interior features

Notification of Evidence Submission Failure when Exception to Loss of Novelty was Claimed

The revised guidelines provide that the MOIP examiners can issue a notification prior to issuing a decision to grant registration, if an applicant claimed an exception to loss of novelty in the application but failed to submit the evidentiary materials necessary to support the claim.

Prior to the revision, if an applicant failed to submit the evidentiary materials, the MOIP examined the application as though the exception to loss of novelty had not been claimed.

The notification will be issued in cases where it is clear that the failure to submit the evidentiary materials was an oversight of the applicant (or the applicant's agent) in order to give the applicant an opportunity to rectify it.

Supreme Court Rules on Starting Point of Statute of Limitations for Copyright Holder's Unjust Enrichment Claim Against Gaming Company's Unauthorized Use of a Musical Work

By Hyung Ji KIM, Se Hyun KIM, Cyril K. CHAN and Katherine Jungyun SOHN

Recently, the Supreme Court of Korea issued a significant ruling concerning the starting point of the five-year statute of limitations to bring a claim for unjust enrichment in a case where a game company unlawfully used a third party's musical work (hereinafter referred to as the "Subject Music") as background music for an online game (hereinafter referred to as the "Subject Game") (Supreme Court Decision 2023Da264462, March 13, 2025).

On December 18, 2008, the defendant game company released the Subject Game, which used plaintiff copyright holder's Subject Music as background music in certain scenes, and the infringement continued for approximately nine years. In May 2016, the company removed the Subject Music from the Subject Game due to the copyright holder's complaint. Subsequently, the copyright holder filed a lawsuit seeking recovery for unjust enrichment for the unauthorized use of the Subject Music.

During the trial, the defendant primarily argued (i) that the statute of limitations was five years under the Commercial Act, and (ii) that the statute of limitations applicable to the plaintiff's claim for restitution of unjust enrichment commenced on December 18, 2008, when the Subject Game was released, and that the claim was therefore untimely. In the alternative, the defendant argued that even if December 18, 2008 was not the date of commencement of the statute of limitations for the claim in its entirety, any claim for unjust enrichment from use of the Subject Music more than five years prior to the filing of the lawsuit was time-barred.

However, the Seoul Southern District Court (hereinafter referred to as the "lower court") rejected these arguments, and ruled that (i) the applicable statute of limitations was ten years, and (ii) the statute of limitations only began to run in May 2016, when the Subject Music was deleted from the Game, on the grounds that it was difficult to determine the exact date of each individual use and because separate claims for unjust enrichment did not arise on a daily basis.

With respect to the statute of limitations period, the Supreme Court affirmed the lower court's reasoning. Noting that the unjust enrichment claim brought by the copyright holder was not seeking the return of a payment itself, nor was there a demonstrated need to promptly resolve the legal relationship as would be required in a commercial relationship, the Supreme Court upheld that rather than the five-year statute of limitations specified in the Commercial Act, the applicable statute of limitations period was the general ten-year term under the Civil Act.

However, the Supreme Court reversed the lower court's decision as to the start of the statute of limitations period for unjust enrichment claims, ruling that the lower court had erroneously interpreted the legal standards on this point. The Court held that the game company, through its unauthorized usage of the Subject Music, accrued new profits on a daily basis, thereby causing damages to the copyright holder. Thus, the Supreme Court held that a new claim for unjust enrichment was established on a daily basis beginning from the date of the game's release to the removal of the infringing Subject Music, and that the statute of limitations for each instance of infringement ran independently for each day.

In cases involving continuous unlawful acts—such as claims for damages resulting from ongoing torts or breaches of contract, or claims for the return of unjust enrichment due to continuing unauthorized possession—it has been established that, absent special circumstances, claims for damages or unjust enrichment are established on a daily basis during the relevant period, with their respective statutes of limitations running independently for each day. This ruling is significant in that the Supreme Court has clarified that the same legal principle extends to claims for unjust enrichment arising from the continuous unauthorized use of copyright protected works. We believe that the clarification provides guidance for similar cases moving forward.

Korean Government Publishes Copyright Guidelines on AI-Generated Content

By Hyung Ji KIM, Sun Ah JEONG, Maria HAJIYEROU and Hyeongsu PARK

Since 2023, the Ministry of Culture, Sports and Tourism (the "**MCST**") and the Korea Copyright Commission (the "**KCC**") have been overseeing a public-private joint council called the Artificial Intelligence-Copyright System Improvement Council/Working Group (the "**Council**"), which functions to address emerging copyright issues in the era of artificial intelligence ("**AI**").

Following their earlier release of the "Guidelines on Generative AI and Copyright" (the "**2023 Guidelines**") on December 27, 2023, together with inputs from the Council, the MCST and the KCC published the following guidelines on June 30, 2025:

- Guidelines on Copyright Registration for Works Utilizing Generative AI (the "**Copyright Registration Guidelines**")
- Guidelines on Prevention of Copyright Disputes Involving Generative AI Content (the "**Copyright Dispute Prevention Guidelines**")

Based on the discussions at the "AI-Generated Content Utilization Division" of the Council in 2025, the new guidelines address: (1) copyright registration for content produced using generative AI ("**generative AI content**"); and (2) prevention of copyright infringement by generative AI content.

In this newsletter, we first briefly highlight the key points from the earlier 2023 guidelines and then outline the key details of the new 2025 guidelines.

1. Summary of Key Points from the 2023 Guidelines

On the eligibility of copyright registration for generative AI content, the 2023 Guidelines provide that:

- Copyrights cannot be registered for outputs without human creative intervention.
- If any "additional work" creatively made by a human modifies, adds to, or subtracts from AI-generated outputs qualifies for copyright protection by itself, a copyright may be registered only for such additional work.
- If human creativity is added to AI-generated output through editing or arrangement, such portion can be registered as a "compilation work."

On copyright infringement from using generative AI, the 2023 Guidelines take the following key positions:

- Generative AI users may infringe copyrighted works of others by producing the "outputs identical or similar to copyrighted works."
- AI service providers are advised to filters so as not to produce AI-generated outputs that are identical or similar to copyrighted works.
- Copyright infringement disputes of AI-generated outputs may lead to controversies among AI service providers about who is liable and to what extent. Foundation model providers and businesses using foundation models are thus advised to clearly define their liabilities and the relevant scope of the liabilities in their service agreements.

2. Copyright Registration Guidelines

The Copyright Registration Guidelines classify (i) generative AI content for which human creative contribution is recognized and can be registered as "work utilizing generative AI," and (ii) those that are not as "generative AI outputs." The Copyright Registration Guidelines also provide key examples of works utilizing generative AI and copyright registration cases:

- Where the generative AI content created by user's input of his/her work as a prompt shows the creativity of the user's work
- Where the user's "additional work" of modifying, adding to, or subtracting from generative AI outputs shows creativity
- Where the selection, arrangement, or configuration of generative AI outputs shows creativity

In addition, the Copyright Registration Guidelines set out criteria for registering works created using generative AI; the key details are summarized below.

Judgment on human creative contribution	• If a human has made additional creative contributions to generative AI outputs, a copyright can be registered for such contributed portion. - The court makes a final decision on whether there were creative contributions by a human, i.e., the degree of human involvement, expressions made by a human, and the specific creativity of the expressions. • If additional human involvement in generative AI outputs enables "<u>control and predictability</u>," the creative contribution is likely to be recognized. <table border="1" data-bbox="513 533 1447 938"> <tr> <td data-bbox="513 533 762 667">Control</td><td data-bbox="762 533 1447 667">whether the creator decides what he/she intends to express, and takes the lead in determining the expression and process of expression</td></tr> <tr> <td data-bbox="513 667 762 768">Predictability</td><td data-bbox="762 667 1447 768">whether the creator can express what he/she intends to express</td></tr> <tr> <td data-bbox="513 768 762 938">Examples of enabling control and predictability</td><td data-bbox="762 768 1447 938"> • adjusting the location of visual elements and inputting additional visual elements, using technologies like inpainting; and • providing a human-created sketch </td></tr> </table> • (If the expression of the work remains clearly recognizable) Copyrights can also be registered for the content generated by inputting human-created work into generative AI. • If an original work is input into generative AI and a human makes creative contributions with control and predictability, the result may be registered as a derivative work. • As proving human creative contributions is crucial, <u>any videos or other records of the AI-generation and creation process may serve as important materials for copyright registration and potential disputes.</u>	Control	whether the creator decides what he/she intends to express, and takes the lead in determining the expression and process of expression	Predictability	whether the creator can express what he/she intends to express	Examples of enabling control and predictability	• adjusting the location of visual elements and inputting additional visual elements, using technologies like inpainting; and • providing a human-created sketch
Control	whether the creator decides what he/she intends to express, and takes the lead in determining the expression and process of expression						
Predictability	whether the creator can express what he/she intends to express						
Examples of enabling control and predictability	• adjusting the location of visual elements and inputting additional visual elements, using technologies like inpainting; and • providing a human-created sketch						
Determination of creative contribution of prompt input	• The act of prompting is generally considered as providing ideas or instructions to generate content. • Prompting is less likely to be considered as creative contributions because it lacks control and predictability.						
Copyright registration applicant	• A person who created a work utilizing generative AI is an author and may apply for copyright registration. • A generative AI developer merely provides tools and is not the creator of the works, and thus cannot be registered as an author. • <u>If (i) a company's employee creates work utilizing generative AI that qualifies as a work made for hire and (ii) a company has made, or plans to announce, such work under its name, the company may apply for copyright registration with the company as the author.</u>						
Examination of copyright registration	• The KCC only reviews written applications or applied works. • The KCC conducts a "formal examination" that simply checks if it is "legally" clear that the applied works do not qualify as copyrighted works, without a detailed investigation. • The KCC only conducts a "formal examination" to determine, without substantive fact-finding, whether it is "legally" clear that the applied works do not qualify as copyrighted works.						

3. Copyright Dispute Prevention Guidelines

The Copyright Dispute Prevention Guidelines provide more specific standards for determining (i) copyright infringement of generative AI outputs in the service (generation) phase and (ii) the infringing party (i.e., liabilities), although they do not cover issues arising during the generative AI training phase.

Determination on whether AI-generated content is created "based on" copyrighted work	- To establish copyright infringement, it must be demonstrated that the generative AI user created the content knowingly based on the relevant copyrighted work (including whether the user included the work as a prompt). - Whether AI-generated content is created "based on" a copyrighted work depends mainly on: (i) whether the user knew about the specific copyrighted work; and (ii) whether that work was included in the training data.
Determination on substantial similarity	- Whether the content generated is identical or similar to the copyrighted expression protected under the Copyright Act - Assessed based on the context of each specific case
Determination of the infringing party	- The level of service provider's contribution and involvement in establishing the model and operating the service may also be considered when determining liability. - The user of generative AI who creates the generative AI content – such as by prompting – is liable for copyright infringement, and the rights holder may protect their rights by: Civil: (1) filing for an injunction, (2) filing a claim for the destruction of generative AI content, and/or (3) claiming damages against the generative AI content Filing a criminal complaint for the infringement - Even the AI developer and the service provider using the developed AI may be liable for copyright infringement. - Copyright infringement is determined based on, among others, (i) the amount of training data used, (ii) algorithm setting for a specific prompt, and (iii) whether a specific prompt has been entered. - If a generative AI business operator creates a generative AI model using a certain author's copyrighted works during the fine-tuning process, or creates an AI model trained on a certain author's copyrighted works to develop AI specialized for a certain field, the service provider may be separately held liable. - If a user's liability is minor – for example, using an AI for simple search that creates a work based on newspaper articles without permission – the generative AI service provider is more likely to be held liable given its role in training the AI on copyright works without permission. - A rights holder may file both civil and criminal complaints against a generative AI service provider liable for copyright infringement: Civil: (1) a claim for failure to take precautions to prevent further copyright infringement by the model/service that generated the infringing content; and/or (2) a claim for damages from the content Filing a criminal complaint for the infringement

The Dispute Prevention Guidelines also make recommendations for generative AI users and service providers:

Subject	Item	Details
User	Prompt input	Refrain from inputting copyrighted work or an expression that induces output identical or similar to copyrighted work
	Utilization and distribution of content	- The user should check whether a third party's rights are infringed before using the generative AI content for commercial purposes. - The user should conduct careful review if he/she plans to disclose the generative AI content or to use it for profit generation.
	Importance of reviewing Terms of Service	- Generative AI service terms should specify the ownership of copyrights to the AI-generated content and whether the content can be used for commercial purposes. - Users must check service terms and must not use content beyond the permitted scope specified in the service terms.
Service provider	Clarification of responsibility when service providers enter into an agreement	- It may be difficult to determine who is responsible in the case of infringement - the AI developer or service provider using AI. - The generative AI developer and the service provider using AI should clarify their responsibilities in their service agreement.
	Preparation of infringement prevention measures	- The service provider should take necessary measures to avoid generating infringing content. - Measures may include using meta prompts and filtering, reinterpreting prompts and deleting keywords, removing redundant data, or reweighting data.
	Obtaining the right to use	Obtain a legitimate license with copyright holders when training AI
	Provision of Terms of Use and user guide	- Clarify responsibilities related to generative AI content in the Terms of Use - Instruct users not to generate content that is identical or similar to copyrighted works through the AI service

4. Implications and Prospects

The new guidelines provide valuable direction to respective stakeholders, including AI service providers, copyright holders, and AI users amid the absence of direct and specific laws, regulations, or court precedents, and clarify the 2023 Guidelines. While not legally binding, they can be an important reference for interpreting and enforcing the Copyright Act in the face of rapid expansion and legal uncertainty with the growing use of generative AI.

However, the guidelines are not comprehensive. Instead, the Copyright Dispute Prevention Guidelines expressly excludes issues arising during the training phase of generative AI, which

are expected to be further discussed by the "AI Training Data System Division" and the "AI Training Data Transaction Promotion Division" of the Council.

The MCST has also expressed its willingness to pursue legislation regarding text and data mining exceptions, disclosure obligation for AI training data, and publicity rights as indicated in its "Key Tasks Implementation Plan for 2025" and "Culture Korea 2035." Therefore, it is important to continue to monitor legislative and policy discussions.

NEWS

Kim & Chang Ranked Again as a Tier 1 Firm in Korea – Managing IP STARS 2025

Kim & Chang has been recognized as a tier 1 firm in Korea in every category covered – patent prosecution, patent disputes, trademark prosecution, trademark disputes, copyright & related rights and IP transactions – by the Managing IP STARS 2025. This marks the 23rd consecutive year that Kim & Chang has received this honor. Further, Kim & Chang is once again the only law firm in Korea that ranked as a Tier 1 firm for the trademark prosecution category.

In addition, 13 Kim & Chang professionals have been recognized as "IP Stars" and "Notable Practitioners". Duck-Soon Chang, Sang-Wook Han, Jay J. Kim, Young Kim, Man-Gi Paik, and Jay (Young-June) Yang have been recognized as "Patent Stars," Sung-Nam Kim, Ann Nam-Yeon Kwon, and Jay (Young-June) Yang as "Trademark Stars," and Eun Jeong Cho, Eui Chul Hwang, Yunki Lee, Amy Seung Hyun Oh, and Chun Y. Yang as "Notable Practitioners."

Managing IP, part of the Legal Benchmarking Group, is a leading source of news and analysis on IP developments worldwide. Managing IP identifies leading law firms and individuals based on extensive research and in-depth interviews with IP practitioners and clients worldwide.

IP STARS 2025

Kim & Chang Named in IAM Patent 1000: The World's Leading Patent Professionals 2025

Kim & Chang has been ranked in the Gold band (highest) for litigation and prosecution, and also ranked as Recommended for trade secrets litigation and Highly Recommended for transactions in Korea in the fourteenth edition of the Intellectual Asset Management (IAM) Patent 1000: The World's Leading Patent Professionals.

In addition, 25 Kim & Chang professionals have been identified as leading individuals in Korea.

Litigation

- **Gold:** Duck-Soon Chang, Young Kim, Jay (Young-June) Yang
- **Silver:** In Hwan Kim, Jay J. Kim, Inchan Andrew Kwon, Minho Lee, Si Yul Lee, Monica Hyon Kyong Leeu, Amy Seung Hyun Oh, Seong-Soo Park, Cheonwoo Son, Yu-Seog Won, Chun Y. Yang

- **Bronze:** Stephen T. Bang

Prosecution

- **Highly Recommended:** Sang Young Lee, Man-Gi Paik
- **Recommended:** Yongrok Choi, Sean (Seunghun) Lee, Song Mi Lim, Flora Qiqiao Zhang

Trade Secrets

- **Recommended:** Seok Hee Lee

Transactions

- **Recommended:** Chul Hwan Jung, Marcus (Yoonchang) Lee, Peter K. Paik, Seong-Soo Park

The IAM Patent 1000 is a guide to top patent practitioners in key jurisdictions around the globe. Their rankings are based on in-depth research and interviews with numerous attorneys at law, patent attorneys and in-house counsel.

IAM Patent 1000

Named "South Korea National Law Firm of the Year" – Chambers Asia-Pacific & Greater China Region Awards 2025

Kim & Chang was recognized as the "South Korea National Law Firm of the Year" at the *Chambers Asia-Pacific & Greater China Region Awards 2025*. Since the first awards ceremony in 2010, our firm has been honored with this title ten times, earning widespread recognition as one of Korea's leading law firms.

About the Chambers Asia-Pacific & Greater China Region Awards: Hosted by the world-renowned legal media Chambers and Partners, the awards ceremony recognizes the past year's work performance, strategic growth, and customer service excellence of law firms in the Asia-Pacific region and selects the best law firm in each country. This year's results were announced at the awards ceremony held in Singapore on May 30, 2025.



Chambers Asia Pacific & Greater China Region Awards 2025

Newsletter

A Quarterly Update of Korean IP Law & Policy

KIM & CHANG

INTELLECTUAL PROPERTY

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