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PATENT

TRADEMARK, DESIGN, COPYRIGHT & UNFAIR COMPETITION

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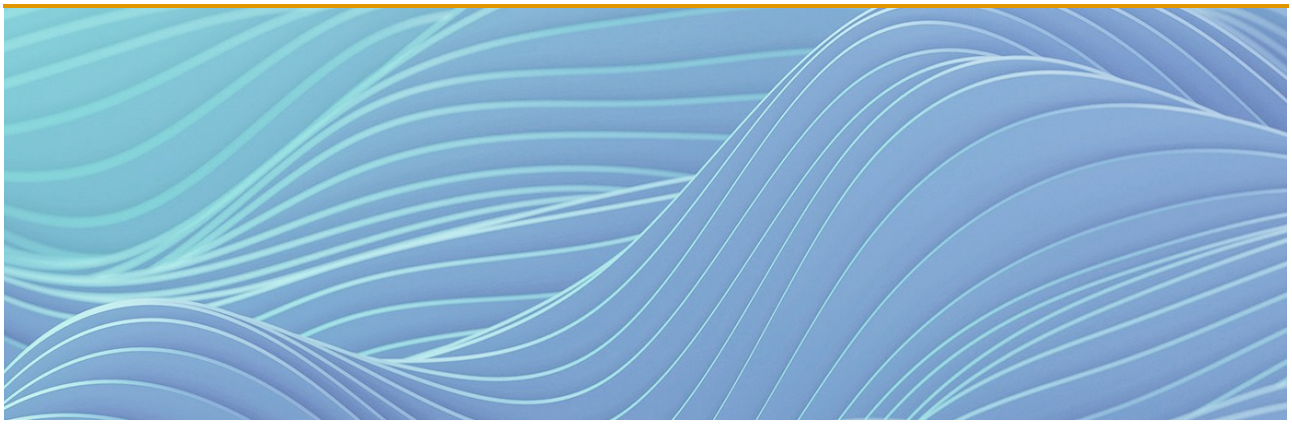
NEWS



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PATENT

MOIP Strengthens Patent Examination Standards for Divisional Applications

Jay (Young-June) YANG, Duck Soon CHANG and Soo Yong LEE

The Ministry of Intellectual Property of Korea (the "MOIP") amended its standards for determining double patenting between genus and species invention filed on the same date. This change was introduced through a partial amendment to the Guidelines for Examination of Patents and Utility Models (the "Amendment"), published in February 2025.

1. Details of Amendment

The Amendment essentially removed a presumption under the previous Guidelines that two inventions with the same filing date were not substantially identical, provided they would not be considered substantially identical if filed on different dates in either order.

Specifically, the Amendment deleted the following provision (the "Provision"):

"(6) where the filing dates and substances of Inventions A and B are the same on the assumption that Invention A is a prior-filed application and Invention B is a later-filed application, the two inventions will be treated as not being the same, if Invention A is not substantially the same as Invention B on the assumption that Invention B is a prior-filed application and Invention A is a later-filed application."

In practice, this Provision had allowed genus and species inventions with the same filing date to be presumed not substantially identical, even if a divisional application was filed to claim a genus concept covering a species invention filed earlier in time.

2. Background and Purpose of Amendment: Prevention of Redundant Patenting and Consistency in Standards for Determining Identicalness

Under the previous Provision, it had been difficult for MOIP to reject a divisional application for double patenting over its parent application unless the claims had been literally identical. Applicants could argue that the divisional application that is otherwise broader than the parent

application would not be considered substantially identical if it had been filed before the parent application. This had led to a situation where a patentee could obtain multiple patents claiming overlapping or substantially identical inventions over multiple applications from the same application (with the same legal filing date), while another applicant might have been rejected for filing such applications on different filing dates under the first-to-file rule.

Therefore, the Amendment (i) prevents duplicative patenting of substantially identical inventions in general, and (ii) eliminates the disparity in double patenting evaluations between applications filed by the same applicant on the same date and those filed on different dates. It reinforces the principle that even if there are differences in certain features of two inventions, they are treated as identical if such differences are minor changes that a person of ordinary skill in the art would ordinarily adopt without any special difference in purpose, operation or effect (Supreme Court Decision 2007Hu2827 rendered on September 24, 2009).

3. Practical Impact and Countermeasures

The Amendment is expected to significantly increase the likelihood that claims of divisional applications are rejected for double patenting in violation of Article 36 (First-to-File). Any applicant with standards previously similar to Korea's (such as Japan) should pay particular attention when filing patent applications in Korea.

As an example, before the Amendment, if one invention claimed a "metal" and another claimed "aluminum," the "metal" invention was generally considered substantially identical to the "aluminum" invention if filed later. Conversely, however, the "aluminum" invention was not considered substantially identical to the "metal" invention if the "aluminum" invention was claimed later, and it was possible to file a valid divisional application under Article 36 that claimed a genus of a species filed in the parent application. This would have been rejected if the two applications had different filing dates. Under the Amendment, this is no longer possible.

In addition, it should be noted that, under the Amendment, even if a genus concept invention is a prior-filed application and a species concept invention is a later-filed application, patentability is determined based on whether the species concept invention can be obviously conceived from the genus concept invention. In other words, it is judged in the same way novelty is determined where the two inventions are described as a genus concept invention and a species concept invention. For example, in the case where the claim describes "silver" as the material for superconducting cables for power transportation, and the prior art reference discloses superconducting cables made of "metal" materials, novelty may be denied if using silver for superconducting phenomena in power transportation is a well-known and commonly used technology. Similarly, whether the species concept invention of a divisional application is a violation of Article 36 (First-to-File) is determined based on whether the species concept

invention of the division application can be obviously conceived from the genus concept invention of the original application.

Since the Amendment is now effective, applicants pursuing a divisional application should consider not only formal difference from the parent application, but also whether the divisional application can be obviously conceived from the parent invention. In addition, since a divisional application that was already registered under the pre-Amendment practices may become a ground for invalidation, it is necessary to keep in mind the possibility of pursuing correction in future disputes.

When drafting specifications, it has now become more important to clearly and specifically describe the remarkable technical effects arising from the differences in the configuration. Finally, to safely secure patent rights, it is advisable to set up a wide range of embodiments and dependent claims within a single application. If necessary, applicants should strategically consider filing divisional applications during the examination process.

The Landmark Introduction of a "Korean-style Discovery System" to Eradicate Technology Theft: Enactment of the Revised Act on the Promotion of Mutually Beneficial Cooperation

By Hyewon CHANG, Min-Kyoung JIN and Raymis H. KIM

On February 19, 2026, the Act on the Promotion of Mutually Beneficial Cooperation between Large Enterprises and Small and Medium-sized Enterprises ("SME") (the "Mutual Cooperation Act"), which centers on the introduction of the "K-Discovery System"—a system designed to significantly improve methods for securing evidence in cases of technology theft—was promulgated and will take effect on February 20, 2028.

The revised Mutual Cooperation Act prohibits technology theft and misappropriation between contracting and subcontracting companies and governs related claims for damages, and therefore does not apply directly to lawsuits involving infringement of patents or misappropriation of trade secrets. However, because the "introduction of a Korean-style discovery system" was a presidential campaign pledge of President Lee Jae-myung and is a major policy task of the current administration, the National Assembly is widely expected to sequentially pass the Patent Act, the Unfair Competition Prevention and Trade Secret Protection Act, and the Utility Model Act with the same provisions following the revised Mutual Cooperation Act.

1. Key Features of K-Discovery System

The revised Mutual Cooperation Act was drafted with reference to Germany's expert fact-finding inspection system and the U.S. discovery system to address the so-called "uneven playing field" problem—where key evidence necessary to prove infringement and damages in litigation is disproportionately concentrated within large companies (contracting companies).

A. Introduction of Expert Fact-finding Inspection System (Article 40-6, et seq.)

Under the current law, when evidence of misappropriation of technical materials is concealed within a contracting company, it has been difficult to obtain the evidence in practice solely through a court's order to produce documents. Furthermore, there has been a lack of effective

means to compel production of such materials when the opposing party refuses on the grounds of trade secrets or similar reasons.

The revised Mutual Cooperation Act allows courts, upon a party's request, to designate an expert to conduct a fact-finding inspection in lawsuits seeking damages for the misuse of technical materials. The court-appointed expert may conduct an on-site inspection by entering the opposing party's offices or factories to ask questions, inspect and copy documents, and operate equipment directly. If the opposing party refuses to allow the inspection without just cause, the court may accept the requesting party's assertions as true.

B. Introduction of Document Preservation Order System (Article 40-11)

A new system has been established to allow a court to order preservation of materials to prevent destruction of evidence when a lawsuit has been filed or is reasonably expected to be filed. Anyone who intentionally destroys materials in violation of such an order may be subject to imprisonment for up to seven years or a fine of up to KRW 100 million.

C. Introduction of Party-conducted Examination (Article 40-12)

To supplement judge-centered examination procedures, a system has been introduced that allows attorneys, even before a hearing date, to conduct mutual examinations of persons whose testimony or materials are necessary for verifying relevant facts or materials. This is similar to the U.S. deposition system in which statements of parties or witnesses made outside the courtroom may be audio- or video recorded and submitted as evidence, thereby ensuring consistency of testimony and clarify the factual record.

D. Expansion of Technical Protection Scope and Mandatory Submission of Administrative Investigation Records (Article 25(2) and Article 40(5))

Under the current law, protection applied only to acts of misappropriation occurring after a consignment or commission relationship had been formally established, leaving a gap in protection against technology theft occurring prior to the conclusion of a contract. The amended Mutual Cooperation Act aims to eliminate this blind spot in protecting SME technology by extending coverage to acts of misappropriation committed prior to the conclusion of a consignment or commission contract.

Also, there have been cases where records obtained by the Ministry of SMEs and Startups through administrative investigations were not submitted to a court due to grounds for non-disclosure under other laws and regulations. However, under the amended Mutual Cooperation Act, the Minister of SMEs and Startups is required to submit such administrative investigation records to the court upon the court's request.

2. Incorporation of Attorney-Client Privilege (ACP)

The revised Mutual Cooperation Act is also noteworthy for explicitly incorporating provisions related to "Attorney-Client Privilege (ACP)" (Article 26-2) from the amendment to the "Attorney-at-Law Act," which was recently passed by the National Assembly and promulgated on the same day. Article 26-2 of the proposed amendment to the Attorney-at-Law Act establishes a legal basis for protecting the confidentiality of communications exchanged for the purpose of providing or receiving assistance between a lawyer and a client concerning a legal matter. Furthermore, it exempts from disclosure any documents or materials prepared by a lawyer in connection with a retained matter for use in litigation, investigation, or inquiry.

Under the revised Mutual Cooperation Act, when a court orders an expert inspection, any communications, documents, or materials subject to Article 26-2 of the Attorney-at-Law Act must be excluded from the scope and subject matter of the inspection upon a party's request. Likewise, in the examination of the parties conducted primarily by a lawyer, the content of communications subject to ACP, as described above, is excluded from the scope of the examination (Article 40-7(1) and Article 40-12(1)).

If a statement made during an examination includes content that falls within ACP, a party may request deletion of such content audio recordings, video recordings, or transcripts. If the court finds the request to be justified, it must delete the relevant content (Article 40-12(9)).

3. Impact and Implications

The amended Mutual Cooperation Act will take effect on February 20, 2028. This provides a grace period intended to allow the courts to update their information systems and to ensure consistency with other laws and regulations.

As expert inspections and other mechanisms enable direct access to internal corporate documents, the resulting ease of proving technology misappropriation is expected to drive a significant increase in enforcement and litigation by affected companies.

Above all, the passage of the revised Mutual Cooperation Act is expected to serve as a catalyst for the passage of the amendments to the Patent Act and the Unfair Competition Prevention and Trade Secret Protection Act currently pending in the National Assembly. Furthermore, as the disclosure of internal documents make it easier to substantiate an infringer's intent, there is a growing possibility that courts will more actively apply the provisions for enhanced damages for willful infringement of intellectual property rights.

Korea's New "K-Battery" Roadmap: Opportunities & Implications for Global Players

By Sung-Eun KIM and Inchan Andrew KWON

The South Korean government recently unveiled its "K-Battery Competitiveness Enhancement Scheme" (November 2025). As Korea remains a global hub for battery manufacturing and innovation, this policy shift carries significant implications for international players in the EV and ESS supply chain.

We summarize the core pillars of this new strategy in this presentation, and discuss specific implications, risks, and IP opportunities for your business.

1. Executive Summary: The "K-Battery" Strategy Shift

The Korean government has diagnosed the current market as facing a "chasm" between the rate of EV adoption and aggressive expansion by Chinese competitors, and intends to implement a new strategy for the industry that pivots from competing solely on price to establishing a lead in technology in key areas, with the aim of achieving a 25% global battery market share by 2030.

Key Strategic Pillars:

A. **Next-Gen Tech Leadership:** A massive R&D push with respect to solid-state, lithium-metal, and lithium-sulfur batteries, aiming for commercialization of batteries with a 1,000km range on a single charge.

B. **Diversification into the Mid-Range (LFP Plus):** Moving beyond NCM dominance, Korea is aggressively entering the mid-to-low-end market by developing "LFP Plus" technologies (LMFP, Mid-Nickel, Sodium-ion) to counter Chinese dominance in this market sector.

C. **Supply Chain Reinforcement:** Reduced reliance on China for key materials (precursors, graphite, etc.) through incentivizing domestic production and recycling.

D. **Establishing a "Battery Triangle Belt":** Creation of a specialized domestic industrial cluster connecting Chungcheong (manufacturing), Honam (materials/minerals), and

Yeongnam (high-tech R&D) by expanding current specialized industrial complexes and increasing government support for establishment of basic facilities (e.g., water, electricity, wastewater, roads, etc.).

2. Implications for Global Battery Players

A. Investment & Partnership Opportunities

Incentives for Domestic Production: The government is reviewing a "Strategic Production Tax Credit" (similar to the US IRA Advanced Manufacturing Production Credit (AMPC)) to incentivize companies to process key minerals and materials within Korea. For suppliers of anode and cathode materials, separators, or electrolytes, there may be substantial economic benefits to establishing a JV or footprint in Korea (particularly within the announced "Battery Triangle Belt").

Incentives for R&D Collaboration: Additional funding potentially available for international joint R&D relating to "LFP Plus" technology and next-gen battery manufacturing processes (e.g., dry electrode coating).

B. Supply Chain Compliance & Risks

De-risking from China: Korea is actively aligning with US (IRA) and EU (Battery Regulation) standards to reduce supply chain dependency on China.

Action Items: If your supply chain involves Chinese-refined minerals, expect tighter scrutiny from major Korean partners such as LG, SK, or Samsung – may require proof of "supply chain freedom" or certification of origin to qualify for their procurement.

Recycling Mandates: New regulations are being drafted for the recycling of LFP batteries, including Producer Extended Responsibility (EPR) systems - battery designs to be used in Korea should allow for automated disassembly to meet future Korean standards.

3. Potential Areas of Focus for Patent Strategy

Based on the battery technology roadmap outlined in the government's scheme, it may be beneficial to focus patent filings on the following high-value areas:

A. Manufacturing Process Innovation (Dry Process)

The roadmap expressly targets implementing an "Eco-friendly Dry Process" for electrode coating to reduce carbon emissions and cost in manufacturing.

Potential IP focus: In addition to patenting cell chemistries, may be important to file IP on dry electrode manufacturing equipment and binder formulations compatible with dry processes, as this is a bottleneck technology for which Korea has prioritized development.

B. "LFP Plus" Chemistries

Korea currently is behind other players in developing LFP batteries, but is hoping to make up the gap by moving ahead with developing "LFP Plus" battery technology (LMFP - adding manganese, or nickel).

Potential IP focus: Patents relating to voltage stability in manganese-rich cathodes or additives that improve low-temperature performance of LFP/sodium batteries are likely to be highly valuable for licensing to Korean firms seeking to bypass Chinese IP.

C. Automated Disassembly & Diagnostics

The government is funding "automated disassembly/separation" technology for recycling, and development of "safety inspection software" for reused batteries.

Potential IP focus: Patenting algorithms for rapid state-of-health (SoH) diagnostics without full discharge, and for robotic disassembly mechanisms - these are expected to be essential technologies in the Korean recycling ecosystem.

4. Conclusion & Next Steps

The Korean market is in the process of evolving from a pure manufacturing hub into a "mother factory" for advanced technologies. Early alignment with these policy directives will be crucial to capitalizing on these changes.

From EV Cells to ESS Systems: Signals of a Shift in Patents and Liability from Korea

By Sung-Eun KIM and Inchan Andrew KWON

Strategic intelligence on emerging patent, FTO, and liability issues as Korean battery makers reposition around ESS

Korea's battery sector is moving decisively toward energy storage systems (ESS) as EV demand slows and stationary-storage demand increases, particularly in North America. For companies participating in the global battery value chain, this is more than a market adjustment: it also signals a shift in IP exposure, from vehicle-centered cell claims to system-centered claims involving safety, diagnostics, and long-duration operation.

1. An industry pivot with legal consequences

At InterBattery 2026, LG Energy Solution, Samsung SDI, and SK On all highlighted ESS, fire-safety technologies, and next-generation battery platforms as the center of their messaging, rather than EV batteries. Reporting in early 2026 also indicates that Korean battery makers are reallocating production and investment toward ESS in response to the EV slowdown, with line conversions and dedicated ESS output now moving from strategy to execution.

This transition matters because ESS products are evaluated differently from automotive batteries. In the ESS context, patent and liability questions increasingly arise at the level of system architecture, fault detection, thermal-event response, and operational lifespan, rather than solely at the level of cell chemistry or charging performance.

2. U.S. manufacturing realignment raises new FTO questions

This strategic shift is already visible in U.S. manufacturing. Ultium Cells, the General Motors–LG Energy Solution joint venture, announced a $70 million retooling of its Spring Hill, Tennessee facility so that it can begin LFP battery production for ESS in Q2 2026. LG Energy Solution has also stated that the output will support its North American ESS build-out, including U.S.-made enclosures and vertically integrated ESS offerings.

For overseas manufacturers, suppliers, and project-facing businesses, this means FTO analyses should no longer stop at cathode materials or cell design. As ESS manufacturing expands, exposure may arise from pack and enclosure design, thermal-runaway containment, monitoring logic, suppression systems, and the interface between the battery system and higher-level control electronics.

3. The next patent battleground is likely to be system-level

Recent patent publications associated with Samsung SDI suggest a growing emphasis on ESS-specific safety and control functions, including energy storage apparatuses, fire-extinguishing systems, and system-level architectures designed to respond to abnormal conditions. These filings indicate that competitive value is increasingly being claimed not only with respect to electrochemical performance, but also in relation to event detection, propagation control, and incident mitigation.

That distinction will be important in future disputes. In a grid-scale or containerized ESS installation, liability analysis may turn on whether the system can detect degradation, localize a fault, preserve relevant operating data, and limit escalation after an initiating event. As a result, patents covering “forensic” or defensive system functions may become just as important as patents covering cell composition or energy density.

4. LMFP is not an open field

Although foundational LFP barriers have narrowed over time, LMFP now appears to be a crowded follow-on patent space rather than a clearly open opportunity. KnowMade’s 2026 LMFP landscape analyzes more than 7,800 patent families, and reports that over 410 new IP players have entered since 2023, with about 80% of those newcomers coming from China. KnowMade also describes a sharp increase in Chinese patenting activity and notes that China has become the dominant center of LMFP patenting and industrial scale-up.

For businesses evaluating market entry, sourcing, licensing, or acquisition opportunities, the practical risk is therefore not limited to core chemistry claims. The denser issues may lie in manganese incorporation strategies, precursor routes, processing conditions, electrode structures, and implementation-specific optimizations that sit around the chemistry, rather than at its historic core.

5. Enforcement risk is becoming more international

In Europe, the Unified Patent Court is becoming an increasingly important forum for strategic patent enforcement, with 2025–2026 commentary emphasizing its role in cross-border relief and

coordinated litigation strategy. In the United States, post-Lashify commentary indicates that the ITC's domestic-industry requirement may be more accessible in some cases than previously assumed, potentially making Section 337 a more attractive route for patent owners targeting imported ESS-related products.

This does not mean an immediate wave of ESS cases is inevitable, but it does mean that imported ESS assemblies, racks, containers, battery control subsystems, and integrated storage solutions should now be assessed with the same seriousness once reserved for EV cells and packs.

6. Practical takeaways

Companies active in ESS should widen their patent diligence to include not only cell materials, but also rack-level monitoring, enclosure architecture, propagation barriers, extinguishing systems, and software-assisted safety controls. Supply agreements should also be revisited for indemnity scope, root-cause allocation, evidence access, incident-data retention, and long-tail degradation or safety obligations over the life of the project.

For cross-border matters, portfolio review should be aligned with likely enforcement venues. That means tracking LMFP follow-on rights, identifying system-level patents with import leverage, and evaluating whether a future dispute would be better framed as a chemistry case, a control-system case, or a containerized ESS architecture case.

First Corrective Order for Publicity-Rights Infringement under the Amended UCPA

By Won Joong KIM and Beth JANG

The Ministry of Intellectual Property ("MOIP"), which was granted the authority to issue binding corrective orders against acts of unfair competition in 2024, recently issued its first corrective order for an infringement of publicity rights—specifically, the unauthorized use of distinctive signs such as the portraits and names of celebrities. This milestone case highlights that administrative remedies, which are both cost and time efficient, are now available alongside civil litigation to address free-riding on the fame of K-Pop idols and other celebrities. The measure is expected to offer significant practical benefits to rights holders, particularly across the entertainment and content industries.

Under the amended UCPA, the MOIP can order cessation and remedial measures when an administrative investigation - initiated either by complaint or *ex officio* - identifies acts of unfair competition. Such acts include confusion as to source, unauthorized imitation of product shape, misappropriation of business ideas, and infringement of publicity rights. Publicity rights infringement was expressly recognized as an act of unfair competition by the June 8, 2022 amendment to the UCPA and has, from 2023 through 2025, consistently ranked as the second most frequently investigated type of unfair competition, following "confusion as to source". Previously, the MOIP could only issue non-binding "recommendations," which attracted criticism as roughly one-third reportedly went unheeded. The current enforcement framework allows the MOIP to not only require corrective action but to impose administrative fines of up to KRW 20 million in cases of non-compliance without legitimate justification, making administrative enforcement more effective as a deterrent. Furthermore, courts handling related civil cases may also request the MOIP's full investigation file, to which both parties have access under the amended UCPA—an improvement expected to enhance evidentiary efficiency in subsequent litigation proceedings.

In its first corrective order case under the amended UCPA, the MOIP found that four companies had, without authorization, produced and sold photocards, stickers, and other merchandise featuring the names and portraits of six well-known K-pop groups and 41 individual artists. Sales occurred both through offline retail outlets across several regions and on online platforms. Although these companies had previously promised in April 2025 to cease their infringing conduct, they continued selling the products, with sales volumes estimated to have reached several

thousand units. The MOIP determined that this conduct constituted unfair competition—the unauthorized commercial use, contrary to fair trade practices or competition order, of widely recognized indicia (names, portraits, voices, signatures, etc.) possessing economic value—thereby infringing the economic interests of the artists and their agencies.

Photos of Infringing Goods

Invoking the corrective-order system introduced in August 2024, the MOIP ordered the immediate cessation of sales of the infringing products, disposal of remaining inventory, a prohibition on similar conduct in the future, and four hours of compliance training designed to prevent recurrence. Failure to comply with the corrective order may result in fines of up to KRW 20 million. This first corrective order signals a meaningful shift in Korea's enforcement landscape, with the MOIP poised to play a more proactive role in addressing unfair competition involving publicity rights and related commercial exploitation.

High Bar Remains: Korea's Supreme Court Tightens "Justifiable Reasons" for Trademark Non-Use

By Won Joong KIM and Beth JANG

In two separate decisions rendered on the same day, the Supreme Court of Korea reaffirmed that the "justifiable reasons" defense against trademark cancellation remains a narrow gateway. The rulings clarify that subjective or internal circumstances—such as anxiety over potential infringement while an invalidation action is pending, or the mere state of bankruptcy—do not excuse a failure to use a mark under Article 119(1)3 of the Trademark Act.

Doctrinal Backdrop: How Korean Courts Interpret "Justifiable Reasons"

Article 119(1)3 of the Trademark Act allows any party to seek the cancellation of a trademark registration that has remained unused in Korea for three consecutive years. However, Article 119(3) provides a defense if the registrant can prove a "justifiable reason" for the non-use.

Historically, Korean courts have interpreted this defense strictly, recognizing it only when the non-use is not attributable to the trademark owner's fault. This typically requires a showing of *force majeure*—such as serious illness, natural disasters, or other external obstacles that render business operations impossible.

Under this strict framework, successful defenses have been rare and generally limited to external legal constraints. These typically include government-imposed restrictions on the import or sale of specific goods and pharmaceutical-related regulatory impediments, such as awaiting mandatory approval from the Korean Food and Drug Administration. Conversely, defensive holdings, business downturns, fear of litigation, internal business circumstances, and mere preparatory acts have consistently failed to meet the "justifiable reasons" standard.

Even ongoing trademark disputes do not excuse non-use, as courts traditionally view them as subjective obstacles within the registrant's control. Most cases decided to date have involved situations where a registrant's mark faced an invalidation proceeding or a third party was infringing upon the registrant's mark. In those cases, the courts have held that even a potential declaration of

invalidity does not preclude the mark's use on the designated goods, and that business difficulties caused by third-party trademark infringement amount merely to an "economic problem" rather than a legal impossibility.

Supreme Court Decision 1: Infringement Risk is Not a Justifiable Reason

The Facts. The registrant had used its registered marks for jewelry and accessories since 2014. The petitioner (in subsequent cancellation proceedings) later obtained two cosmetics-related registrations on December 6, 2017. The registrant subsequently secured its own cosmetics registration on August 26, 2019, and filed invalidation actions against the petitioner's senior registrations on October 8, 2019, citing a conflict with its prior jewelry related registration and the fame of its mark. While these actions were ultimately successful—with the invalidation of the petitioner's marks confirmed on July 27, 2023—the petitioner counter-attacked by filing a non-use cancellation action against the registrant on August 29, 2022. At that point, the registrant had only undertaken preparatory acts—packaging design, OEM negotiations, registering as a cosmetics-responsible-distributor, and undergoing related training—without achieving actual sales.

IP High Court (Overturned). On May 9, 2024, the IP High Court initially accepted the registrant's defense. It reasoned that compelling the registrant to use its mark while the senior registrations were still valid would expose the registrant to the risk of criminal trademark infringement. The IP High Court also noted that the registrant had promptly sought a legal remedy by filing the invalidation actions against the petitioner's marks within two months of its own registration.

Supreme Court (Reversed and Remanded). The Supreme Court reversed, ruling that concern about infringing a senior registration is a controllable, subjective decision, not an objective, external obstacle. The Court reasoned that: (i) the registrant is capable of deciding for itself whether to use its registered mark and must bear the consequences of its non-use; (ii) the registrant can mitigate infringement risks by asserting an "abuse of rights" defense or by initiating invalidation actions; (iii) invalidation rulings concerning the petitioner' marks relate only to those marks and do not, by themselves, create a legal duty for the registrant to refrain from using its own registered mark; and (iv) allowing non-use based solely on a fear of infringement would undermine the purpose of the non-use cancellation provision.

Supreme Court Decision 2: Bankruptcy Not Excused

The Facts. A limited partnership registered the disputed mark in 2005 for goods including beans and sweet potatoes. The partnership entered rehabilitation proceedings in 2009, during which it borrowed KRW 400 million from a lender who would later participate as a party in non-use cancellation proceedings, pledging eight trademarks (including the mark in dispute) as collateral.

After rehabilitation process was discontinued in 2010 and two subsequent rehabilitation petitions were dismissed, the partnership filed for bankruptcy in March 2016 and was officially adjudicated bankrupt on April 25, 2016. In July 2017, the bankruptcy trustee sold the mark to the petitioner with court approval, but the assignment of the mark was never officially recorded. The petitioner subsequently filed a non-use cancellation action on August 10, 2022, and the pledgee intervened in the proceedings.

IP High Court & Supreme Court (Appeal Dismissed). On October 31, 2024, the IP High Court rejected the registrant's defense, citing the trustee's failure to seek court permission to continue business operations. The Supreme Court affirmed and established two practically significant doctrinal points: (a) once a registrant is adjudicated bankrupt, the mark falls into the bankruptcy estate, and the existence of justifiable reasons must be assessed from the trustee's perspective; and (b) since a bankruptcy trustee is legally permitted to obtain court approval to continue a debtor's business, a trustee who could have applied for such permission—but failed to do so—cannot rely on the bankruptcy alone as a justifiable reason for non-use.

Takeaways

Through these rulings, the Supreme Court has reaffirmed that the scope of "justifiable reasons" must be interpreted and applied strictly. Trademark owners should bear this high threshold in mind and proactively monitor the three-year statutory time limit for every dormant Korean registration, taking concrete, timely steps to guard against vulnerability to non-use cancellation.

Supreme Court Decision Finds Creative Golf Course Designs Eligible for Copyright Protection

By Won KIM, Maria HAJIYEROU, Hyung Ji KIM and Gi Un LEE

Two recent Supreme Court cases have clarified the parameters for determining creativity under the Copyright Act.

In February 2026, the Supreme Court vacated and remanded two related cases concerning whether a golf course, or its design drawings (collectively, “Golf Courses”), qualify for protection under the Copyright Act. The Court held that even functional works, like golf courses, may meet the originality threshold if creative individuality appears in the selection, arrangement, or combination of its constituent elements (Supreme Court Decision 2024Da228661 and 2024Da229671, February 26, 2026).

Going beyond earlier cases that held that a golf course is only protectable to the extent that its overall design – including the layout and combination of individual elements within the space occupied by the course - is an aesthetic form manifesting the designer’s creative individuality apart from its functional elements (Supreme Court Decision 2016Da276467, March 26, 2020, see also the related lower-court ruling Seoul High Court Decision 2015Na2016239, December 1, 2016), with these decisions, the Supreme Court has confirmed the criteria for assessing the creativity of a golf course as a functional work.

1. Overview of the Cases

The Defendant produces golf course video content for golf simulator systems. It entered into a usage agreement with the owners of the Golf Courses, and thereafter produced videos recreating those golf courses, which it then supplied to third party golf simulator operators. The Plaintiff, the company that designed the Golf Courses at issue, filed an injunction and damages against the Defendant, claiming infringement of its economic rights under the Copyright Act, including the right of reproduction and the right to produce derivative works.

2. Lower Court Decision (denying copyrightability of the golf course)

The lower court dismissed the Plaintiff's case (Seoul High Court Decision 2023Na2003078, February 1, 2024), because they had failed to specifically identify the creative expressions of the Golf Courses that are separable from their functional elements. In finding against the Plaintiff, the lower court held that there were substantial constraints from the site topography (e.g., mountains affecting the layout of the clubhouse, access road, and individual holes), and that there were restrictions from the course's functional elements, like user convenience and safety.

The court further observed that basic components (e.g., teeing grounds, fairways, bunkers, and greens) are common golf course features, and that individual holes are constrained by the rules of golf and international standards. Despite taking the aforementioned topographical constraints into account, the lower court concluded that the arrangement and combination of basic components within an individual hole, which are designed to achieve functional objectives such as play difficulty, enjoyment, and strategy, lacked the creativity required for protection as an architectural work. On this basis, the lower court dismissed the Plaintiff's claims.

3. Supreme Court Decision (overturning the lower court)

In remanding the case back to the lower court, the Supreme Court found that the overall form manifested through the selection, placement, and combination of the constituent elements of each golf course could be identified as creative expression of the design drawings, separable from its functional elements. The Supreme Court also reaffirmed that even functional works may be protected under the Copyright Act if it embodies the creator's distinctive expression and manifests "creative individuality".

While acknowledging that the Golf Courses in this case are subject to constraints imposed by practical and functional factors - such as the rules of golf, site topography, and user convenience, the Supreme Court determined that such practical limitations alone cannot uniformly negate creativity. A course designer can exercise creative individuality by selecting, arranging, and combining various components so as to distinguish a course (or an individual hole) from others; therefore, the existence of practical constraints does not preclude creative expression.

The Court also stated that even if a golf course's basic components—such as teeing grounds, fairways, and bunkers—are commonly used in ordinary golf courses, they may still reflect the course designer's distinctive expression (and thus possess creative individuality) through their selection and arrangement to form an organic combination in accordance with design intent, such as to influence course strategy, introduce variation, or harmonize with the surrounding landscape.

This decision - together with Supreme Court Decision 2017Da212095, decided on June 27, 2019, which established the criteria for determining the creativity of game works, and Supreme Court Decision 2016Da276467, decided on March 26, 2020, which first recognized the copyrightability of the aesthetic form of a golf course - reaffirms that the Court will protect works under the Copyright Act if there is originality in the overall shape based on the selection, placement, and combination of components, even in functional or utilitarian fields. Notably, these cases establish a flexible framework for copyright protection at a time of rapid expansion in the content industry and the advancement of generative AI technology.

More broadly, these Supreme Court decisions are a part of a clear trend toward robust intellectual property protection in Korea. By recognizing that creative individuality can arise from the selection and arrangement of constituent elements, the Supreme Court has expanded the reach of copyright protection. Also, when copyright protection is unavailable – as in the earlier golf course dispute (Supreme Court Decision 2016Da276467, March 26, 2020), in which course operators failed to prove copyright ownership – Korean courts have granted relief under the “catch-all” provision of the Unfair Competition Prevention and Trade Secrets Protection Act, which broadly prohibits the unfair exploitation of another’s achievements. Together, these developments reflect the Court’s clear commitment to actively protect intellectual property rights.

Maximizing IP Protection by Obtaining Both a Design Registration and a 3D Trademark Registration

By Seung Jun JI and Jason J. LEE

The Supreme Court recently rendered a decision on February 26, 2026 which highlighted the valuable interplay between design and trademark protections. The ruling confirms that the shape of a product can function as a source identifier, and that a party is not precluded from securing a 3D trademark registration simply because they already hold a design registration for that same shape, provided the shape is recognized by consumers as an indication of source.

The petitioner, Woosung IB, a manufacturer of towable water tube products, filed a scope confirmation trial against a competitor, Aqua Festa. Woosung IB argued that since the shape of its tube was recognized as a well-known source identifier, having been registered as a 3D trademark, Aqua Festa's use of the same shape for its towable tube product fell within the scope of Woosung IB's registered trademark rights. Conversely, Aqua Festa argued that its use of the shape was purely decorative and that its distinctive word mark ("Aqua Festa") served as the source identifier.

Woosung IB's 3D Trademark (Reg. No. 40-1634887)	Aqua Festa's Product
	

The IP High Court agreed that the shape of Aqua Festa's product was merely a decorative design element, noting that consumers generally perceive the appearance of water leisure equipment as aesthetic rather than as a brand indicator. The court reasoned that the word mark would have been perceived as the source identifier and concluded that the use of the same tube shape by Aqua Festa did not fall within the scope of protection of Woosung IB's 3D trademark registration.

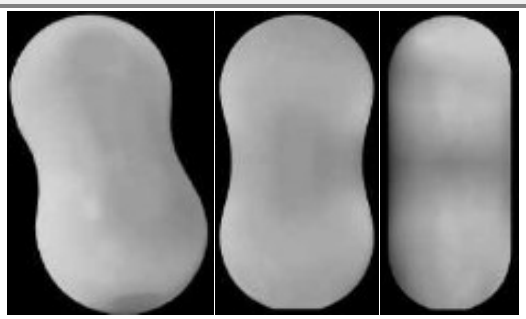
The Supreme Court reversed this decision, confirming that Woosung IB's tube shape functions as a source identifier. Firstly, the court noted that only Woosung IB had used this specific tube shape for over 20 years. It had owned a design registration for an almost identical shape for approximately 15 of those years, and no one else had sold a similar shaped tube either before or after Woosung IB's design application was filed. Second, the court pointed to consumer recognition; given the distinctive shape and extensive advertising in newspapers and magazines, it was reasonable to conclude the shape was well-known to consumers as a source indicator of Woosung IB. The court also found that Aqua Festa had intended to "free-ride" on Woosung IB's fame by using a shape that imitated Woosung IB's.

The Supreme Court's decision highlights that design registrations and 3D trademark registrations can not only co-exist, owning a design registration can help a shape acquire the distinctiveness necessary to function as a trademark. It is also notable that the court held that Aqua Festa's use fell within the scope of Woosung IB's 3D trademark registration despite the differences between 'AQUA FESTA' and the 'FLYFISH' word component of Woosung IB's registration.

There have been similar cases where the main issue was whether a 3D shape functions as a trademark or merely as a design. In a scope confirmation trial, the IP High Court rendered a decision on February 14, 2025 holding that the shape of a gummy did not function as a source identifier. RiGO Trading S.A.("RiGO"), the manufacturer of gummy bears under the name "Haribo," had registered a 3D trademark for the shape of the Haribo gummy in 2016 by proving secondary meaning of the shape. RiGO sent a warning letter to Weeny Beeny in 2022, arguing that Weeny Beeny's gummy product has a similar shape and that their sales fell within the scope of RiGO's 3D trademark. Thereafter, Weeny Beeny filed a negative scope confirmation trial, asserting that Weeny Beeny's sales of their gummy does not fall within the scope of RiGO's 3D trademark. The IP High Court held that the bear shape used by Weeny Beeny functioned only as a product design, not as a source identifier. The court pointed to the fact that Weeny Beeny sold the bear shaped gummy with many other different shaped gummies, such as cola bottles, worms, fruits, and hearts, in a "Pick & Mix" manner, and multiple brands offered gummy products in different bear shapes. The court also highlighted that RiGO used the word mark "HARIBO" very prominently on the packaging of every one of its jelly products, which lowered the likelihood that its gummy shape was perceived by consumers as RiGO's trademark. In addition, the court identified visual differences between the compared gummies in terms of the contours, facial features, and overall proportions, while noting the long-standing presence of similar bear-shaped gummies in the Korean market.

RiGO's Registered 3D trademark (Reg. No. 40-1183780)	Weeny Beeny's product
	

Further, in May 29, 2025, the IP High Court invalidated a registration for 3D trademark for crayons, ruling that the shape was a common design rather than a source identifier. Ms. Hwang, the representative of a company named Ddangkong Press, registered a 3D trademark for a crayon. The petitioner, a company named Morning Glory, filed an invalidation action against Ms. Hwang's 3D trademark, arguing that it lacked distinctiveness and could not function as a trademark since it was merely the shape of a crayon. The IP High Court found that crayons are generally produced by a casting method in which a mixture of pigments and oil-based wax is melted, poured into a mold, and solidified; due to this manufacturing method, crayons in a variety of diverse shapes exist. Considering the diverse shapes of crayons, Ms. Hwang's 3D trademark can be viewed as falling within the scope of what can be adopted for crayons in the marketplace, and it was determined that consumers are highly likely to perceive this 3D trademark as a design rather than as an indication of source. The court also emphasized that because Ms. Hwang's product was marketed for its functional benefits, such as being easy for children to grip, consumers were more likely to view the shape as a useful feature rather than a trademark.

Ms. Hwang's Invalidated 3D trademark (Reg. No. 40-1668013)


The Supreme Court dismissed the appeals against both of the above two cases without examining the merits.

It is important to note that in cases where similar 3D shapes had become common in the marketplace, where a word mark had been prominently used on the products, or where the trademark owner's product had been promoted for its functional advantages (for example, being easy to grip), courts have tended to find that the 3D shape at issue functioned as a product design rather than a source identifier. In those cases, the 3D trademark registration involved was

invalidated (in invalidation actions) or its scope of protection became narrower as a result. By contrast, if a 3D trademark owner can demonstrate exclusive use of its shape over a long period of time, courts appear more willing to recognize it as a trademark, even if the brand owner also uses a word mark on its product.

Accordingly, for companies with iconic or highly distinctive product designs, it is crucial to vigilantly monitor and enforce their 3D trademarks against competitors using similar 3D shapes. It is also advisable to refrain from putting too much emphasis on functional features of the shape when advertising the product. Further, since 3D shapes are protectable under both 3D trademark and design registrations, we recommend additionally securing a 3D trademark registration for the shape if it also functions as a source identifier. This is because while design rights provide robust protection for a fixed term, a 3D trademark can be renewed indefinitely and the proprietary rights in the product's signature shape can be protected long after the design registration expires.

NEWS

Ranked “Band 1” in All Nine Areas, 44 “Leading Individuals” Recognized – Chambers Global 2026

In the 2026 edition of *Chambers Global*, Kim & Chang was once again the only Korean law firm ranked “Band 1” in all nine practice areas that were surveyed for Korea. In addition, in the Global Market Leader ranking table, our firm was ranked “Band 5” in the Arbitration (International) category for the sixth consecutive year. In the individual categories, 44 of our attorneys and patent attorneys were recognized as “Leading Individuals,” demonstrating our market-leading capabilities across a wide range of fields.

About Chambers Global: A global legal market assessment directory published annually by the world-renowned legal media Chambers and Partners, *Chambers Global* conducts extensive investigations based on law firms’ submissions, interviews with key clients and partners, and its own research and data analysis to name outstanding law firms and lawyers in more than 200 jurisdictions around the world.

The following details our 2026 rankings.

Firm Rankings

Global Market Leader

- Arbitration (International): Band 5

Asia-Pacific Region

- Arbitration (International): Band 4
- Climate Change: Band 2

South Korea (“Band 1” in all nine categories surveyed for Korea)

- Banking & Finance: Band 1
- Capital Markets: Band 1
  - Capital Markets: Securitisation
- Corporate/M&A: Band 1
  - Corporate/M&A: Foreign Expertise for North Korea
- Dispute Resolution – Arbitration: Band 1
- Dispute Resolution – Litigation: Band 1
- Intellectual Property: Band 1
- Intellectual Property – Patent Specialists: Band 1
- International Trade: Band 1

- International & Cross-Border Capabilities: Band 1

North Korea
- General Business Law: Spotlight[1]

China
- Corporate/M&A (International Firms) (Expertise Based Abroad): Spotlight

Leading Individuals in the Intellectual Property Practice Area

South Korea
- Intellectual Property: Jay (Young-June) Yang, Young Kim, Duck Soon Chang, Sang-Wook Han, Seong-Soo Park, Yu-Seog Won, Minjung Park, Cheonwoo Son, Chun Y. Yang, John J. Kim

1 A "Spotlight" ranking is given to firms or individuals where the table does not have numerical rankings.

"Tier 1" in All 17 Practice Areas – The Legal 500 Asia Pacific 2026

In the 2026 edition of *The Legal 500 Asia Pacific*, Kim & Chang was the only Korean law firm to be recognized as "Tier 1" in all 17 areas surveyed for Korea.

Moreover, 54 of our attorneys, patent attorneys, and tax attorneys/CPAs were recognized in the following individual categories, highlighting our firm's capabilities across various fields: "Hall of Fame" (three professionals), "Leading Partners" (32 professionals), "Next-Generation Partners" (16 professionals), and "Leading Associates" (three professionals).

The Legal 500 Asia Pacific, a market-leading law firm directory published by renowned UK legal publisher Legalease, conducts extensive research on around 30 countries in the Asia-Pacific region based on submissions from law firms and interviews with partners and clients, and announces law firm rankings across major practice areas.

Below are the details of our rankings this year:

Firm Rankings

South Korea ("Tier 1" in all 17 practice areas)

- Antitrust and Competition
- Banking and Finance
- Capital Markets
- Corporate and M&A
- Dispute Resolution
- Fintech and Financial Service Regulatory
- Insurance
- Intellectual Property
- Intellectual Property – PATMA
- International Arbitration
- Labour and Employment
- Projects and Energy
- Real Estate
- Regulatory – White-Collar, Compliance and Investigations
- Shipping
- Tax
- TMT

Lawyer Rankings in the Intellectual Property Practice Area

Leading Partners

- Intellectual Property: Jay (Young-June) Yang*, In Hwan Kim, Won Kim
- Intellectual Property – PATMA: Young Kim, Chul Hwan Jung, Monica Hyon Kyong Leeu

Next Generation Partners

- Intellectual Property: Minjung Park
- Intellectual Property – PATMA: Kang Kwon

Leading Associates

- Intellectual Property: Jongmin Lee

1 Hall of fame: individuals who have received constant praise from their clients for their continued excellence.

Kim & Chang Ranked Among Top Trademark Firms in WTR 1000 2026

Kim & Chang has once again been recognized as one of the top trademark law firms in Korea by World Trademark Review (WTR), earning the top “Gold Band” ranking in the categories of Enforcement and Litigation and Prosecution and Strategy, and also ranked as the “Highly Recommended” firm in the Licensing and Transactions category in the fifteenth edition of WTR 1000 – The World’s Leading Trademark Professionals.

In addition, 22 Kim & Chang attorneys – Alexandra Bélec, Duck Sook Chang, Hyun-Jin Chang, Sue Su-Yeon Chun, Min Kyoung Jee, Seung Jun Ji, Martin Kagerbauer, Angela Kim, Dong-Won Kim, Sung-Nam Kim, Won Kim, Ann Nam-Yeon Kwon, Jason J. Lee, Ji Eun Lee, Sophia Seunghee Lee, Clare Ryeojin Park, Minjung Park, Ki Beom Park, Sun Young Park, Dae Hyun Seo, Cheonwoo Son, and Jay (Young-June) Yang – were recognized as leading practitioners.

WTR 1000 is the first and only definitive guide exclusively dedicated to identifying the world’s leading trademark professionals. Their rankings are based on in-depth research and interviews with hundreds of trademark specialists across the globe.

World Trademark Review 1000 2026

Newsletter

A Quarterly Update of Korean IP Law & Policy

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