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PATENT

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PATENT

Korean Courts Begin to Define When to Apply Enhanced Damages for Willful Patent Infringement

By Injae LEE, Da Woon KIM and Mikyung (MK) CHOE

Korea's punitive damages regime for patents was introduced through Article 128(8) of the Patent Act, effective July 9, 2019, allowing courts to award up to three times actual damages for willful infringement of a patent or exclusive license. A more recent amendment raised that ceiling to five times actual damages for willful infringement after August 21, 2024.

However, because the regime is still relatively new and precedent remains limited, guidance for exactly when and how to apply enhanced damages when willful infringement is found has been lacking. Recently issued decisions are beginning to establish concrete standards and practical guideposts for decision-making. The following summarizes the emerging standards for assessing willfulness, the factors courts weigh in setting the enhancement amount, and the implications for IP management strategy.

1. The Standard for Willfulness

"Willful" infringement means continuing an act with knowledge that it will result in patent infringement, and it encompasses not only definite intent to infringe, but also willful blindness to infringement. Because an infringer's internal state is rarely susceptible to direct proof, courts assess willfulness comprehensively from indirect facts bearing a substantial connection to intent, applying logic and the rules of experience (*see* Supreme Court Case No. 2000Da67020 decided on March 9, 2001).

Recent decisions illustrate how this plays out. In one decision (IP High Court Case No. 2023Na11276 decided on October 31, 2024), the court treated as an indirect indicator of willfulness whether the infringer had learned of the patent's existence in advance through a prior business relationship with the patentee, and found particularly decisive that the infringer began unauthorized production and sales while engaging in licensing negotiations, and then continued infringing without permission after negotiations broke down. Persisting in infringement over a long period despite receiving a specific cease-and-desist notice from the patentee was likewise a key consideration.

Another recent decision (IP High Court Case No. 2022Na2183 decided on October 23, 2025) treated the infringer's past conduct, the development history of the product, and the specific manner of infringement as central indicators of willfulness. There, the infringer had earlier signed a memorandum of understanding during a prior dispute with the right holder, undertaking that it would "not produce any products similar to products produced by the plaintiff relating to the designs, utility models, and patents." The court reasoned that, from the time it signed that memorandum, the infringer must have clearly recognized it had a duty to verify the existence of competitors' rights when developing products. A related criminal conviction for patent infringement — in which the infringer had argued that the infringing product resulted from imitation through market research rather than independent development — further supported the finding of intent.

The same decision also rejected the infringer's defense that there could have been no willfulness because it had filed trials at the Intellectual Property Trial and Appeal Board (IPTAB) relating to the patent. The infringer had obtained a favorable negative scope-confirmation ruling from the IPTAB against the patent, and also filed for a decision of invalidation against the asserted patent which was ultimately dismissed, and thus argued that it lacked intent because it had relied on the scope-confirmation decision until the first-instance infringement judgment held otherwise. However, the court dismissed this argument, noting that (i) in light of the background and history of this case, the infringer should have fully been aware at the time the infringement suit was filed that its manufacturing and sales activities infringed the patents; (ii) the scope-confirmation ruling used a different claim construction than the infringement action; (iii) the scope and invalidation trials were only belatedly filed well after the patentee's cease-and-desist notice, and the invalidation petition was dismissed; and (iv) the infringer continued infringing before and after the rulings regardless of their outcome.

2. Factors Considered in Setting the Enhancement Amount

When setting the amount of enhancement under Article 128(8), a court first fixes the actual damages, and then determines the appropriate multiplier by comprehensively weighing the eight factors set out in Article 128(9): the infringer's position of dominance; the degree of intent and awareness of harm; the scale of the harm to the right holder and the economic benefit to the infringer; and the duration and frequency of the infringing acts, among others. In the 2023Na11276 decision, the court applied these eight factors to set enhanced damages at two times the actual damages.

The court's reasoning is instructive. It gave significant weight to the relative position of dominance and economic gap between the parties, noting that the patentee had been a subcontractor to the infringer and that the infringer's size and resources were far greater. Regarding the degree of intent and awareness of harm, the court found definite intent based on the infringer's launch of production and sales without authorization while being aware of the patent and having engaged in licensing negotiations, and the infringer's continued sales even after losing the invalidation and negative scope-confirmation actions following the cease-and-desist notice. Although the precise scale of harm to the patentee and exclusive licensee was not clearly established by the evidence, the court considered that the infringer's economic benefit could not be regarded as small, and that the infringement was long in duration and very frequent. Finally, on remediation efforts, the court found that, while there had been some product recalls and settlement attempts, the recall volume was small relative to sales, and the attempts at settlement were merely passive responses to the patentee's requests with no real compensation — and therefore could not be regarded as a sufficient effort at remedy.

3. Outlook and Practical Implications

The introduction of enhanced punitive damages and the increase of the maximum enhancement to five times actual damages have been positive changes to try to strengthen patent protection and the remedies available to victims of infringement. These changes have also elevated the question of willfulness — previously not a focal point in damages assessment — into one of the central battlegrounds in patent disputes. As precedent in this area remains limited due to the short history of the enhanced damages provisions, continued development of the governing legal principles for handling such damages will be necessary.

Going forward, businesses should pay close attention as courts articulate concrete standards for finding willfulness and clearer methodologies for assessing damages, and establish improved IP management strategies accordingly. In practical terms, patentees should build a willfulness record early — documenting the counterparty's prior knowledge of the patent, conduct during negotiations, response to cease-and-desist notices, and behavior surrounding IPTAB proceedings. Potential defendants, in turn, should treat licensing negotiations and cease-and-desist correspondence as moments of heightened exposure, and respond with due care.

IP High Court Holds That Foreign Online Listings Targeting Korean Consumers Can Infringe a Korean Patent

By Mikyung (MK) CHOE, Soo Yong LEE and Hyun-Jin CHANG

In a first-of-its-kind ruling, the IP High Court of Korea has held that a foreign company that advertises and sells products on a foreign e-commerce platform or through a website hosted on overseas servers can infringe a Korean patent, where the online activity is directed at consumers in Korea (Intellectual Property High Court, Decision No. 2023Na10693, May 22, 2025). The decision recognizes that posting an allegedly infringing product on an overseas online platform can constitute an “offer for assignment” (also known as an “offer for sale”) under the Korean Patent Act, bringing such conduct within the reach of Korean patent law even absent proven domestic sales. The parties did not appeal to the Supreme Court and the court decision became final and conclusive on June 10, 2025.

Background

Under the Korean Patent Act, an “offer for assignment” is one of the statutorily defined forms of “practice” of a patented invention, and an unauthorized offer for assignment can therefore constitute patent infringement. Patent rights are traditionally understood to be territorially bound, meaning that acts occurring outside Korea generally fall outside the scope of Korean patent protection. The central question in this case was whether conduct carried out abroad—specifically, posting a product for sale on a foreign website or e-commerce platform—could constitute a domestic “offer for assignment” under the Korean Patent Act.

The Facts

The plaintiff, an Italian corporation, holds Korean-registered patents relating to hosiery (sock) knitting machines. The defendant, a Chinese corporation, manufactured similar machines in China, and advertised and sold them on the Chinese e-commerce platform Alibaba and on its own website hosted on servers located in China. The plaintiff argued that the defendant’s posting of the machines for sale constituted an “offer for assignment” of products falling within the scope of the plaintiff’s patented invention, and sought an injunction against infringement together with damages.

Notably, the court found that the defendant's online activity was specifically directed at the Korean market: the listings provided detailed product information in Korean, allowed Korea to be selected as a delivery destination, offered the option of payment in Korean won (KRW), and provided a dedicated inquiry and customer-support channel for Korean consumers.

International Jurisdiction and Governing Law

Since this case involves an Italian corporation (plaintiff) that sought an injunction against a Chinese corporation (defendant) for infringement of the subject patents registered in Korea, the court first reviewed whether a Korean court has jurisdiction over this case. Applying Article 39 of the Act on Private International Law, the court reasoned that jurisdiction lies with Korean courts where the result of an infringement of a Korea-registered patent is likely to occur in Korea, and found that the dispute and the parties had a substantial nexus to Korea. On governing law, the court applied Korean law pursuant to Article 40 of the Act on Private International Law, under which the protection of intellectual property rights is governed by the law of the place of infringement.

Whether Posting on a Foreign Platform Is an "Offer for Assignment" in Korea

The court first compared the defendant's machines element-by-element against the asserted claims and found that the defendant's machines fell within the scope of the patented invention. The court then turned to whether the defendant had "practiced" the invention in Korea. As to whether the defendant "sold" the defendant's products in Korea, the court found that import-clearance records alone were insufficient to prove that the defendant's products had actually been transferred into Korea. Nevertheless, the court held that the act of posting the products for sale online amounted to a domestic "offer for assignment," reasoning that the conduct went beyond mere worldwide accessibility and instead constituted sales solicitation aimed directly at consumers in Korea.

In reaching this conclusion, the court emphasized the following indicators that the defendant's activity targeted the Korean market:

- Users can access the website (http://www.E.com) and change the language to Korean, and if the Korean language is selected, the site is redirected to http://korean.E.com;
- Product information is provided in Korean;
- Ability to order and receive delivery in Korea;
- Payment available in Korean won; and
- A dedicated inquiry and consultation channel for Korean consumers.

The Ruling

The court granted the plaintiff's request for injunctive relief, ordering the defendant to refrain from assigning or leasing the accused products and from making any offer for their assignment or lease (including display for such purposes). The decision reversed the lower court, which had dismissed the infringement claim on the view that the key elements of the offer for sale—the seller, the product, and the price—were located overseas. It is the first case that a Korean court has held that online postings by a foreign company outside Korea can qualify as domestic infringement where the foreign company effectively solicits business from consumers in Korea.

Significance and Key Takeaways

This decision is significant as the first ruling to clarify that cross-border commerce based on foreign servers or platforms may nonetheless be treated as an "offer for assignment" under the Korean Patent Act where it is accompanied by substantive business activity aimed at the Korean market. In effect, the court elevated the practical impact of the conduct and the boundaries of the market it targets over the formal location of the physical server. The ruling reflects a modernized application of the territoriality principle, adapting Korean patent enforcement to a digital economy in which globally accessible platforms are commonplace.

For clients, the principal practical implications are as follows:

- **Online offers can infringe, even without proven local sales.** Listings that target Korean consumers may amount to patent infringement in Korea regardless of where the seller or its servers are located.

- **Market-targeting indicators are decisive.** Korean-language pages, Korean won pricing, delivery to Korea, and Korean-language customer support are the type of factors courts will weigh in assessing whether conduct is an "offer for assignment" aimed at Korea.

- **Patent holders gain a stronger enforcement tool.** Rights holders can act against infringing products marketed into Korea via international platforms even where the seller is based abroad and direct sales are difficult to prove. Regarding litigation strategy, it will be important to specifically establish intentional business activity directed at the Korean market, rather than mere passive exposure of product information.

- **Foreign sellers are on notice.** Manufacturers and sellers using online platforms such as Alibaba, or operating multilingual websites, should assess Korean patent exposure where their listings are oriented toward Korean consumers.

IP High Court Rules that a Rejection Based on Different Compared Elements of the Same Prior Art from a Previous Rejection Is a New Rejection Ground Allowing Further Response and Amendment

By Kyoo Yeon LEE and CY Chooyoun KIM

Korea's IP High Court recently ruled that, if a rejection is issued during examination based on different elements of the compared prior art than previously compared with the claimed invention, the rejection is a new rejection ground giving the applicant another opportunity to submit a response and amendment.

Background

Under Korean patent examination practice, if an applicant submits a response (with or without an amendment) to a rejection, but the response/amended claims are deemed not to resolve the rejection, the applicant normally has limited scope for further amendments to the claims. However, a rejection based on incorrectly identified primary/secondary prior art or newly cited prior art (beyond conventional technology) does constitute a new rejection ground, for which the applicant is provided an opportunity to file another response and amendment. The recent IP High Court decision extends this practice to cases where a rejection is based on the same compared prior art, but on different elements of that prior art, if certain requirements are met.

IP High Court Decision

In this case, the Ministry of Intellectual Property ("MOIP") had issued a Final Rejection denying the inventiveness of a claimed invention directed to a multilayer coating comprising (i) a high clarity gel coat layer, (ii) a visual effect layer, and (iii) a color layer, on the grounds that layers (i), (ii), and (iii) corresponded to the gel coat layer, **the intermediate layer**, and **the back layer** of the compared prior art. The Intellectual Property Trial and Appeal Board ("IPTAB") upheld this Final Rejection, but on the grounds that layers (i), (ii), and (iii) of the claimed invention corresponded to the gel coat layer, **the ink composition layer**, and **the intermediate layer** of the prior art. In other words, MOIP and the IPTAB ruled that different elements of the prior art corresponded to layers (ii) and

(iii) of the claimed invention. However, since both rejections were based on the same prior art, this difference was not deemed a new rejection ground, and the applicant was not given an opportunity to submit a new response and amendment based on the IPTAB's reasoning.

On appeal, the IP High Court reversed the IPTAB's decision, holding that: (i) when different elements of the prior art are compared for the first time in issuing a rejection during examination, and the change alters the inventiveness assessment between the claimed invention and the prior art, this constitutes new rejection grounds impacting the applicant's response and amendment strategies, so the applicant should be given the opportunity to file a response and amendment accordingly; and (ii) the IPTAB's decision was overturned for changing the compared elements of the prior art from the Final Rejection, but not providing the applicant an opportunity to submit a further response and amendment in such instance.

Repercussions

The IP High Court's decision is significant for providing applicants more opportunities to respond based on the specific rejection grounds, even in the absence of newly cited prior art. Ultimately, the additional opportunity and time to formulate response and amendment strategies should help increase the applicants' chances of obtaining allowances.

Rethinking the Clock: Korea's Supreme Court Redefines When Employee-Invention Compensation Claims Arise—and When They Expire

By Seong-Soo PARK, Won KIM, Da Woon KIM, Sanggyu PARK and Mikyung (MK) CHOE

Overview

The Supreme Court of Korea recently issued a significant decision addressing the legal nature of an employee's right to claim compensation for a "service invention" (or employee invention) and the point from which the statute of limitations to initiate a claim begins to run (Supreme Court Decision No. 2025Da219742, June 24, 2026; the "Decision"). Because the ruling bears directly on how companies should administer employee-invention compensation and manage their internal compensation policies, we recommend that companies review the reasoning and implications of the Decision closely. The key points are summarized below.

For readers less familiar with the Korean regime, employee-invention compensation is governed by the Invention Promotion Act (the "IPA"), under which an employee who assigns the rights to a service invention to, or grants an exclusive license to, the employer is entitled to fair compensation.

1. Legal Nature of the Compensation Claim

The Supreme Court made clear that an employee's right to claim compensation for a service invention is a statutory (i.e., mandatory) claim—one recognized as a matter of policy to encourage service inventions—even where the employment contract or workplace regulations contain provisions governing such compensation. The Court reasoned that, even where a company's contract or workplace rules specify the form of compensation, the criteria for determining the amount, and the method of payment for purposes of the "fair compensation" required under the IPA, such provisions should—absent special circumstances—be construed as giving concrete shape to, or supplementing, the statutory compensation claim under the IPA, and do not alter the fundamental legal character of that claim.

In practice, claimants in compensation lawsuits have sometimes framed their claims as arising from a separate, independent contractual obligation based on the company's compensation regulations, distinct from the statutory claim under the IPA. Reaffirming its established position, the Supreme Court once again confirmed that the right to claim compensation for a service invention is a statutory claim.

2. Commencement of the Statute of Limitations Period

There has been some uncertainty in Korea regarding when the statute of limitations to bring an employee invention compensation claim begins to run. Under the Supreme Court Decision, the statute of limitations for a statutory claim begins to run as soon as the employer succeeds to the rights to the service invention, or the date specified by the employer in the company policy for payment of employee invention compensation. However, the Supreme Court held that where a company's compensation rules provide for payment—in this case, after an internal review and resolution procedure—upon the occurrence of payment triggers such as where the patent for the service invention has been "assigned or licensed for value, or has generated a tangible benefit through the exercise of the right," this constitutes setting an uncertain due date for the compensation. As a result, the Court ruled that, absent special circumstances, the employee's right to bring a compensation claim does not begin to run until payment of compensation is actually received, not when the invention is transferred to the employer.

3. Practical Implications

In light of the Court's reasoning, the existence of a company's own employee-invention compensation rules may well affect how the statute of limitations period runs going forward. From a company's perspective, this means that even where considerable time has passed since the employer succeeded to a service invention, a compensation issue may arise anew at the point the company later exploits the invention. Companies should therefore consider carefully whether their current compensation rules may need to be revised to account for the uncertainty surrounding the statute of limitations period and to secure legal stability.

The employee invention compensation system is fundamentally intended to stimulate employees' creative drive to invent while giving companies an opportunity for growth—thereby fostering a mutually beneficial relationship between labor and management. Accordingly, companies that currently operate service-invention rules and agreements should closely review whether their existing compensation rules should be amended, both to deliver fair compensation that continues to encourage inventive activity and to minimize unpredictability around the statute of limitations period while securing legal certainty. This is especially important for companies with active service-invention programs, which should establish in advance multifaceted and strategic measures to reinforce labor-management trust while enabling reasonable risk management at the corporate level.

MOIP Publishes Examination Guidelines for Semiconductor Inventions

By Dong Hyoung LEE and Sooho LEE

On March 9, 2026, the Ministry of Intellectual Property ("MOIP") announced specific patent examination guidelines (the "Guidelines") tailored for the semiconductor industry. As the field undergoes rapid advancements in miniaturization and integration—driven by technologies such as Extreme Ultraviolet (EUV) lithography, amorphous carbon hard masks, High Bandwidth memory (HBM), and next-generation AI chips—MOIP recognized a need for clear standards that reflect these technical characteristics. The Guidelines primarily deal with three patentability requirements in the Korean Patent Act ("Act"): i) enablement requirement (Article 42(3) of the Act), ii) claim description requirement (Article 42(4) of the Act), and iii) novelty and inventiveness requirements (Article 29(1) and (2) of the Act). Although the Guidelines are not substantially different from general prosecution practice, they provide semiconductor-specific examples to assist applicants in preparing Korean applications in this field.

I. Enablement Requirement

1. Overview

An invention must be clearly and specifically described in the written description such that a person of ordinary skill in the art ("POSITA") can easily practice the invention. The Guidelines emphasize that a POSITA must be able to accurately understand and reproduce the invention without "adding special knowledge."

2. Examples of Non-Compliance with the Enablement Requirement

The Guidelines provide the following examples where the enablement requirement is not met.

- **Unsupported Claimed Configurations:** A claim recites multiple possible configurations, but the written description lacks a clear technical realization for some configurations recited in the claim (e.g., a claim recites that the pressure sensor may be installed above or below an electrostatic electrode, but the written description fails to describe a specific manner in which the pressure sensor is installed below the electrostatic electrode to measure electrostatic force).

- **Technically Impossible Processes:** The written description describes a thin-film formation process that seems to be technically impossible to implement under the stated operational conditions in view of established scientific literature.

II. Claim Description Requirement

1. Overview

All claims in a patent application must be supported by the written description in the application ("Support Requirement") and be clear and concise ("Clarity Requirement").

2. Examples of Non-Compliance with the Support Requirement

The Guidelines provide the following examples where the support requirement is not met.

- **Unsupported Claim Terms:** A configuration or feature recited in a claim is absent in the written description (e.g., while the claim is directed to a composition containing xylene, the written description merely describes aromatic hydrocarbon compounds, without explicitly stating or even implying xylene).

- **Omitting or Broadening Essential Features:** The written description identifies a specific feature as indispensable to the technical solution, but that feature is either omitted in the claim or diluted into an unsupported abstraction (e.g., the specification identifies the technical task as introducing an adhesive that emits light upon UV irradiation and describes only a configuration that emits fluorescence upon exposure to UV light, but the claim broadly covers fluorescent materials, including those responsive to light outside the UV spectrum).

3. Examples of Non-Compliance with the Clarity Requirement

The Guidelines provide the following examples where a claim fails to meet the clarity requirement.

- **Ambiguous Claim Category:** A claim is directed to the "use" of a flexible substrate mount, leaving it unclear whether the claim is classified as a product or a process invention.

- **Indefinite Relative Terms:** Terms such as “low” (e.g., “low resistance”) or “suitable” (e.g., “suitable material”) render a claim indefinite when they fail to provide a specific standard of comparison or a degree.

- **Inconsistencies between Related Claims**: Inconsistencies in claim limitations between related claims (e.g., a preceding claim specifies that the ground-to-signal ratio is smaller in the inner zone than in the edge zone, whereas a subsequent dependent claim states that the ground-to-signal ratio is larger in the inner zone than in the edge zone).

III. Novelty/Inventiveness Requirements

1. Examples of Compliance with the Inventiveness Requirement

The Guidelines provide the following examples where the inventiveness of the claimed invention is recognized.

- **Prior Art Lacking Specific Details or Effects:** A prior art reference merely discloses general concepts without disclosing specific structure or effects of the claimed invention (e.g., although the prior art reference is similar to the claimed invention in providing a double-layer film, it does not disclose a claimed feature of forming the lower layer of the double-layer film from an aluminum-containing film, nor does it suggest the technical effects of the claimed invention, such as the ease of forming contact holes and excellent resistance to moisture penetration).

- **Different Problem-Solving Principles:** Combining features of a secondary prior art reference with the basic structure of a primary prior art reference is not obvious to a POSITA if the problem-solving principle of the secondary prior art reference differs from that of the claimed invention (e.g., a claimed invention uses a stepped portion with an adhesive to bond a lens to a package body, whereas a secondary prior art reference discloses a groove formed solely for the purpose of fitting the lens without using any adhesive).

2. Examples of Non-Compliance with the Inventiveness Requirement

The Guidelines provide the following examples where the inventiveness of a claimed invention is denied.

- The claimed invention could have been easily derived by applying common general knowledge to the prior art reference (e.g., although a prior art reference differs from a claimed invention in that it does not explicitly disclose that interlayer insulating films are oxide films of different densities, the use of oxide or nitride films as interlayer insulating films is merely a well-known, conventional technology in the semiconductor field; furthermore, forming first and second interlayer insulating layers under different times and conditions—resulting in differing physical properties such as density—is also obvious or corresponds to nothing more than well-known, conventional technology).

- A POSITA would find it obvious to adopt a fluorescent material disclosed in a secondary prior art reference for a component in a primary prior art reference since (i) both references belong to the same technical field, (ii) the material disclosed in the secondary reference can be adopted for a component of the primary reference without altering the basic structural configuration of the primary reference, and (iii) there is no evidence suggesting such a substitution would be difficult or intentionally excluded. Accordingly, the claimed invention could have been easily derived in view of the combination of the references.

3. Novelty/Inventiveness of a Product-by-Process (PBP) Claim

For PBP claims, patentability is evaluated based on the structure or properties of the resulting product—construed in light of the entire claim language (including process steps)— rather than on the manufacturing process alone. In addition, novelty and inventive step must be assessed through a comparison with prior art known before the filing date.

For example, the Guidelines provide the following case example where the novelty of a PBP claim is denied:

- Although a manufacturing method recited in the claim specifies that a second gas supply hole is formed by drilling, this method does not affect the structure or properties of the gas supply hole. Therefore, the feature of “the second gas supply hole being formed by drilling” refers to the second gas supply hole itself. Since this is substantially identical to an upper hole formed in an upper plate of a prior art reference, the claimed invention lacks novelty over the prior art reference.

IV. Implications

The Guidelines impose stricter enablement and support requirements, demanding clear technical realization for all claimed semiconductor features while prohibiting vague or indefinite terms, which should be considered when preparing Korean applications in this field.

Korea Boosts Tech Protection: New Monetary Rewards for Preventing and Reporting Overseas Trade Secret Leaks

By Seok Hee LEE, Seung-Chan EOM, Peter K. PAIK and Beth JANG

To strengthen the protection of trade secrets, the amended Unfair Competition Prevention and Trade Secret Protection Act ("UCPA") took effect on May 28, 2026. This amendment introduces a monetary reward system designed to incentivize the early detection, reporting, and prevention of overseas trade secret leaks.

- **Expanded Eligibility (UCPA Article 16):** Rewards are now available to individuals who report overseas trade secret leaks, as well as to those who make significant contributions to preventing them. Under the amended UCPA, specific details regarding the criteria, methods, and procedures for paying rewards are delegated to the Presidential Decree.

- **Covered Offenses (UCPA Article 18(1)):** The reward system specifically targets crimes involving the overseas leakage or misappropriation of trade secrets – that is, the infringement of trade secrets that are used abroad, or that the infringer knows will be used abroad. Under this article, targeted offenses include: (i) acquiring, using, or leaking trade secrets for the purpose of obtaining unfair profits or causing damage to the trade secret holder, or continuously retaining them despite a demand for their return or deletion; (ii) acquiring trade secrets through unfair means such as theft, deception, or coercion; and (iii) acquiring or using trade secrets with the knowledge that an act falling under the aforementioned categories was involved.

- **Specific Reward Criteria (Enforcement Decree & Payment Regulations):** Pursuant to the UCPA amendment, the Enforcement Decree and the "Regulations on the Payment of Rewards for Trade Secret Protection" were concurrently implemented to establish detailed payment standards:

  - **Rewards for Reporting:** Up to KRW 200 million per case may be awarded to individuals who report violations or significantly contribute to investigations conducted by the Ministry of Intellectual Property ("MOIP"). An application for the reward must be submitted to the Minister of MOIP within 5 months from the date the case is forwarded for prosecution.

  - **Rewards for Merit:** Up to KRW 5 million can be awarded to individuals with a proven track record (3+ years) of contributing to the prevention of overseas leaks, selected either *ex officio* by the Minister of MOIP or through institutional recommendations.

  - **Reward Calculation & Additional Rewards:** The reward amount is based on the seriousness of the violation and the applicant's contribution. Furthermore, once a court judgment becomes final and conclusive, an additional reward may be paid through a review process within 6 months, factoring in the final sentencing.

- **Application Timeline:** For rewards based on merit, an individual's career history accumulated prior to the enforcement date (May 28, 2026) is recognized toward the three-year eligibility requirement. In the case of rewards for reporting, the system applies to cases starting with the first case formally registered as a criminal matter by MOIP after the enforcement date, so that violations committed prior to the enforcement date can be subject to these rewards.

Legislative Background and Strategic Implications for Businesses

Previously, while financial rewards based on merit and reporting were available for "industrial technology" under the Act on Prevention of Divulgence and Protection of Industrial Technology, the old UCPA reward system was strictly limited to the distribution of counterfeit goods bearing registered trademarks, offering no separate rewards for trade secret offenses. This amendment finally establishes a solid legal framework for rewarding individuals who protect trade secrets, facilitating the early detection of leaks. This measure directly addresses an issue of growing concern, given the increasingly severe consequences of technology theft.

With substantial financial rewards now authorized by the UCPA and its subordinate regulations, hidden corporate disputes are more likely to come to light through proactive reporting. For multinational companies operating in or partnering with South Korea, this shift creates a critical incentive to strengthen internal compliance.

To mitigate potential risks under this heightened enforcement environment, companies should ensure robust compliance mechanisms are in place. Specifically, organizations must carefully verify that no third-party trade secrets are inadvertently held or utilized within their operations, while rigorously reviewing all external technical data to prevent infringement on another entity's proprietary rights.

Kim & Chang will continue to monitor these developments and provide timely updates on policy trends affecting your business.

Korean Court Invalidates Generic Drug Trademarks in Landmark Pharmaceutical Brand Protection Case

By Sung-Nam KIM and Jason J. LEE

In a significant victory for pharmaceutical brand protection, Korea's Intellectual Property High Court invalidated the trademark registrations of three generic hepatitis B drug brands, finding that they improperly imitated an original pharmaceutical trademark and were filed in bad faith. The case was appealed to the Supreme Court, but the Supreme Court dismissed the appeal without reviewing the merits.

Background

Gilead Sciences ("Gilead") launched its hepatitis B treatment drug under the trademark "VEMLIDY" globally in 2016 and in South Korea in 2017. Subsequently, three Korean generic pharmaceutical companies, Dong-A, Daewoong, and Samil Pharmaceutical, filed trademark applications for "Vemlia," "Vemliver," and "Vemlino" respectively — all containing the "Vemli" portion of the original mark — and launched their generic hepatitis B treatments in 2023 after their applications were registered. Gilead initiated invalidation actions against these marks before Korea's Intellectual Property Trial and Appeal Board (IPTAB). After the actions were dismissed at the administrative level, the cases were appealed to the IP High Court.

Key Issues and Arguments

The defendants argued that "VEM" was a weak, descriptive component referencing "Vaccine Escape Mutant," a medical term, and that the shared portion therefore lacked distinctiveness. They contended that when viewed as wholes, the marks were not similar. To rebut the defendants' claims, Kim & Chang conducted rigorous surveys which demonstrated that 95-97% of the respondents, including both general consumers and medical professionals, were unfamiliar with "VEM" as a medical abbreviation. Furthermore, Kim & Chang effectively pointed out that, upon reviewing each of the approximately 40 papers submitted by the defendants, they cannot be deemed to prove that VEM is commonly used as a medical abbreviation.

Court's Decision

The IP High Court ruled in favor of Gilead on all counts. The Court first established that when assessing trademark similarity for pharmaceutical products, which include both prescription and over-the-counter drugs, the perceptions of general consumers, as well as medical professionals, must be considered.

Regarding the distinctiveness of "VEM," the Court found that while the term appears in some medical literature as an abbreviation for "Vaccine Escape Mutant," it is not a standardized abbreviation, does not appear in specialized abbreviation databases, and is used as an abbreviation for various other medical terms. The Court noted that other pharmaceutical companies using the same active ingredient did not incorporate "VEM" in their product names, indicating it should not be considered descriptive or generic for the relevant products. The Court highlighted in particular that, according to Kim & Chang's survey results, only 6.3% of doctors, 3.3% of pharmacists, and 3% of the general public responded that they knew the meaning of 'VEM,' and even among those who claimed to know it, their responses were inconsistent.

As for market confusion, the Court accepted evidence of actual confusion in the marketplace, including prescription software screenshots showing that entering "vem" in search fields simultaneously displayed both the original and generic products. The Court rejected the defendants' survey methodologies, finding procedural flaws in their approach of presenting product packaging photos rather than comparing the trademarks directly.

On the question of bad faith, the Court found that the prior-used trademarks were well-known to domestic and international consumers at the time the defendants' applications were filed, and the defendants were clearly aware of their existence. The Court noted that "VEMLIDY" was launched after Gilead's earlier hepatitis B treatment "Viread," which helped the new trademark gain recognition faster than typical new products. The Court also found that "VEMLIDY" is a highly creative coined mark with no similar usage in the market, and the defendants' adoption of the "Vemli" portion constituted imitation.

Since receiving the decision, Dong-A, Daewoong, and Samil Pharmaceutical have changed their marks to Tafria, Tafvir and TenoS, respectively.

Significance of the Decision

There has been a troubling trend in Korea where generic pharmaceutical companies adopt trademarks that intentionally evoke the original brand's name. Historically, Korean courts have been somewhat reluctant to find these generic marks similar to the originals, a notable example being the case where "GLITAMIN" was ruled dissimilar to "GLIATILIN".

This decision establishes an important precedent for protecting creative pharmaceutical trademarks in Korea, reinforces the importance of survey evidence in trademark disputes, and strengthens safeguards against the adoption of opportunistic branding strategies for generics. Notably, the trademark registrations were invalidated despite the generic products already being in use in the market, meaning past use may be recognized as infringement. The finding of bad faith also raises the possibility of enhanced damages, creating significant market implications for the pharmaceutical industry.

Kim & Chang represented Gilead throughout the proceedings, combining rigorous survey research, strategic legal arguments, and comprehensive factual documentation to secure this landmark victory.

MOIP Releases Guidelines on AI-Assisted Design Applications: “The Creator Must Be Human”

By Seung Jun JI and Beth JANG

As the use of Artificial Intelligence (AI) in design creation continues to expand, the Ministry of Intellectual Property (“MOIP”) recently released guidelines to clarify the standards for registering AI-assisted designs (the “Guidelines”). These Guidelines were prepared to mitigate confusion among industry applicants navigating rapid advancements in AI, and help them secure valid design rights.

The core principle of the Guidelines is that while AI-assisted designs are registrable, AI should only have been used as a tool in the design creation process. Under the current Design Protection Act, “the person who creates a design or his/her successor shall have the right to obtain a design registration”, which means that only a natural person (a human) can be recognized as the creator. Accordingly, the Guidelines stipulate that only individuals can be named on an application as the creator. If an AI system name - such as ChatGPT or Midjourney - or “AI developers” is identified as the creator, the application will be rejected.

Furthermore, for an AI-assisted output to be a valid design right, the creator must have made a “substantial contribution” to the output. According to the Guidelines, results obtained by inputting broad, simple commands into an AI, such as “Make a cool chair design,” will not be recognized as reflecting human creativity. Conversely, a substantial contribution will be acknowledged if an individual used specific prompts that directly affect the shape, pattern, or color of the design, or creatively refined the AI-generated output to aesthetically enhance it.

Under existing practice, if an examiner has a reasonable basis to conclude that the applied-for design was created solely by AI or without substantial human contribution, the examiner may issue a preliminary rejection and request information from the applicant about the creation process. Since legal disputes could also potentially arise, the Guidelines recommend that applicants carefully document and maintain evidence that prove there was human intervention during the development of the design. Comprehensive records such as initial idea sketches, details of the AI models used, logs of prompt inputs and modifications, and the subsequent retouching process applied to the AI-generated outputs should be retained.

The Guidelines also highlight several invalidation risks that arise through the use of AI to create designs. These include the risk of a design being publicly disclosed and novelty being lost during the AI's learning (training) process; the risk of the AI generating a design that is overly similar to an existing prior art; and the potential for structural inconsistencies between the multi-view drawings (e.g., front, side, and rear views) generated by the AI.

The Guidelines do not, however, introduce a duty to disclose to the MOIP whether the application relates to an AI-assisted design and practically speaking, the likelihood of a preliminary rejection being issued by an examiner is low since identifying AI intervention in the creation process is still challenging. However, there is a latent risk of a dispute, such as an invalidation action arising after registration. The design right could be invalidated if the creation process cannot be proven through legal discovery or if the lack of human intervention is exposed by an internal whistleblower. Therefore, for long-term, stable intellectual property protection, applicants should ensure their internal AI usage policies align with the intent of the Guidelines and systematically monitor and document their design creation processes.

Korea Allows Transfer of <.KR> Domain Names to Foreign Rights Holders Not Having a Korean Address

By Seok Hyun KWON and Martin KAGERBAUER

Korea’s Domain Name Management Rules (the “Rules”) have been amended to introduce exceptions to the general requirement that registrants of <.kr> domain names be domiciled in Korea.

As of July 1, 2026, even foreign rights holders without a Korean address can request the transfer of a disputed <.kr> domain name if the transfer results from (i) an IDRC decision, (ii) a court judgment, or (iii) an arbitral decision.

Prior to the amendment, foreign rights holders without a Korean address could only seek the cancellation of a disputed domain name registration. If the foreign rights holder wanted to register the domain name, they had to have a local agent register and hold the <.kr> domain name on their behalf. However, this approach was not only impractical, it carried the risk of a third party registering the domain name before the Korean agent was able to complete the registration process.

The amendment addresses these concerns and enhances the effectiveness of Korea’s domain name dispute resolution framework.

NEWS

Kim & Chang Obtains Five Recognitions Including "South Korea Firm of the Year" – Benchmark Litigation Asia-Pacific Awards 2026

Kim & Chang was named as the "South Korea Firm of the Year" at the *Benchmark Litigation Asia-Pacific Awards 2026*. Our firm also won the "Tax Firm of the Year" award in the Practice Area Firm Awards, which recognize an outstanding law firm in each sector.

In addition, attorney Janghoon Kim was named "South Korea Lawyer of the Year" and "Insolvency Lawyer of the Year," while attorney Harold Noh received the "Client Choice Awards: South Korea Lawyer of the Year" award. These achievements highlight the outstanding expertise and capabilities of our attorneys.

The following list details the awards we won this year.

- South Korea Firm of the Year (recognized nine times in total)
- Tax Firm of the Year
- South Korea Lawyer of the Year: Janghoon Kim
- Insolvency Lawyer of the Year: Janghoon Kim
- Client Choice Awards: South Korea Lawyer of the Year: Harold Noh

About the Benchmark Litigation Asia-Pacific Awards: This is an annual awards ceremony hosted by Benchmark Litigation, a global legal media outlet under the Legal Benchmarking Group. The *Benchmark Litigation Asia-Pacific Awards* selects notable dispute resolution cases and the law firms/lawyers who have conducted them in 14 countries across the Asia-Pacific region. This year's awards ceremony took place in Beijing on July 2, 2026.

Kim & Chang Ranked Again as a Tier 1 Firm in Korea – Managing IP STARS 2026

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 2026. This marks the 24th 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, 15 Kim & Chang professionals have been recognized as “IP Stars,” “Notable Practitioners,” and “Rising Stars.” Duck-Soon Chang, Hyun-Jin 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,” Eun Jeong Cho, Yunki Lee, Amy Seung Hyun Oh, and Chun Y. Yang as “Notable Practitioners,” and Seung-Chan Eom and Jongmin Lee as “Rising Stars,” and Sung-Nam Kim as one of the “Top 250 Women in IP.”

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 2026

Kim & Chang Named in IAM Patent 1000: The World’s Leading Patent Professionals 2026

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 fifteenth edition of the Intellectual Asset Management (IAM) Patent 1000: The World’s Leading Patent Professionals.

In addition, 28 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, Jee Hyung Hong, Sanghyun Lee

Prosecution

- **Highly Recommended:** Yongrok Choi, Sang Young Lee, Man-Gi Paik, Flora Qiqiao Zhang
- **Recommended:** Song Mi Lim, Jun Hyuk Seo

Trade Secrets

- **Recommended:** Hye Won Chang, Seok Hee Lee

Transactions

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

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

Newsletter

A Quarterly Update of Korean IP Law & Policy

KIM & CHANG

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