

Lee &amp; Ko

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Lee & Ko's *IP Perspective* is the Lee & Ko IP Group's periodic report aimed at providing news and information about notable decisions, major trends and key developments in Korea's IP legal landscape to our international readership. In addition to providing factual information, *IP Perspective* augments such facts with Lee & Ko's own in-depth analyses, opinions, and expert outlook on the latest IP and legal news.

In this issue of Lee & Ko's *IP Perspective*, we discuss the following topics:

1. **Review of Korea's Patent Term Extension ("PTE") System, including the current status of the system, recent trends of PTE-related decisions, and proposed changes by the Korean National Assembly.** 02
2. **Overview of the "Unauthorized Use of Accomplishments" Provision under Korea's Unfair Competition Prevention Act ("UCPA") and the recent UCPA-related judgment trends.** 08

*Lee & Ko's Intellectual Property Group provides leading-edge legal counseling based on a wealth of real-world experience in the protection of ideas. Grounded in decades of foundational expertise with protecting IP owners and litigating unfair competition matters, we work with our clients to address their most challenging legal needs in Korea. If you need our team's assistance with cross-border IP issues and legal strategies, please contact any of the key members of Lee & Ko's Intellectual Practice Group.*

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## Review of Korea's Patent Term Extension System and Recent Trends

••• **Focusing on: (1) PTE Eligibility; (2) PTE Period; and (3) Scope of PTE Rights**

### 1. Introduction

Patentees holding patent rights relating to pharmaceutical products often aim to extend their market exclusivity by obtaining Patent Term Extension ("PTE") of patents covering their products. Conversely, generic companies seeking prompt market entry have a vested interest in opposing PTE.

Given these dynamics, the key points of dispute between patentees and generic companies are: (i) which patents are eligible for PTE ("PTE eligibility"); (ii) how long the term should be extended under PTE ("PTE period"); and (iii) what scope of rights should be granted during the extended patent term ("PTE scope").

The Korean government has been attempting a statutory harmonization with global standards while balancing innovation-fostering patent protection rights with the public interest served by lower-priced generic products. The PTE system, which emerged from these policy considerations, represents one of the most dynamic and constantly evolving areas of Korea's patent policy.

For example, the Korean National Assembly recently passed a bill proposing to introduce additional requirements for PTE eligibility and the PTE period, and the Korean Intellectual Property Office ("KIPO") is currently reviewing changes to the appellate system for rejected PTE requests.

This article examines the current status of Korea's PTE system and the latest trends that patentees should keep in mind for a global IP strategic framework.

### 2. Overall Status of the Korean PTE System

Similar to policies in other areas of IP, patent offices worldwide are seeking to harmonize their PTE systems.

In Korea, KIPO introduced the so-called "new substance-first approval" requirement in 2013 as for PTE eligibility. This 2013 requirement is comparable to the notion of "first commercialization" in the United States PTE policy and the European SPC systems. Under the amended Korean Patent Act ("KPA") that will come into effect later this year, patentees should choose a single patent among multiple patents covering its approved pharmaceutical product, which is similar to the approach used in the United States PTE system.

Despite these amendments, however, there are still significant differences between the Korean PTE system and those of the United States and Europe with regard to the PTE period and the scope of the extended rights.

As for PTE period, in the leading Betmiga® case, the Korean Supreme Court ruled that the length of the PTE period under Article 89 of the KPA is “the time period during which the patented invention could not be practiced.” The Korean Supreme Court further defined the PTE period as the time period from the initiation of a marketing approval (“MA”) process (usually, the start date of clinical trials) or the patent registration date, whichever is later, to the MA date. This PTE period interpretation is akin to the definition under the Japanese PTE system. Despite this technical definitional similarity, however, the average length of PTE periods granted in Korea is much shorter than those in other jurisdictions, including Japan, because the KIPO takes a restrictive approach in calculating the PTE period. For PTE calculation purposes, only the periods during which clinical trial organizations and the Ministry of Food and Drug Safety were conducting related activities count toward the PTE period. In practice, the statutory PTE period - defined as “the time period during which the patented invention could not be practiced” - will be determined according to the Public Notification on the Administration of the Patent Term Extension (the “Public Notification”) from KIPO rather than the Supreme Court’s interpretation of the statute.

As for PTE scope, in the leading Vesicare® case, the Korean Supreme Court held that the scope of rights should be determined by focusing on the sameness of the active ingredient, the medicinal use, and therapeutic effects. Based on these standards, the Court found that the PTE scope of a compound patent covers different salt forms of the approved product. This ruling on the enforceable scope regarding API is similar to the enforceable scope of patent right by PTE/SPC in the United States and Europe. The Korean system differs significantly from its United States and European counterparts, however, in that the majority view takes the position that the PTE right should be limited to the first approved use (indications) as well as the approved API. That is, in the United States and Europe, any medicinal uses approved for the product at issue without any limitations thereon can be protected by the patent extended by PTE/SPC.

### **3. Recent Trends of Korea’s PTE System**

#### **A. PTE eligibility**

First, according to the amended KPA, the single-patent selection requirement, whereby only one patent among multiple patents covering an approved product may receive PTE, will be implemented in the second half of 2025. According to the new statute, applicants (patentees) should select only one patent to benefit from PTE among the patents that are eligible for PTE since the related marketing approval is granted after the implementation of the amended KPA. Accordingly, patentees should carefully determine which patents should be extended.

Second, regarding PTE eligibility, a recent Supreme Court decision in the Plegridy® case (wherein the API of the approved drug product at issue is a pegylated drug) highlights another key issue. The Supreme Court ruled that a pegylated drug may not be eligible for PTE as long as the active moiety is found to be the same (having the same medicinal use/effect despite different PK profiles, such as long retention time of drug in blood due to pegylation) as the earlier approved drug (a non-pegylated form).

Although the “new substance-first approval” requirement is similar to the “first commercialization” requirement in the United States and Europe, the Korean Supreme Court ruling in the Plegridy® case suggests that the PTE eligibility for pegylated drugs will be different from the United States and Europe where a pegylated product is generally considered a new active substance.

Under this Korean Supreme Court interpretation, the KIPO is expected to reject PTE applications based on pegylated forms of biologics. In fact, we are already seeing cases in Korea where the KIPO has rejected PTE applications under the Korean Supreme Court’s reasoning.

Therefore, patentees who own patents directed to pegylated pharmaceutical products need to show different medicinal uses/effects of their pegylated drugs from the earlier approved unmodified forms if they aim to secure PTE of their patents.

Although the above Supreme Court ruling implies that a pegylated drug is not eligible for PTE, pegylation may result in a clearly different medicinal use/effect in some cases. In these specific cases, patentees may still argue for new active substance status even in the face of the Korean Supreme Court ruling. The Korean Supreme Court’s decision was grounded on the foundation that the pegylated drug in question merely offered a different pharmacokinetic profile while maintaining the same medicinal use.

## B. PTE Period

The KIPO’s calculation of the PTE period based on its Public Notification rules and regulations is notably restrictive and results in much shorter PTE periods compared to other jurisdictions.

It is important to note, however, that it has not always been calculated that way. Earlier KIPO public notifications allowed for a wider range of PTE periods, and, through a string of amendments to its public notifications, the KIPO has established a practice of increasingly limiting PTE periods.

Currently, in the Galvus® PTE case, the disputed issues are closely-related to the KIPO’s amendment to the calculation method of PTE period. In that case, the PTE of the patent at-issue was granted under the KIPO’s public notification issued in 2000 (“KIPO’s Former Public Notification”) and the granted PTE period is being hotly contested.

Since the PTE period under the KIPO’s Former Public Notification was substantially the same as that of the Japanese PTE system, the granted PTE period was longer than the period allowable under the current Public Notification. This PTE disparity was what prompted some generic companies to challenge the validity of the PTE of the Galvus® patent.

After more than 8 years of twists and turns, the case is now pending before the Korean Supreme Court. Since the IP High Court found all periods granted for PTE to be valid, if the Supreme Court upholds this appellate decision, the KIPO’s practice on PTE period calculation and the relevant provisions of the Public Notification may be amended going forward to expand the allowable time periods for PTE purposes.

Such a move will be welcome news for global patent owners with Korean patent interests.

On a separate but related issue regarding Korea's PTE period, according to the amended Patent Act, from the second half of 2025, Korea, like the United States, will be subject to a 14-year cap if the term of the extended patent exceeds 14 years from the date of approval of the drug product. The requirement for patentees to select only one patent to file a PTE application will be implemented in conjunction with this 14-year cap.

If the expected PTE term of each patent is the same as each other and is not limited by the 14-year cap, a longer exclusivity may be expected by the PTE of a later patent. In general practice, formulation or crystalline-form patents have a later term expiry date. Like many other jurisdictions around the world, the substance/compound patent is generally the strongest in terms of validity of rights.

Thus, in connection with the above two requirements, which will be newly-implemented from the second half of 2025, pharmaceutical patent holders in Korea should comprehensively consider various factors from the perspective of pharmaceutical patent protection, including the degree of strength of each patent right that can be extended and the length of the possible extension period, when pursuing a PTE application.

### C. PTE Scope (Enforceable Scope of Patent Right during Extended Patent Term)

The scope of rights during the extended patent term by PTE is stipulated by Article 95 of the KPA. It provides that the PTE scope is limited to only practicing the approved product for its approved medicinal uses.

In this regard, the Korean Supreme Court clarified in the Vesicare® case that the PTE scope should be determined by focusing on the active ingredient, its medicinal use and therapeutic effect of the approved product. The Korean Supreme Court then found that any salt-modified forms can be covered by the compound patent extended based on the MA of the approved product at-issue and where the API is a different salt.

Although the Supreme Court provided some clarity about how to assess the sameness of the active ingredients, uncertainties remain regarding how to interpret "the approved use.". These uncertainties are currently stirring controversy in Korea.

The following key points are worth pondering regarding "the approved use": (1) whether the use should be the first approved uses; and (2) whether the use means the specific approved indications or general concept of the medicinal use.

As of now, the latter is being disputed and tested in many cases, but patentees need to raise the former issue before moving to the latter one.

With respect to the former issue (referred to as "Issue 1"), although the majority view in Korea is that the PTE right should be limited by the first approved uses as well as

the first approved API, the language of Article 95 of the KPA does not clearly limit the use to be those approved first for the product. The statute merely states that the scope of patent right is limited to practicing the approved product for its approved uses. Historically, the PTE system was first established in the United States, and the relevant provision in 35 USC §156 (b)(1) also states that the scope of rights is limited to any approved use.

**35 USC § 156. Extension of patent term**

...

(b) ...

(1) in the case of a patent which claims a product, **be limited to any use approved for the product**

The limitation to approved medicinal uses was introduced in-line with the original purpose of the PTE, which was to extend patent rights directed to a pharmaceutical product.

No matter how broad the scope of the patent, the scope of rights during the patent term extended by the PTE was limited to the approved API, and there was no rational reason to further narrow this limited scope based on the first approved medicinal use.

Accordingly, patentees may need to raise questions regarding Issue 1 and the proper interpretation and purpose of Article 95 of the KPA in terms of PTE history.

Regarding the latter issue (referred to as "Issue 2"), one common strategy taken by generic companies had been to change the API of the patented product, such as changing the salt, to claim non-infringement of the PTE scope. With the Supreme Court decision in the Betmiga® case blocking this strategy, local generics in Korea are turning to another strategy by claiming differences in approved medicinal use.

Currently, hundreds of scope confirmation action cases against a product patent extended based on the approval of K-cab® product are pending before the IP High Court. In the first instance, the IPTAB ruled in favor of the patentee, and the Patent Court also ruled in support of IPTAB's decision. Specifically, the IPTAB held that:

- (1) although the specific indications asserted by the generics are different from the first-approved indications of the patented drug, all of them are based on the same pharmacological mechanism, which has been known before the patent at-issue;
- (2) the PTE scope is limited to practicing the invention directed to the approved product, which does not mean practicing the exactly same pharmaceutical product as the approved product; and
- (3) the asserted indications are deemed substantially identical to the first-approved indications in terms of medicinal use and effect.

#### 4. Implications of the PTE Trends in Korea for Pharmaceutical Patent Holders

In the important field of PTEs, depending on the interests at stake, there will inevitably be arguments between patentees favoring broad interpretation of rights and generic companies advocating for narrow constructions.

Due to the competing policy aspects of the PTE system, the Korean PTE system is rapidly changing and creating an environment where legal disputes are constantly arising in connection with ambiguities in the Korea's interpretation of the law.

While the direction of some previous Korean amendments may be favorable to patentees, the recent amendments to the KPA introduce more restrictive requirements for granting PTEs to patentees in Korea. However, further discussions regarding amendments to the Korean PTE system are ongoing. These evolving trends in the PTE system signify that the direction of the improvements or revisions is not set in stone and Korea remains open to hearing various views.

Therefore, pharmaceutical patent holders and the stakeholders in the pharmaceutical industry are encouraged to examine proactively whether the current and forthcoming amendments to the PTE system are moving in the right direction. In the end, a balanced IP and legal policy approach in Korea should be in-line with the purpose and intent of the PTE system.

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## Korean Judgment Trends of “Unauthorized Use of Accomplishments” as Unfair Competition

In Korea, Article 2, Section 1, Paragraph (m) of the *Unfair Competition Prevention and Trade Secret Protection Act* (“UCPA”) defines an act of unfair competition as any act “of infringing on other persons’ economic interests by using the Accomplishments, etc. achieved by them through substantial investment or efforts, for one’s own business without permission, in a manner contrary to fair commercial practices or competition order” (commonly referred to as “Unauthorized Use of Accomplishments”). Since the introduction of the provision on Unauthorized Use of Accomplishments through the 2013 amendment, discussions on the requirements for its establishment have been actively ongoing. Most importantly, the Korean Supreme Court has developed specific criteria through numerous rulings that we will review below interpreting the Unauthorized Use of Accomplishments under the UCPA.

### 1. Historical Background and Purpose of the Unauthorized Use of Accomplishments Provision

Before the introduction of Paragraph (m), the UCPA did not have a comprehensive definition of unfair competition acts. While the earlier statute listed specific types of such acts, practitioners, scholars, and jurists alike found it difficult to appropriately address new types of unfair competition. This provision was added with the amendment to the Unfair Competition Prevention Act on July 30, 2013, as a supplementary general clause to appropriately respond to new and diverse types of unfair competition arising from technological changes and other factors.<sup>1</sup>

The main purpose of this provision is to regulate acts of free-riding where one unfairly benefits by taking advantage of another’s achievements and reputation without authorization. Before the enactment of this provision as a type of unfair competition, the Supreme Court had addressed this legislative gap through civil law where “a competitor, by using the achievements created through significant effort and investment in violation of business ethics or fair competition order, unfairly profits by taking advantage of the competitor’s effort and investment, thus infringing upon the competitor’s legally protected interests.” (*See, e.g.*, Korean Supreme Court Decision No. 2008-Ma-1541, rendered on August 25, 2010, Korean Supreme Court Decision No. 2010-Da-20044, rendered on March 29, 2012).

This 2013 statutory amendment provision effectively codified the principles of the above rulings, enabling the determination of new types of unfair competition directly under the Unfair Competition Prevention Act, without relying on existing civil tort principles. By doing so, the UCPA was bolstered to more clearly regulate unfair competition by reflecting the changing business concepts in a timely manner.

<sup>1</sup> Korean Legislative Office, *Reasoning for the Enactment and Amendment of the Unfair Competition Prevention and Trade Secret Protection Act* (2013)



## 2. Criteria for Judging Requirements and Scope of Application

For a litigant to establish a violation of Paragraph (m) of the UCPA, they must establish that "the Accomplishments, etc. achieved by other persons through substantial investment or efforts" (requirements for protected subjects) are 'used for one's own business without permission in a manner contrary to fair commercial practices or competition order' (requirements for the nature of the act), thereby 'infringing on the economic interests of the other persons.'

Since the Korean Supreme Court first began to set forth the legal principles regarding the legislative intent and requirements for establishing Paragraph (m) in 2020, it has presented specific criteria through several rulings, which are summarized and outlined below.

- (1) Paragraph (m) does not limit the types of "Accomplishments, etc." subject to protection, meaning it includes not only tangible items but also intangible assets. New forms of results that were difficult to protect under traditional intellectual property law can also be included. When determining "Accomplishments, etc.," factors such as the resulting reputation or economic value, customer attraction embedded in the result, the proportion and competitiveness of the result in the relevant business field should be considered comprehensively.
- (2) Whether such "Accomplishments, etc.," are "achieved through substantial investment or efforts" should be judged specifically and individually in consideration of the nature and extent of the investment or effort made by the rights holder, in light of the practices and conditions in the relevant industry. Additionally, the economic interests infringed upon by the unauthorized use of these Accomplishments should not fall within the so-called public domain, which refers to areas that are freely available for everyone to use.
- (3) In order to fall under the category of "used for one's own business without permission in a manner contrary to fair commercial practices or competition order," it is necessary to consider factors such as whether the rights holder and the infringer are in a competitive relationship or are likely to be in a competitive relationship in the near future, the nature of trade practices or competitive order in the industry containing the Accomplishments, and whether those practices are fair, whether such Accomplishments can be substituted by the infringer's goods or services in the market, the degree to which these Accomplishments are known to consumers or traders, and whether there is a likelihood of confusion among consumers or traders, among others.

## 3. Major Cases and Types of Unfair Competition Acts under Paragraph (m)

Before the Supreme Court rulings on Paragraph (m) of the UCPA, many lower courts strictly applied the supplementary nature of Paragraph (m), taking the position that "the use of another's achievements is generally free," and that for Paragraph (m) to apply to the act of imitating or utilizing another's achievements, there needed to be "special circumstances"

that made it unjustifiable according to fair trade order. Such circumstances included acquiring another's achievements or ideas by dishonest means (*e.g.*, theft) or engaging in imitation that significantly contradicts contractual obligations or the principle of good faith, or direct imitation where the imitator's creative input was minimal.<sup>2</sup> Through a series of rulings by the Supreme Court in 2020, however, Korea has clarified that such "special circumstances" are not required for the application of Paragraph (m), thereby broadening its scope. Additionally, by presenting criteria for the establishment of Paragraph (m), it has made it clear that new types of results, which were difficult to be protected under traditional intellectual property law, can also be protected under Paragraph (m).

#### A. Cases Recognizing Unfair Competition Acts Under Paragraph (m)

Representative cases in which the Supreme Court recognized intangible assets as part of the 'Accomplishments, etc.,' protected by Paragraph (m) include:

- (1) The overall image of a golf course ("Screen Golf Course Case"<sup>3</sup>)
- (2) Reputation, credit, and customer attraction power related to an idol group ("BTS Case"<sup>4</sup>)
- (3) Distinctive features of luxury handbags ("Eyeball Bag Case"<sup>5</sup>)
- (4) Brand naming and scripts for advertising services ("Sur-fried Chicken Commercial Case"<sup>6</sup>)
- (5) The name of a famous local restaurant ("Haeundae Female Cow Ribs Case"<sup>7</sup>)
- (6) Design file of driving mechanism for lifters ("Lifters Case"<sup>8</sup>)

#### Key Korean Case Examples:

##### ■ Screen Golf Course Image Usage Case (Korean Supreme Court Ruling, 2016-Da-276467)

The Korean Supreme Court ruled that the overall "image" of a golf course, created by combining terrain, scenery, landscaping elements, and installations on the golf course site, constitutes an achievement created by the significant investment and effort of the golf course operator. The act of unauthorized use of the golf course's image to create a 3D golf course video and provide it to a screen golf course operator was deemed an act of "Unauthorized Use of Accomplishments."

<sup>2</sup> See Seoul High Court Ruling No. 2018-Na-2052021 rendered on September 26, 2019.

<sup>3</sup> Korean Supreme Court Ruling No. 2016-Da-276467 rendered on March 26, 2020.

<sup>4</sup> Korean Supreme Court Ruling No. 2019-Ma-6525 rendered on March 26, 2020.

<sup>5</sup> Korean Supreme Court Ruling No. 2017-Da-217847 rendered on July 9, 2020.

<sup>6</sup> Korean Supreme Court Ruling No. 2020-Da-220607 rendered on July 23, 2020.

<sup>7</sup> Seoul High Court Ruling No. 2019-Na-2058187 rendered on October 22, 2020, affirmed by Supreme Court Ruling No. 2020-Da-287266 rendered on March 11, 2021.

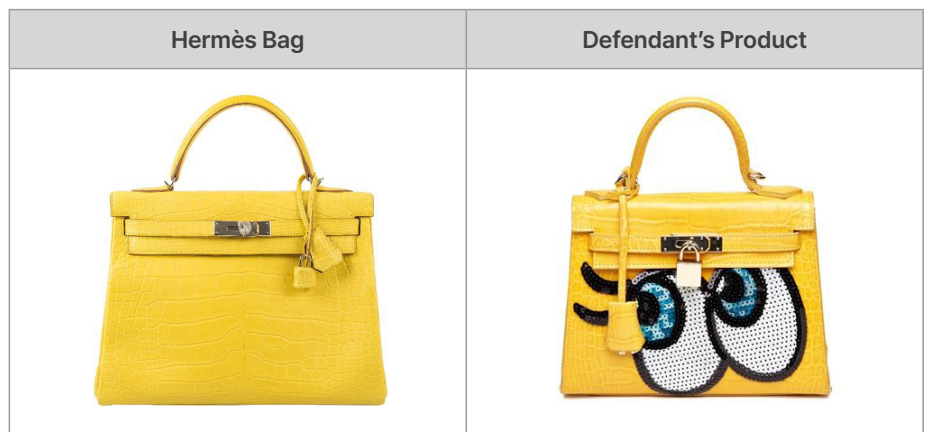
<sup>8</sup> Korean Supreme Court Ruling No. 2021-Da-310873 rendered on April 28, 2022.

■ **BTS Portrait Usage Case (Korean Supreme Court Ruling, 2019-Ma-6525)**

The Korean Supreme Court ruled that producing and selling a photo book and photo cards featuring BTS members' images without authorization constituted an infringement of the achievements, reputation, credit, and customer attraction power built by the entertainment company through significant investment and effort, thus violating the achievements of the entertainment company.



■ **Hermès Bag vs. Eyeball Bag Case (Korean Supreme Court Ruling 2017-Da-217847)**

In a case concerning the copying of Hermès' luxury handbag design, the Korean Supreme Court ruled that adopting the design of Hermès bags but adding creative elements such as an eyeball motif did not make it a lawful imitation. The Court determined that the Birkin and Kelly bags had developed distinctive recognition in the domestic market, making them legally protectable, and thus the act of copying was recognized as an act of unfair competition.







■ **Sur-Fried Chicken Advertisement Case (Korean Supreme Court Ruling, 2020-Da-220607)**

The defendant, a chicken delivery franchise company, entered into an advertising service contract with the plaintiff, an advertising agency, and received the advertising campaign (naming and script) from the plaintiff. However, the defendant failed to pay the full production costs for these results, and instead, through another advertising agency, created an advertisement based on the script provided by the plaintiff and released a new product under the naming created by the plaintiff. The Korean Supreme Court ruled that the naming and advertising script, as economic assets, were achievements created through the plaintiff's considerable investment and effort. The Korean Supreme Court also found the defendant's actions, using the naming and script without paying the production costs over the plaintiff's objections, to be an unfair competition act under Paragraph (m).

The Concept/Script	The Advertisement
	

■ **Haeundae Female Cow Ribs Case (Seoul High Court Ruling, 2019-Na-2058187)**

Haeundae is a famous beach in Korea, and "Amsogalbi" (Female Cow Ribs) refers to a specific type of beef rib. A restaurant that used a name similar to that of a famous restaurant combining a notable geographic name and a type of meat was considered by the court. Even if the name contained a prominent geographic name, the court ruled that if the name embodied the reputation, credit, customer attraction power, and trust in quality, it could possess "economic value" and be protected under Paragraph (m) of the Unfair Competition Prevention Act. The Seoul High Court ruled that a competitor restaurant that mimicked the name, signage, and overall reputation of a famous restaurant that had been in business for over 55 years was engaged in unfair competition.

Plaintiff's Restaurant	Defendant's Restaurant
	
	

## B. Key Korean Cases Denying Unfair Competition

The Korean Supreme Court has ruled that if an intangible asset used by someone falls within the public domain, which is free for anyone to use, it does not meet the definition of "Accomplishments" under Paragraph (m), and thus, no unfair competition act is established.

### ■ Roof Box Structure Case (Korean Supreme Court Ruling, 2019-Da-282449<sup>9</sup>)

Plaintiff developed and sold a roof box with a crossbar embedded into the lower plate. Defendant manufactured and sold a product with the same structure. The Korean Supreme Court ruled that the main component of the roof box structure was already publicly disclosed through a patent, so it could not be considered an outcome created by substantial investment or efforts. The Korean Supreme Court also found that defendant made considerable modifications to the roof box structure and, therefore, could not be said to have used the structure in an unauthorized manner that violated fair competition practices.

### ■ Iberico Restaurant Case (Korean Supreme Court Ruling, 2019-Ma-6625<sup>10</sup>)

Defendant, after terminating a franchise contract for a pork restaurant, continued using certain business methods to operate the restaurant and franchised business while making changes to the restaurant's name and the external sign only. The Korean Supreme Court ruled that the overall image of the franchised business were comprehensively created, including the name, signage, and interior layout, as well as the specific menu configurations and serving methods. However, the Court found that the methods, which is a part of the overall image and included interior design, menu or settings, continued to be used by defendant were either commonly used by many restaurants or only minor aspects of the business. As such, the Court did not find these continued methods as an "accomplishment created through considerable investment or effort."

### ■ Online Shopping Mall Grouping Service Case (Korean Supreme Court Ruling, 2020-Da-268807<sup>11</sup>)

Plaintiff, operating an online shopping mall, developed and publicly released a product registration system with a "grouping service" feature, allowing sellers to group products they wanted to display together. Defendant, who also provided the same service, was accused of unfair competition. The Korean Supreme Court ruled that the idea of the "grouping service" was merely an implementation of traditional sales methods in the online space and that the technical means to realize it were neither highly advanced nor innovative. Thus, the Court determined that it did not qualify as "Accomplishments" under Paragraph (m) of the UCPA.

<sup>9</sup> Korean Supreme Court Ruling No. 2019-Da-282449 rendered on June 25, 2020.

<sup>10</sup> Korean Supreme Court Ruling No. 2019-Ma-6625 rendered on June 16, 2022.

<sup>11</sup> Korean Supreme Court Ruling No. 2020-Da-268807 rendered on October 14, 2022.

#### 4. Recent Trends in Judgments on Unfair Competition Acts under Paragraph (m) and Their Implications

Since the Supreme Court established specific criteria for determining unfair competition acts under Paragraph (m) in 2020, this catch-all provision has widely been used as a remedy for new economic values that could not be protected under the existing intellectual property framework. In practice, it is being applied with increasing frequency in various intellectual property infringement cases. As seen in the numerous judgments delivered by the Supreme Court since 2020, Korean courts have been interpreting Paragraph (m) of the Unfair Competition Prevention Act more aggressively and expanding protection for the rights holders' results that were previously not recognized under traditional intellectual property law.

There is growing concern in Korea, however, that if the establishment requirements for unfair competition acts under Paragraph (m) are interpreted too broadly, it could stifle the use of many results that should remain in the public domain leading to a lack of predictability regarding the legality of such actions.

There are also emerging questions in Korea about whether a result that does not meet the originality requirements under copyright law but is still recognized as having involved substantial investment and efforts should be acknowledged as an achievement. More specifically, this scenario may lead to infringement being recognized as an act of unfair competition by imitation. The future rulings on this issue will be closely watched in Korea.

In the future, we expect many business sectors and rights holders that leverage intellectual property will actively consider using Paragraph (m) of the UCPA to protect their rights by demonstrating that their created results are significant achievements involving considerable costs and efforts.