

Recent IP Developments in Korea – 2025.02

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Editors



Hyeon Gil RYOO



Seong Tahk AHN



Jiwoo JEONG

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CONTACT



Patent Attorney
Seong Tahk AHN
 T: +82.2.6386.6239
 E: seongtahk.ahn@leekoip.com



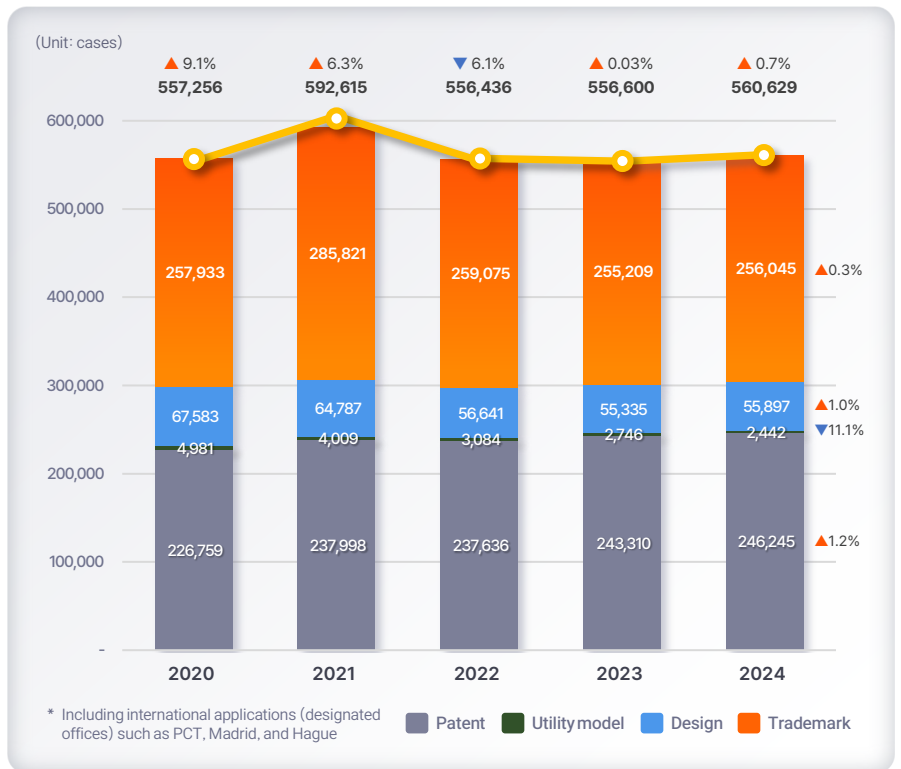
Patent Attorney
Sungmin CHO
 T: +82.2.6386.7934
 E: sungmin.cho@leekoip.com

Statistical Analysis of Domestic Intellectual Property in 2024

This report analyzes the 2024 statistics on intellectual property applications and Intellectual Property Trial and Appeal Board (IPTAB) cases based on the data published by the Korean Intellectual Property Office (KIPO) in January 2025. The number of intellectual property applications filed with KIPO in 2024 was similar to that in 2023, albeit with a slight decrease in the number of cases handled by IPTAB.

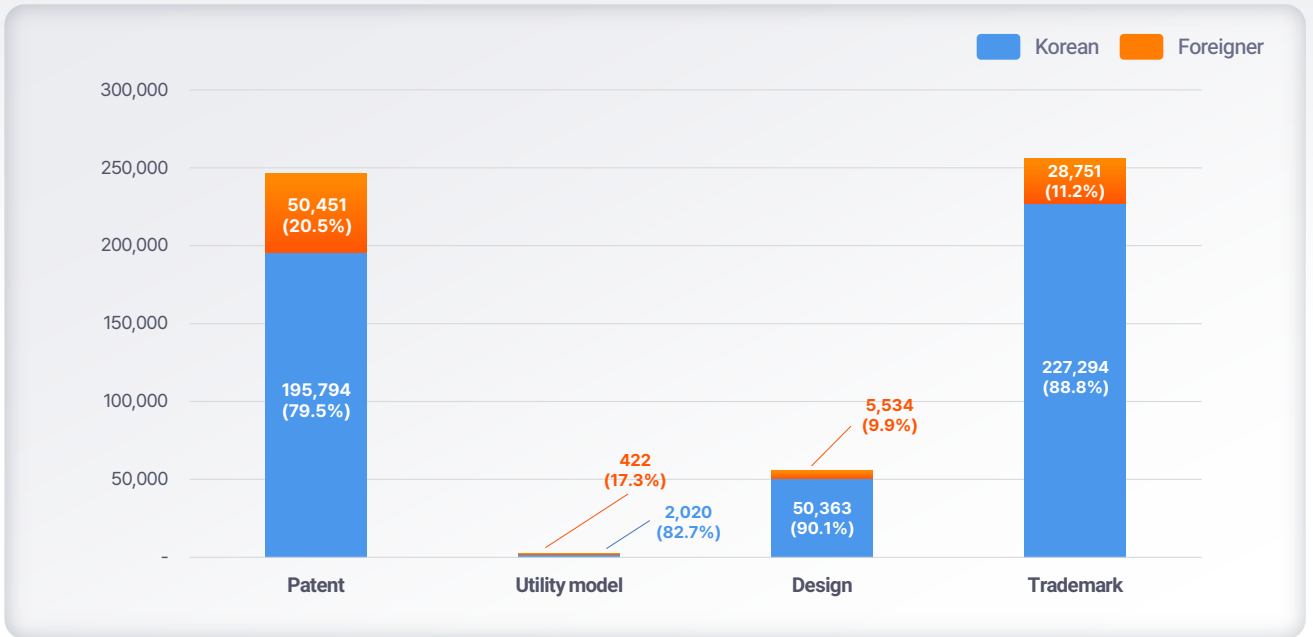
1. Overall Intellectual Property Application Trends

The total number of IP applications, including applications for patents, utility models, designs, and trademarks, in 2024 reached 560,629 – a slight increase compared to 2023 (556,600) – and represents an increase of 0.7%. Specifically, the number of applications for patents, designs, and trademarks increased by 1.2%, 1.0%, and 0.3%, respectively, while applications for utility models decreased by 11.1%.



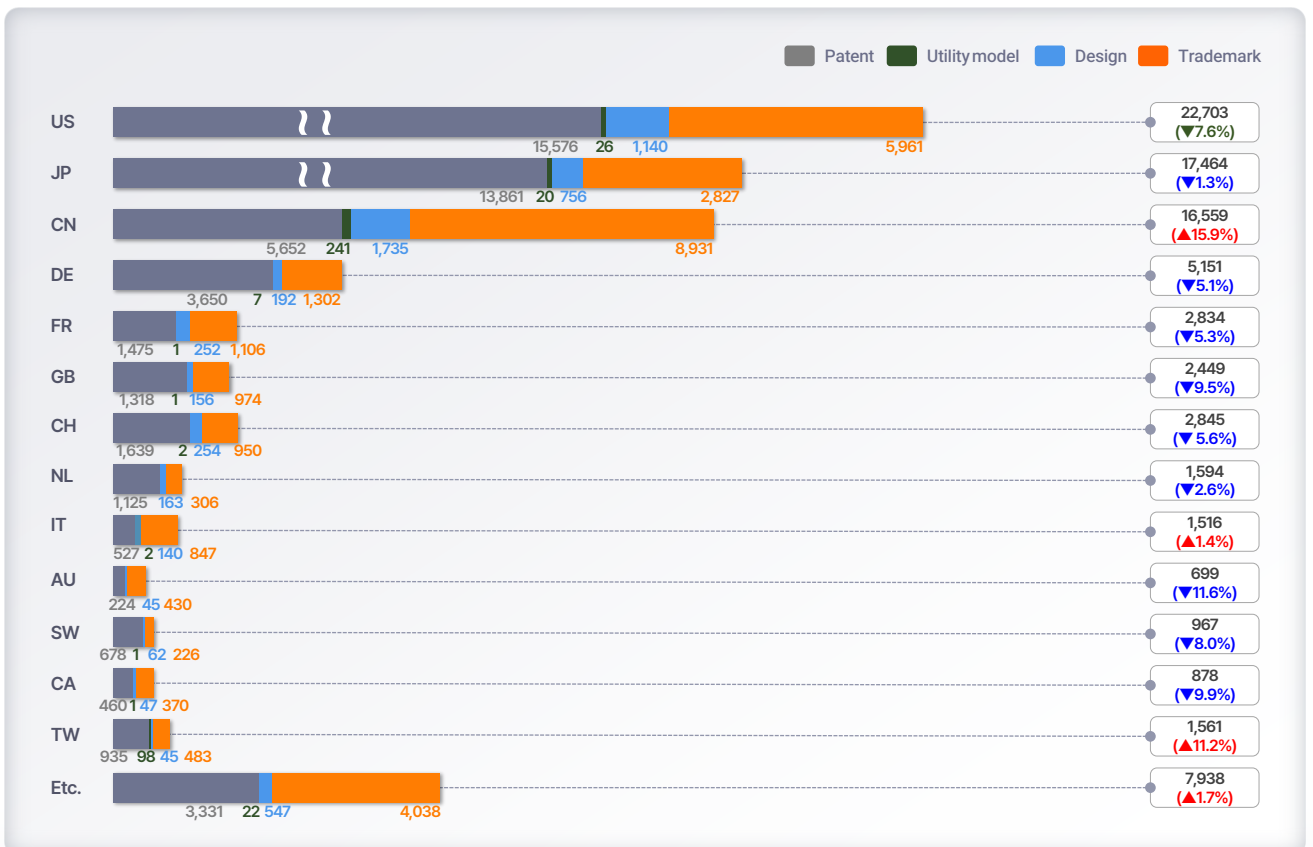
[IP Application Trends in Korea by Year]

Domestic IP applications can be categorized into those by Korean applicants (Korean applications) and foreign applicants (foreigner applications). In 2024, foreigner applications slightly decreased from 85,825 in 2023 to 85,158, while Korean applications increased slightly from 470,775 in 2023 to 475,471. In 2024, the share of foreigner applications was 20.5% for patents, 17.3% for utility models, 9.9% for designs, and 11.2% for trademarks, as shown in the chart below.



[Korean and Foreigner Domestic Applications in 2024]

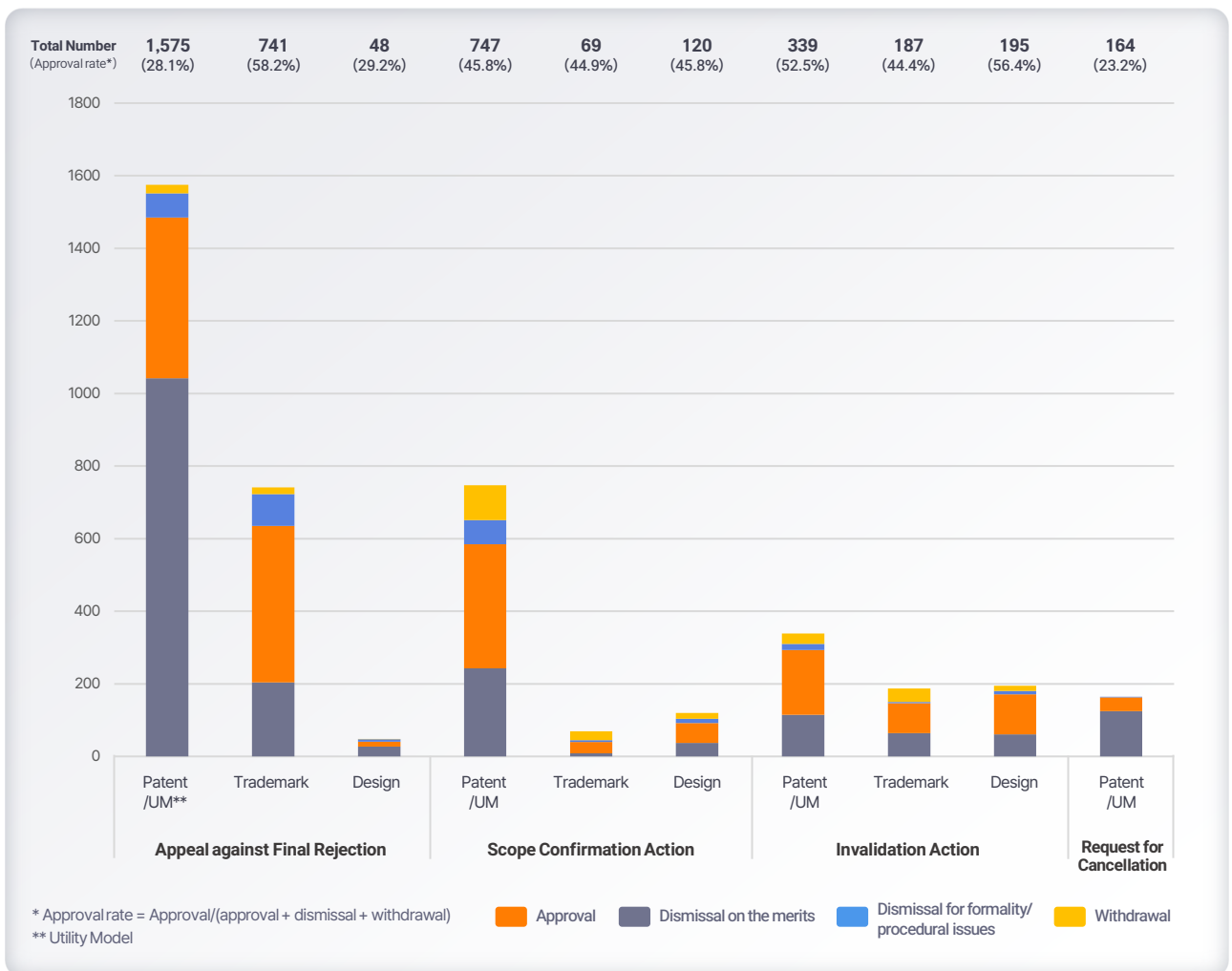
When analyzing foreigners' domestic applications by nationality, American applicants (26.7%), Japanese applicants (20.5%), and Chinese applicants (19.4%) rank at the top. In 2024, there were increases in the numbers of applications from Chinese (15.9%) and Taiwanese (11.2%) applicants compared to the previous year, while applications from the United States, Japan, Europe, Australia, and Canada generally declined.



[Domestic Applications by Foreign Applicant Nationality in 2024]

2. Trends of IPTAB cases

In 2024, the total caseload of the IPTAB decreased by 7.2% compared to the previous year. Notably, patent scope confirmation actions dropped by 66.1%, from 770 cases in 2023 to 261. The approval rates for appeals against rejections of patent · utility model, trademark, and design applications were 28.1%, 58.2%, and 29.2%, respectively. In scope confirmation actions, the approval rate for patents · utility models was 45.8%, down from 63.7% in 2023. The approval rates for trademarks and designs in scope confirmation actions were 44.9% and 45.8%, respectively. On the other hand, in invalidation actions, the approval rate for patents · utility models was 52.5%, an increase from 44.0% in 2023. The approval rates for invalidation actions for trademarks and designs were 44.4% and 56.4%, respectively. The approval rate for requests for cancellation for patents · utility models was 23.2%, which is lower than that for invalidation actions and also decreased from 33.6% in 2023.



[IPTAB Case Trends in 2024]

CONTACT



Patent Attorney
Jonghyuk WON
T: +82.2.2191.3022
E: jonghyuk.won@leekoip.com



Patent Attorney
Hyungwon CHAE
T: +82.2.6386.6632
E: hyungwon.chae@leekoip.com

Amendments to the Patent Act and Changes in KIPO's Patent Practices

The Patent Act, promulgated on January 21, 2025 (and scheduled to take effect on July 22, 2025), along with certain amendments to KIPO's examination practices, requires the attention of applicants and rights holders. Below, we briefly introduce these key amendments. Additionally, we will review changes to procedural practices and systems within the Intellectual Property Trial and Appeal Board (IPTAB) and KIPO.

1. Key Amendments to the Patent Act

1) Inclusion of 'Exporting' in Acts of Practicing an Invention

Under the current Patent Act and Utility Model Act, Article 2(3) defines acts of practicing an invention (or device) involving a product as 'manufacturing, using, assigning, leasing, or importing the product or offering to assign or lease the product.' However, 'exporting' has not been explicitly included in this definition. With the recent amendment, 'exporting' has been added as a type of act for practicing an invention (or device), aligning it with other intellectual property laws, such as the Trademark Act, Design Protection Act, Act on the Protection of New Varieties of Plants, and Unfair Competition Prevention Act, which already include exporting in their acts of practicing.

Previously, patentees faced challenges in protecting their rights against the export of patented products. They were required to separately prove that acts such as assigning had actually occurred during the exporting process to determine whether the acts of exporting constituted infringement. With the enforcement of the amended law, patentees can now directly claim infringement and compensation for damages caused by an infringer's act of 'exporting' itself. This change is expected to reduce the burden of proof on right-holders when protecting patents and utility model rights and strengthen remedies for infringement.

2) Amendments Regarding Inventions Necessary for National Defense

The current Patent Act allows, if necessary for national defense, the prohibition of filing of a patent application with a foreign patent office or the ordering of an inventor and applicant to keep confidential an invention for which a patent application has been filed. However, there were no penalty provisions for violations of these orders. The amended act introduces penalties for violations of an order to keep a patent application confidential concerning inventions or devices critical to national defense. Violations of this order may result in imprisonment with labor for up to five years or a fine not exceeding 50 million won.

The amended act also introduces joint penalty provisions, holding not only the violator of an order to keep a patent application confidential but also corporations or representatives with oversight responsibilities accountable for such violations. It allows for a fine not exceeding 100 million won to be imposed on the corporation or representative.

3) Others

There have also been changes to the Patent Term Extensions (PTE) system. Under the amended act, a patent's extended term shall not exceed 14 years from the Market Approval (MA) date. In addition, the number of patents that can be extended under a single MA has been limited to one. These two amendments will be discussed in detail in a separate topic, "Developments in Patent Term Extensions," in this newsletter.

2. Improvements to Patent Examination Procedures

KIPO recently revised the Rules on the Handling of Patent and Utility Model Examinations to prioritize enhancing examination capacity for general patent applications. The key changes are as follows:

1) Shortening the Examination Processing Deadline for Patent Prosecution Highway (PPH) Applications

The examination processing deadline for PPH applications has been reduced from the previous four months to three months from the date of the expedited examination decision. This change applies to applications for which an expedited examination is requested on or after January 1, 2025, and is aimed at expediting the acquisition of patent rights in line with the PPH improvement policies implemented by the United States and Japan.

2) Revised Examination Order for Divisional Applications

Previously, divisional applications were prioritized for examination based on the examination order of the parent application, allowing for faster processing. However, under the amendment, divisional applications will now be examined in the order of their own requests for examination, bringing Korea in line with the practices of other major jurisdictions, such as the United States and Japan. This change applies to applications where examinations commence on or after January 1, 2025.

3) Removal of Examination Commencement Deadline for Re-examination Applications

For applications undergoing re-examination starting on or after April 1, 2025, the deadline for commencing re-examinations will be extended from the previous one month to six months.

3. Immediate Registration Determination by the Administrative Patent Judge upon Upholding a Rejection Decision Appeal

Starting in January 2025, the Intellectual Property Trial and Appeal Board (IPTAB) began improving its procedures by allowing the administrative patent judge to directly issue a registration decision through a trial ruling when an appeal against a rejection decision for patent or design registrations is upheld and no additional issues are identified. Previously, if an appeal against a rejection was successful, the rejection was canceled, and the case was remanded to the Examination Bureau for reevaluation by the examiner, leading to additional delays in the registration decision.

However, under the new procedure, if no further issues are identified, the administrative patent judge will directly issue a registration decision, potentially shortening the registration process by one to two months. IPTAB expects this measure to enable applicants to secure rights more swiftly and reduce administrative inefficiencies caused by repetitive procedures.

4. Newly Designated Expedited Examination Targets for Patents in the Bio, AI, and Advanced Robotics Sectors

Starting in February 2025, KIPO will expand the scope of expedited examination to cover patents related to biotechnology, artificial intelligence and advanced robotics, provided that they are either produced or being prepared for production in Korea, or the results of Korea national R&D projects. To achieve this, KIPO plans to hire private-sector experts as examiners in the fields of bio (35 people), AI (9 people), and advanced robotics (16 people), and establish a dedicated examination team for the bio sector.

KIPO aims to expand the scope of expedited examination, which has already been applied to the semiconductor, display, and secondary battery sectors, to safeguard technologies in rapidly evolving fields designated as nationally strategic industries while also enhancing the global competitiveness of domestic companies.

CONTACT



Patent Attorney
Jayoung KOO

T: +82.2.6386.7857
E: jayoung.koo@leekoip.com

Developments in Patent Term Extension

The latest amendments to the Patent Act limiting Patent Term Extensions, as well as the relevant Supreme Court decision, are as follows.

1. Patent Act Amendment Regarding PTE

A bill to amend the Patent Act concerning Patent Term Extensions by approval (hereinafter referred to as **PTE**) was approved in the plenary session of the National Assembly on December 27, 2024, and promulgated on January 21, 2025. Accordingly, the amendment will be applied starting from the PTE application for the patent invention that received approval after the enforcement date (July 22, 2025), which is six months after the promulgation.

- i) The term of extended patent rights shall not exceed 14 years from the Market Approval (**MA**) date (new addition to Article 89(1) of the amended Patent Act)
- ii) Limiting the number of patents eligible for PTE to only one patent per MA (new addition to Article 90(7) of the amended Patent Act)

■ Details of the amended Patent Act concerning PTE

PTE is a system that extends the patent term to compensate for the time required to obtain MA from the Ministry of Food and Drug Safety (**MFDS**). This extension is granted because it often takes a long time to obtain MA, during which the invention cannot be commercially implemented despite having been granted a patent. Currently, PTE is implemented in Korea, the United States, Europe, Japan etc.

This amendment aims to align the Korean system with the PTE systems in the United States and Europe, based on the global effort to harmonize disparate PTE systems worldwide.

Specifically, under the current Patent Act, since there is no limit on the number of patents eligible for extension, if a patentee holds two or more patents related to an approved drug, and the registration dates of these patents precede the approval date, the patentee can apply for an extension on all of these patents and obtain extension registrations. However, the current amendment allows for the extension of only one patent, in line with the systems in the United States and Europe.

Furthermore, under the current Patent Act, the extension period of PTE is calculated by aggregating the clinical period (from the First Patient In date to the Last Patient Out date; domestic clinical trial period only) and the MFDS review period (actual MFDS review period only) and can be extended up to 5 years. However, this amendment introduces an additional upper limit, establishing that the extension period cannot exceed 14 years from the MA date, similar to the United States.

■ Issues with the amended Patent Act concerning PTE and points to be noted in PTE applications

Currently, there are fundamental differences between the PTE system in Korea and those of the United States and Europe in (i) the scope of extended rights and (ii) the method of calculating the extended period. However, as these issues are not addressed in this amendment, there remain challenges in harmonizing these systems internationally.

Specifically, regarding the scope of extended rights, patents extended in the United States and Europe are entitled to exercise rights for subsequently approved drug for any indication. In contrast, the courts in Korea and the Korean Intellectual Property Office (KIPO) interpret that the scope of a patent right whose term has been extended applies only to the "same extent as the initial approved indication" on which the extended registration is based.

In addition, the method for calculating extension periods in the United States and Europe differs significantly from that in Korea. In Korea, the extension period is not based on the period from the approval date of the clinical trial plan to the approval date. The clinical trial period is measured from the First Patient In date (FPI) to the Last Patient Out date (LPO), and limited to the domestic clinical trial period as well. Additionally, the MFDS's review period for approval documents includes only the time the MFDS actually reviewed the documents, rather than the entire period from the application submission to final approval.

Although the purpose of the amendment is to harmonize different patent standards across countries, it remains problematic that the differences in the scope of extended rights and the method for calculating extension periods were not addressed in the amended Patent Act.

Meanwhile, under the amendment, patentees of drugs that have obtained MA must carefully examine and assess which patent is most advantageous for extension prior to filing the PTE application. At this stage, the decision should be made by comprehensively considering the strength of the patent right and the length of the extendable period. It is crucial, however, to factor in the introduction of a 14-year cap from the MA date when considering the length of the extendable period.

2. The Supreme Court Decision limiting PEGylation for PTE eligibility

A new Supreme Court Decision (2021Hu11070; rendered on July 25, 2024) limited PTE eligibility in relation to improvement drugs.

In determining whether the PEGylated compound (Peginterferon beta-1a) obtained by chemically bonding the PEG moiety to the previously-approved drug (Interferon beta-1a) would be eligible for PTE, the Supreme Court reversed and remanded the IP High Court Decision. The Court ruled that the PEGylated version of a previously-approved active ingredient does not qualify as a "new substance."

In its decision, the Supreme Court noted that the active ingredient of a previously-approved drug was "Interferon beta-1a," while the active ingredient of the drug under review was "Peginterferon beta-1a," with identical efficacy and effects as "therapeutic agents for relapsing multiple sclerosis."

Article 7(1) of the Enforcement Decree of the Korean Patent Act stipulates that the subject of the term extension is a drug manufactured with "a substance whose chemical structure in the active moiety having medicinal effects is new," specifically, "a new substance" as an active ingredient. The drug must also be the one that receives the first Market Approval (MA). The issue in this case was whether Peginterferon beta-1a, the active ingredient in question, qualifies as the "active moiety having the medicinal effect."

In this regard, the IP High Court Decision (2020Heo4129 rendered on September 30, 2021) of the original trial ruled that the "medicinal effect" of "the activated moiety having medicinal effects" in Article 7(1) of the Enforcement Decree of the Patent Act was not limited to the indication but rather referred to "the effect of diagnosing, treating, alleviating, managing, or preventing specific diseases based on the intrinsic pharmacological action of the drug's components." In this case, the court reasoned that differences in the degree, duration, or side effects of the medicinal effect could render the "medicinal effect" distinct. Based on this interpretation, the court concluded that Peginterferon beta-1a, with enhanced biological activity and pharmacokinetic properties compared to Interferon beta-1a, increases therapeutic effects for relapsing multiple sclerosis, and thus constituted "the activated moiety having medicinal effects" in its entirety.

However, the Supreme Court rejected this interpretation, ruling that the “medicinal effect” under Article 7(1) refers to the “efficacy or effectiveness” specified in the drug’s MA based on particular diseases or symptoms. Furthermore, it held that “the activated moiety having medicinal effects” refers to the moiety of the drug that interacts with human cells or tissues to produce the efficacy or effectiveness specified in the MA. According to the court, even if a non-active moiety enhances the degree of the drug’s medicinal effect when combined with the active moiety, the entire compound cannot be regarded as “the activated moiety having medicinal effects.” Consequently, the court concluded that “the activated moiety having medicinal effects” of the drug in question was limited to interferon beta-1a.

Namely, the Supreme Court strictly interprets the scope of the “active moiety having medicinal effects” eligible for PTE, effectively limiting the PTE for improved drugs with enhanced pharmacokinetic properties. In light of this decision, it is necessary to challenge the PTE eligibility of other PEGylated pharmaceuticals by highlighting distinguishing factors that set them apart from the Supreme Court decision. Additionally, it should be argued that the Supreme Court Decision conflicts with the trend of international harmonization in PTE systems, as PEGylated pharmaceuticals are recognized as new substance in all countries except Korea. Furthermore, the decision also contradicts the purpose of the PTE system, which aims to compensate for the loss of patent term due to the lengthy research and clinical trials required for MA.

CONTACT



Patent Attorney
Jiwoo JEONG

T: +82.2.6386.0776
E: [jiwoo.jeong](mailto:jiwoo.jeong@leekoip.com)
[@leekoip.com](mailto:jiwoo.jeong@leekoip.com)

KIPO's Amendments to the Trademark and the Design Protection Acts

The Trademark Act and the Design Protection Act have recently been amended to reduce the examination period for trademarks, thereby securing applicants' rights sooner, and to strengthen protections for all intellectual property rights.

1. Reducing the Period for Oppositions against Trademark Applications (2 months → 30 days)

The period for filing oppositions was reduced from the current two months to thirty days to expedite trademark application examinations and allow applicants to secure rights sooner. This amendment was promulgated on January 21, 2025, and will be effective from July 22, 2025.

Under the Trademark Act, the opposition system allows anyone to file an objection within two months from the publication date of the relevant application after the examination on the application for trademark registration has been completed, causing the relevant trademark to undergo public examination. For reference, oppositions are filed against approximately 1% of published trademark applications.

2. Increasing punitive damages for willful trademark rights or exclusive license infringement (Three-fold → Five-fold)

Pursuant to the amended Trademark Act, which will be in effect from July 22, 2025, in cases where a trademark right or an exclusive license is intentionally infringed, the maximum amount of damages will be increased from three to five times the previous amount.

It has been pointed out that it is difficult to prove compensation for damages caused by trademark infringement even in the event of damages to trademark holders, meaning actual compensation for damages cannot be made. This amendment will strengthen legal remedies for trademark infringement.

Extending the five-fold compensation system to the trademark sector, following similar improvements in the patent, trade secret, and idea theft sectors, is expected to further strengthen the overall protection of intellectual property rights.

3. Increasing punitive damages for willful design rights or exclusive license infringement (Three-fold → Five-fold)

Under the current Design Protection Act, damages for intentional infringement of design rights or exclusive licenses are capped at three times the amount recognized as damages.

However, in line with the amended Trademark Act, the Design Protection Act was amended to protect rights with realistic and effective compensation for damages by determining five times the amount recognized as damages in cases where the infringement is recognized as intentional.

The Amended Design Protection Act was promulgated on January 21, 2025, and will be effective from July 22, 2025.

CONTACT



Patent Attorney
Joonyoung KWAK
T: +82.2.6386.7908
E: joonyoung.kwak@leekoip.com



Partner
Hayoun CHUN
T: +82.2.772.5964
E: hayoun.chun@leeko.com

The Direction of K-Discovery Enactment and Amendment to the Concentration of IP Litigation Jurisdictions

Major system improvements are being pursued to strengthen the protection of intellectual property rights and enhance litigation procedures. First, an amendment to the Patent Act has been submitted to the National Assembly to facilitate evidence collection in patent infringement lawsuits by introducing the Korean-style evidence collection system (K-Discovery), thereby enhancing the protection of patent rights. Additionally, the Korean government has announced plans to revise relevant laws to concentrate the jurisdiction for IP-related lawsuits, enabling courts to make faster and more accurate rulings.

1. K-Discovery Enactment

In injunctions against patent infringement and lawsuits claiming compensation for damages, systems such as orders to produce data have been established to prove the existence of infringement and the extent of damages. However, this data is typically held by the infringer, making it difficult for the patent holder to verify. Furthermore, evidence is sometimes damaged and cannot be used in infringement lawsuits. In light of the foregoing, the Korean Intellectual Property Office (KIPO) is in the process of amending the Korean Patent Act to facilitate the collection of evidence and reduce the burden of proof for infringement on the patent holder in patent infringement lawsuits, as detailed below.

■ Expert fact-finding

Under the amendment, courts may designate experts in the relevant field (such as technical examiners, investigation officers, expert advisors, attorneys-at-law, patent attorneys, etc.) if necessary to prove the existence of infringement or to calculate the damages resulting from the infringement in a patent infringement lawsuit. These experts may request the opposing party to submit related data, enter offices, factories, and other locations to investigate related documents, articles, facilities, equipment, and so on, or make necessary inquiries to interested parties.

The investigated party may first review the investigation report prepared by the experts and request the removal of any trade secrets. However, the court may not delete content that is necessary to prove infringement or calculate damages. The court may also limit the scope of the inspection and determine who may inspect it. After these proceedings, the patent holder may inspect the investigation report and use it as evidence.

■ Inter-party deposition

The amendment introduces a system that allows the parties to cross-examine each other by determining the number of individuals making statements, as well as the scope, method, and location of the examination. The parties may record the deposition via audio or video and may specify the relevant portions to be submitted as evidence.

▪ Litigation hold

When a patent infringement action is filed or is highly likely to be filed, the court may order a litigation hold for up to one year, upon the petitioner's request, provided that there are sufficient facts to specify the data subject to the hold and that irreparable harm is likely to occur to the petitioner if the litigation hold is not imposed. If a person who occupies, manages, or retains the data fails to comply with the litigation hold, the court may deem the petitioner's allegations as truthful.

2. Amendment to Concentration of IP Litigation Jurisdictions

Under current law, lawsuits concerning patent rights, utility model rights, design rights, trademark rights, and plant variety rights fall under the exclusive jurisdiction of six district courts, including the Seoul Central District Court (Article 24(2) of the Civil Procedure Act). Appeals for these lawsuits are heard by the IP High Court (Article 28-4(2) of the Court Organization Act). Since the IP High Court has exclusive jurisdiction over actions to revoke decisions made by the Intellectual Property Trial and Appeal Board (IPTAB), it examines both revocation actions for invalidation proceedings and appeals of infringement proceedings.

These provisions result from amendments to laws made in 2015, which concentrated the jurisdiction of IP-related lawsuits to increase the expertise and litigation efficiency of the judiciary. However, copyright and trade secret-related lawsuits were not included within the jurisdiction of these specialized courts.

Given the importance of and, in particular, the recent increase in trade secret-related litigations, the Korean government has announced plans to change the jurisdiction system so that such cases will also be examined by the aforementioned specialized courts. Furthermore, the government has decided to place preliminary injunctions and criminal cases related to intellectual property rights under the jurisdiction of these specialized courts (under Korean law, intellectual property infringement, trade secret infringement, and industrial technology infringement are subject to criminal penalties). Specifically, the specialized courts will have jurisdiction over lawsuits related to three acts: the Unfair Competition Prevention and Trade Secret Protection Act, the Industrial Technology Outflow Prevention and Protection Law, and the Act on the Layout-designs of Semiconductor Integrated Circuits.

Additionally, there is a proposal to transfer the jurisdiction of appeals against unfair trade investigations by the Korean Trade Commission and appeals against administrative decisions by the KIPO, which were previously under the jurisdiction of administrative courts, to the IP High Court.

In the past, IP-related cases, such as patent cases, have been examined by specialized courts, leading to an increase in their expertise. Notably, the IP High Court has actively developed IP-related legal principles, especially as IP-related revocation actions and appeals against infringement actions have been concentrated in the IP High Court. In the future, should the IP High Court gain jurisdiction over preliminary injunctions and criminal litigation cases, further legal developments are expected in these areas as well. Additionally, as the specialized courts and the IP High Court accumulate experience and expertise, litigation proceedings in the field of intellectual property are expected to proceed more effectively and consistently.