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South Korea

Intellectual Property

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This country-specific Q&A provides an overview of intellectual property laws and regulations applicable in South Korea.

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South Korea: Intellectual Property

1. What different types of intellectual property rights exist to protect: (a) Inventions (e.g. patents, supplementary protection certificates, rights in trade secrets, confidential information and/or know-how); (b) Brands (e.g. trade marks, cause of action in passing off, rights to prevent unfair competition, association marks, certification marks, hallmarks, designations of origin, geographical indications, traditional speciality guarantees); (c) Other creations, technology and proprietary interests (e.g. copyright, design rights, semiconductor topography rights, plant varieties, database rights, rights in trade secrets, confidential information and/or know-how).

(a) Inventions (e.g. patents, supplementary protection certificates, rights in trade secrets, confidential information and/or know-how);

1) Patent

Subject Matter of Protection: An invention, which is a highly advanced creation of a technical idea utilizing the laws of nature (Article 2, subparagraph 1 of the Patent Act).

Legal Basis: Patent Act

2) Utility Model

Subject Matter of Protection: A device, which is a creation of a technical idea utilizing the laws of nature (Article 2, subparagraph 1 of the Utility Model Act). Unlike patents, a high level of advancement is not required.

Legal Basis: Utility Model Act

3) Trade Secret

Definition: Technical or business information, such as production methods or sales methods, useful for business activities, which is not publicly known, has independent economic value, and has been subject to reasonable efforts to maintain its secrecy.

Legal Basis: Unfair Competition Prevention and Trade Secret Protection Act ("UCPA") (Article 2(ii))

(b) Brands (e.g. trade marks, cause of action in passing off, rights to prevent unfair competition, association marks, certification marks, hallmarks, designations of origin, geographical indications, traditional speciality guarantees);

1) Trademark (Note: In the past, service marks were regulated separately, but the 2016 amendment to the Trademark Act integrated service marks into trademarks.)

Definition: A mark used to distinguish one's goods from those of others.

Legal Basis: Article 2(1)(i) of Trademark Act

2) Collective Mark

Definition: A mark used by a legal entity jointly established by persons engaged in the production, manufacture, processing, or sale of goods or provision of services, either directly or through its members.

Legal Basis: Article 2(1)(iii) of Trademark Act

3) Certification Mark

Definition: A mark used by a person engaged in the business of certifying and managing the quality, origin, production method, or other characteristics of goods, to certify that a third party's goods meet such standards.

Legal Basis: Article 2(1)(vii) of Trademark Act

4) Business Emblem

Definition: A mark used by a person engaged in non-profit activities to indicate the business or service concerned.

Legal Basis: Article 2(1)(ix) of Trademark Act

5) Certification Mark with Geographical Indication

Definition: A certification mark used by a person engaged in the business of certifying geographical indications, to certify that a third party's goods satisfy the designated geographical characteristics.

Legal Basis: Article 2(1)(viii) of Trademark Act

6) Collective Mark with Geographical Indication

Definition: A mark used directly by, or licensed for use by members of, a legal entity jointly established by producers, manufacturers, or processors of goods that may bear a geographical indication.

Legal Basis: Article 2(1)(vi) of Trademark Act

7) Denomination of a Plant Variety

Definition: A unique name assigned to a specific cultivated plant variety. To obtain plant variety protection, the variety must be designated by a single, unique denomination.

Legal Basis: Act on the Protection of New Varieties of Plants (Articles 106 through 117)

8) Geographical Indication

Definition: An indication used for agricultural, fishery, or processed products whose reputation, quality, or other characteristics are essentially attributable to their geographical origin, indicating that the product was produced, manufactured, or processed in that specific region.

Legal Basis: Article 2(1)(viii) of Agricultural and Fishery Products Quality Control Act

9) Product Mark Widely Recognized in Korea

Definition: The UCPA also provides that, even where a trademark is not registered under the Trademark Act, the use by another party of a mark identical or similar to a product mark widely recognized in Korea, which creates a likelihood of confusion as to the source of the goods, constitutes an act of unfair competition subject to regulation.

Legal Basis: Articles 2(1) of UCPA

(c) Other creations, technology and proprietary interests (e.g. copyright, design rights, semiconductor topography rights, plant varieties, database rights, rights in trade secrets, confidential information and/or know-how).

1) Copyright

Subject of Protection: Works of authorship; original creations that express human thoughts or emotions.

Legal Basis: Article 2(i) of Copyright Act

2) Design Right

Subject of Protection: Designs; the shape, form, color, or any combination thereof of an article that evokes

aesthetic appeal through visual perception.

Legal Basis: Article 2(1)(i) of Design Protection Act

3) Layout Design

Subject of Protection: Layout designs for semiconductor integrated circuits, which consist of the spatial arrangement (in two or three dimensions) of various circuit elements and interconnecting wires intended for the manufacture of semiconductor integrated circuits.

Legal Basis: Act on the Layout-Designs of Semiconductor Integrated Circuits

4) Plant Variety Right

Subject of Protection: Plant varieties; a group of plants within the lowest classification unit recognized in botany.

Legal Basis: Act on the Protection of New Varieties of Plants

5) Database

Subject of Protection: Databases, which are compilations of materials systematically arranged or organized to allow individual access to or retrieval of the materials.

Legal Basis: Copyright Act (Articles 91 to 98)

2. What is the duration of each of these intellectual property rights? What procedures exist to extend the life of registered rights in appropriate circumstances?

1) Patent Right

Duration: From the date of registration of the patent right until 20 years from the patent application date (Patent Act Article 88)

Extension Procedures:

(1) For pharmaceuticals and similar products requiring marketing approval for working, the duration may be extended for the period during which working was not possible due to the approval process. The maximum extension is 5 years, and the expiration date after extension cannot exceed 14 years from the date of approval (Article 89, Enforcement Decree Article 7).

(2) If delays occur without the applicant's fault, the duration may be extended by the delayed period. The delayed period refers to the period from the later of (a) 4 years from the actual filing date (not the priority date), or

(b) 3 years from the examination request date, to the registration date (Article 92-2).

2) Utility Model Right

Duration: From the date of registration of the utility model right until 10 years from the utility model application date (Utility Model Act Article 22)

Extension Procedures: If delays occur without the applicant's fault, the duration may be extended by the delayed period. The delayed period refers to the period from the later of (a) 4 years from the actual filing date (not the priority date), or (b) 3 years from the examination request date, to the registration date (Article 22-2).

3) Trademark Right

Duration: 10 years from the date of registration (Article 83 (1))

Extension Procedures: Renewable in 10-year increments through an application for renewal of term (Article 83 (2); unlimited renewals permitted)

4) Design Right

Duration: From the registration date until 20 years from the design application date (Article 91 (1))

Extension Procedures: None

5) Copyright

Duration: During the author's lifetime and for 70 years after death (Article 39)

Extension Procedures: None

6) Trade Secret

Due to its nature, no statutory duration or extension procedures apply

3. Who is the first owner of each of these intellectual property rights and is this different for rights created in the course of employment or under a commission?

1) Patent Right

A) General

The Patent Act provides that a patent right arises upon registration (Article 87(1)) and that an inventor has the right to obtain a patent, and if two or more persons have

jointly made an invention, the right to obtain a patent shall be jointly owned (Article 33(1) and (2)). Here, the "right to obtain a patent" refers to the right to be granted a patent right under the Patent Act for a completed invention (Article 37(1)). Therefore, in principle, the inventor initially holds the patent right.

B) Employment Relationship

The Invention Promotion Act provides that if an employee, etc. obtains a patent, utility model registration, or design registration (collectively referred to as "patents, etc.") for an employee invention, the employer, etc. shall have a non-exclusive license to the corresponding patent, utility model right, or design right (collectively referred to as "patent rights, etc.") (Article 10(1) of the Invention Promotion Act). Accordingly, in principle, the employee initially holds the patent right for an employee invention. In addition, the Act recognizes the validity of a prior agreement under which the right to obtain a patent for an employee invention is to be succeeded by the employer, etc. (Articles 10 and 13 of the Invention Promotion Act).

*According to Article 2(ii) of the Invention Promotion Act, an "employee invention" means an invention made by an employee, officer of a corporation, or public servant ("employee, etc.") in relation to his or her duties, which by nature belongs to the business scope of the employer, corporation, the state, or local government ("employer, etc.") and where the act of making the invention falls within the current or former duties of the employee.

2) Utility Model Right

A) General

The Utility Model Act provides that Articles 33 and 37 of the Patent Act apply mutatis mutandis to the requirements and procedures for utility model registration (Article 11 of the Utility Model Act). Therefore, like patents, in principle, the creator of the device initially holds the utility model right.

B) Employment Relationship

The provisions of the Invention Promotion Act concerning patent rights apply equally.

3) Trademark Right

A) General

The Trademark Act provides that a trademark right arises upon registration (Article 82). Therefore, in principle, the person who files and registers the trademark initially acquires the trademark right (Article 89).

B) Employment Relationship

For reference, Articles 10 and 13 of the Invention Promotion Act discussed above do not apply to trademark rights. While the current Trademark Act is based on the registration principle, it also stipulates that a trademark application filed for a mark identical or similar to one known to be used or prepared for use by another through partnership, employment, or other contractual, business, or related relationships, for identical or similar goods, shall be refused registration (Article 34(1)(20) of the Trademark Act). Accordingly, if an employee learns of a company's product launch plan and attempts to pre-emptively file an application for the mark, trademark registration will be denied, and the employee will not be able to acquire the trademark right.

4) Design Right

A) General

The Design Protection Act stipulates that a design right arises upon registration (Article 90(1)). It also provides that a person who has created a design shall have the right to own that design, namely, the "right to obtain design registration," and when two or more persons have jointly created a design, the right to obtain design registration shall be jointly owned (Article 3(1) and (2)). Therefore, in principle, the person who created the design initially holds the design right.

B) Employment Relationship

The provisions of the Invention Promotion Act concerning patent rights apply equally.

5) Copyright

A) General

The Copyright Act defines an "author" as a person who has created a work (Article 2(2)). It also presumes that a person who falls under any of the following categories is the author and holds the copyright to the work (Article 8(1)), and in the absence of such an indication, the person indicated as the publisher, performer, or person who disclosed the work shall be presumed to hold the copyright (Article 8(2)). Accordingly, in principle, the person who created the work initially holds the copyright.

1. A person whose real name or well-known pseudonym (including pen name, nickname, abbreviation, etc.) is indicated in a usual manner on the original or copies of the work as the author;
2. A person whose real name or well-known pseudonym is indicated as the author when the work is performed

or publicly transmitted.

B) Employment Relationship

The Copyright Act provides that "in the case of a work made in the course of duty that is published under the name of a corporation or organization, the author shall be the corporation or organization, unless otherwise provided by contract or work rules; provided that in the case of computer program works, publication is not required." Accordingly, where a work qualifies as a work made in the course of duty under the Copyright Act, the corporation or organization (i.e., the employer) shall be deemed the author, and both the economic and moral rights shall originally vest in the corporation or organization.

6) Trade Secret

A) General

The UCPA defines a "trade secret" as technical or business information useful for business activities, including production or sales methods, that is not publicly known, has independent economic value, and is managed as confidential (Article 2(ii)). Accordingly, technical or business information that meets the requirements of secrecy, economic value, and confidentiality qualifies as a trade secret and does not require a separate registration procedure. Therefore, in principle, the person who directly created or developed the trade secret initially holds the rights thereto.

B) Employment Relationship

The law does not explicitly provide for the attribution of rights to trade secrets created by employees in an employment relationship. However, the Supreme Court has held that "since under the principle of inventorship the rights to an employee invention originally belong to the employee, the content of the invention as a whole—before such rights are succeeded to by the employer—cannot be considered a trade secret of the employer" (Supreme Court Decision 2012Do6676, Nov. 15, 2012). This may be interpreted as applying the principle of inventorship from the Patent Act and the Invention Promotion Act to the attribution of rights in trade secrets.

4. Which of the intellectual property rights described above are registered rights?

- 1) Patent Right: Yes (Patent Act, Article 87(1))
- 2) Utility Model Right: Yes (Utility Model Act, Article 21(1))

3) Trademark right: Yes (Trademark Act, Article 82(1))

4) Design Right: Yes (Design Protection Act, Article 90(1))

5) Copyright: No

Copyright arises upon creation (Copyright Act, Article 10(2)). Although registration is optional, if the copyright is registered, the registered author and the time of creation or publication of the work are presumed to correct as stated (Copyright Act, Article 53(1) and (3)).

6) Trade Secret: No

Self-evident due to the nature of the right.

5. Who can apply for registration of these intellectual property rights and, briefly, what is the procedure for registration?

1) Patent Right

Eligible Applicant: The inventor or a person or company who has succeeded to the right to obtain a patent from the inventor (Patent Act, Article 33(1))

Registration Procedure: Patent application (Article 42) – Request for examination (mandatory, Article 59) – Examination (Article 57) – Decision to grant a patent (Article 66) – Payment of patent fee (Article 79) – Registration (Article 87)

2) Utility Model Right

Eligible Applicant: As prescribed by the Patent Act (Article 11 applying mutatis mutandis Patent Act Article 33)

Registration Procedure: Utility model application (Article 8) – Request for examination (mandatory, Article 12) – Examination (Article 15 applying mutatis mutandis Patent Act Article 57) – Decision to register (Article 15 applying mutatis mutandis Patent Act Article 66) – Payment of registration fee (Article 16) – Registration (Article 21)

3) Trademark Right

Eligible Applicant: A person who uses or intends to use a trademark (Article 3); actual use at the time of filing or registration is not required (Supreme Court Decision 2017Do7236, Nov. 12, 2020, etc.)

Registration Procedure: Application (Article 36) – Examination (Article 50) – Decision to register trademark (Article 68) – Payment of registration fee (Article 72) – Registration (Article 82)

4) Design Right

Eligible Applicant: The creator of the design or a successor thereof (Article 3(1))

Registration Procedure: Application (Article 37) – Examination (Article 58) – Decision to register design (Article 65) – Payment of registration fee (Article 79) – Registration (Article 90)

5) Copyright

Eligible Applicant for Registration: The author (Article 53)

Procedure: Completed by recording in the copyright register by the Committee (Article 55)

6) Trade Secret: Not Available

6. How long does the registration procedure usually take?

1) Patent Right/Utility Model Right/Trademark Right/Design Right:

In terms of examination periods under the standard examination process, patents and utility models are examined for approximately 26 months after a request for examination is filed. For designs, a partial examination takes about 1 month from the filing date, while a regular examination takes approximately 7 months. Trademarks are generally examined about for 14 months from the filing date.

However, when utilizing the expedited examination system, the timeline is significantly shortened: examination of patents and utility models takes approximately 6 months after a request for expedited examination is filed; examination of designs takes about 3 months; and examination of trademarks also takes approximately 3 months.

2) **Copyright:** Registration typically takes about 1 to 2 weeks from the date of application.

3) **Trade Secret:** Not Applicable.

7. Do third parties have the right to take part in or comment on the registration process?

1) Patent Right

Third Party Submission of Information: Any person may provide the Commissioner of the Korean Intellectual Property Office with information, together with evidence,

to the effect that the patent application falls under grounds for rejection and therefore cannot be patented (Article 63-2).

2) Utility Model Right

Third Party Submission of Information: Article 63-2 of the Patent Act applies mutatis mutandis (Article 15).

3) Trademark Right

Third Party Submission of Information: Any person may provide the Commissioner of the Korean Intellectual Property Office or the President of the Intellectual Property Trial and Appeal Board with information, together with evidence, to the effect that the trademark application falls under grounds for rejection and therefore cannot be registered (Article 49).

Opposition: If a publication of application is made, any person may file an opposition by submitting evidence to the Commissioner of the Korean Intellectual Property Office within 30 days from the date of publication, stating that the trademark falls under grounds for rejection (Article 60).

4) Design Right

Third Party Submission of Information: Any person may provide the Commissioner of the Korean Intellectual Property Office or the President of the Intellectual Property Trial and Appeal Board with information, together with evidence, to the effect that the design application falls under grounds for rejection and therefore cannot be registered (Article 55).

Opposition to Partial-Examination Design Registration: Any person may provide the Commissioner of the Korean Intellectual Property Office with information, together with evidence, to the effect that the partial-examination design registration falls under grounds for rejection and therefore cannot be registered, from the date of design registration to the date that is three months after the publication date of the partial-examination design registration (Article 68).

5) Copyright: Not Available

6) Trade Secret: Not Available

8. What (if any) steps can the applicant take if registration is refused?

1) Patent Right

(1) A request for re-examination may be filed within 3 months from the date of receipt of the notice of the decision of rejection (Article 67-2).

(2) A trial against the decision of rejection may be requested within 3 months from the date of receipt of the notice of the final decision of rejection. A trial may also be requested against a decision of rejection rendered upon re-examination (Article 132-17).

2) Utility Model Right

Same as patent right (Articles 15 and 33, applying mutatis mutandis Articles 67-2 and 132-17 of the Patent Act)

3) Trademark Right

(1) A request for re-examination may be filed within 3 months from the date of receipt of the notice of the decision of refusal of trademark registration (Article 55-2).

(2) A trial against the final decision of refusal may be requested within 3 months from the date of receipt of the notice of the decision. A trial may also be requested against a decision rendered upon re-examination (Article 116).

4) Design Right

(1) A request for re-examination may be filed within 3 months from the date of receipt of the notice of the decision of refusal of design registration (Article 64).

(2) A trial against the decision of refusal may be requested within 3 months from the date of receipt of the notice of the final decision. A trial may also be requested against a decision rendered upon re-examination (Article 120).

5) Copyright

An objection may be filed within 1 month from the date the registration is refused, and the Copyright Commission shall examine the case and notify the result within 1 month (Article 55 (3), (4)).

6) Trade Secret

Not Available (no registration procedure)

9. What are the current application and renewal fees for each of these intellectual property

rights?

1) Patent Right:

- **Electronic filing fee:** KRW 46,000 (based on Korean language filing)
- **Request for examination:** KRW 166,000, plus KRW 51,000 per claim
- **Registration fee (for 3 years):** KRW 39,000, plus an additional annual fee of KRW 12,000 per claim
- **Annual maintenance fees after the initial 3 years:**
 - Years 4–6: KRW 36,000 per year, plus an additional annual fee of KRW 20,000 per claim
 - Years 7–9: KRW 90,000 per year, plus an additional annual fee of KRW 34,000 per claim
 - Years 10–12: KRW 216,000 per year, plus an additional annual fee of KRW 49,000 per claim
 - Years 13–25: KRW 324,000 per year, plus an additional annual fee of KRW 49,000 per claim

2) Utility Model Right:

- **Electronic filing fee:** KRW 20,000 (based on Korean language filing)
- **Request for examination:** KRW 71,000, plus KRW 19,000 per claim
- **Registration fee (for 3 years):** KRW 36,000, plus an additional annual fee of KRW 4,000 per claim
- **Annual maintenance fees after the initial 3 years:**
 - Years 4–6: KRW 25,000 per year, plus an additional annual fee of KRW 9,000 per claim
 - Years 7–9: KRW 60,000 per year, plus an additional annual fee of KRW 14,000 per claim
 - Years 10–12: KRW 160,000 per year, plus an additional annual fee of KRW 20,000 per claim
 - Years 13–25: KRW 240,000 per year, plus an additional annual fee of KRW 20,000 per claim

3) Trademark Right:

- **Electronic filing fee:** KRW 52,000 per class, with additional charges for designated goods
- **Registration fee:** KRW 201,000 per class, with additional fees for extra designated goods
- **Renewal fee:** KRW 300,000 per class, with additional fees for designated goods

4) Design Right:

- **Electronic filing fee:**
 - KRW 94,000 per design (KRW 45,000 for partial examination cases)
- **Registration fee (for 3 years):** KRW 25,000 per design annually
- **Annual maintenance fees after the initial period:**

- Years 4–6: KRW 35,000 per year
- Years 7–9: KRW 70,000 per year
- Years 10–12: KRW 140,000 per year
- Years 13–25: KRW 210,000 per year

* KRW 34,000 for partial design cases

5) Copyright:

Registration fee:

- KRW 30,000 (offline) / KRW 20,000 (online) for general works, neighboring rights, and database producers' rights
- KRW 60,000 (offline) / KRW 50,000 (online) for computer program works

6) Trade Secret: Not Applicable

10. What are the consequences of a failure to pay any renewal fees and what (if any) steps can be taken to remedy a failure to pay renewal fees?

1) Patent Right

Renewal: Upon initial payment of the patent fee, a three-year period is granted. Thereafter, it can be renewed annually up to the maximum duration.

Consequence of non-payment of renewal fees: If the fee is not paid even after both the additional payment period and the restoration period lapse, the patent right shall be deemed extinguished retroactively on the day after the last day of the paid period (in yearly units) (Article 81(3)).

Remedies for non-payment of fees:

(1) Additional payment period: Payment is allowed within six months after the due date with an additional 3% per month (Article 81; Rule 8(8) of the Rules on Collection of Patent Fees, etc.).

(2) Restoration period: If part of the fee is not paid by the due date or during additional payment period, the shortage may be paid with a 3% surcharge (Article 81-2; Rule 8(9)).

(3) Recovery period: If (1) and (2) lapse, the patent right is deemed extinguished retroactively. However, if the delay was due to a justifiable reason, payment of the unpaid amount is allowed within two months from the end of the reason or one year from the lapse. In cases of mere ignorance, the right may be restored by paying twice the fee within three months of the lapse (Article 81-3). If restored, the patent right is deemed to have remained

effective, but rights cannot be exercised during the lapsed period (Article 81-3(4)).

2) Utility Model Right

Same as patent right (Article 20, applying mutatis mutandis Articles 81, 81-2 and 81-3 of the Patent Act)

3) Trademark Right

Renewal: An initial period of 10 years is granted. Thereafter, the term may be renewed by filing a renewal application within one year before the expiration date (Article 83(2), Article 84(2)).

Consequence of non-payment of renewal fees: Trademark right expires.

Remedy for non-payment: Renewal is allowed within 6 months after expiration (Article 84(2)). In such case, the renewal is deemed validly completed (Article 85).

4) Design Right

Same as patent right (Articles 79 through 84)

5) Copyright

Not Available (registration is not mandatory, and renewal is not allowed)

6) Trade Secret

Not available (not subject to registration)

11. What are the requirements to assign ownership of each of the intellectual property rights described above?

1) Patent Right

The right to obtain a patent may be transferred, and if such right is jointly owned, each co-owner must obtain the consent of all other co-owners to transfer their share (Patent Act Article 37(1), (3)).

If the right to obtain a patent is succeeded before the filing of the patent application, such succession must be followed by a patent application by the successor in order to be effective against third parties. After the filing of the patent application, the succession of the right to obtain a patent becomes effective only upon the filing of a change in the applicant, unless it is succession by inheritance or other general succession (Patent Act Article 38(1), (4)).

A patent right may be transferred, and if such right is

jointly owned, each co-owner must obtain the consent of all other co-owners to transfer their share or ownership (Patent Act Article 99(1), (2)).

2) Utility Model Right (Same as patent right)

Pursuant to Article 11 of the Utility Model Act, Articles 37 and 38 of the Patent Act apply mutatis mutandis.

Pursuant to Article 28 of the Utility Model Act, Article 99 of the Patent Act applies mutatis mutandis.

3) Trademark Right

A trademark right may be transferred in part for each designated good. In such case, the right to similar designated goods must be transferred together (Trademark Act Article 93).

4) Design Right

A design right may be transferred. However, the design right of the basic design and the design right of the related design must be transferred together to the same person (Design Protection Act Article 96).

5) Copyright

Economic rights may be transferred in whole or in part. Even if the entire economic rights are transferred, the right to create and use derivative works under Article 22 is presumed not to be included unless agreed otherwise. However, for computer programs, unless agreed otherwise, the right to create derivative works is presumed to be transferred as well (Copyright Act Article 45(1), (2)). Moral rights are not assignable (Copyright Act Article 14(1)).

6) Trade Secret

There is no explicit provision. However, case laws recognize that trade secret is transferable. Seoul Central District Court Decision 2011Gahap105374, Jan. 25, 2013, where a contract was executed to transfer all intellectual property rights including trade secrets.

12. Is there a requirement to register an assignment of any of these intellectual property rights and, if so, what is the consequence of failing to register?

1) Patent Right

The transfer of a patent right (excluding transfer by inheritance or other general succession) is effective only

upon registration (Patent Act Article 101(1)(i)). If it is not registered, it has no effect.

2) Utility Model Right

Same as patent right. Pursuant to Article 28 of the Utility Model Act, Article 101 of the Patent Act applies mutatis mutandis.

3) Trademark Right

The transfer of a trademark right (excluding transfer by inheritance or other general succession) is not effective unless it is registered (Trademark Act Article 96(1)(i)).

4) Design Right

The transfer of a design right (excluding transfer by inheritance or other general succession) is not effective unless it is registered (Design Protection Act Article 98(1)(i)).

5) Copyright

The transfer of economic rights (excluding inheritance or other general succession) may be registered. If not registered, it cannot be asserted against third parties (Copyright Act Article 54(i)).

6) Trade Secret

No registration requirement

13. What are the requirements to licence a third party to use each of the intellectual property rights described above?

1) Patent Right

A patent holder may grant an exclusive license to a third party with respect to the patent right (Article 100(1) of the Patent Act) and also may permit a third party to have a non-exclusive license (Article 102(1) of the Patent Act).

Additionally, regardless of the patent holder's intention, licenses may be established if certain conditions are met, based on the principle of fairness concerning the status of third parties and industrial policy considerations (Articles 103 through 105 and 182 of the Patent Act). Furthermore, in cases where it is essential to promote the fundamental purpose of the patent system and the public interest, licenses may be compelled to be granted to the government or a third party (e.g., compulsory non-exclusive license in national emergency under Article 106-2 or non-exclusive license by adjudication under

Article 107 of the Patent Act).

2) Utility Model Right (Similar to patent rights. Article 28 of the Utility Model Act incorporates by reference Articles 100 through 103, 106-2, and 107 of the Patent Act)

3) Trademark Right

A trademark holder may grant an exclusive license to a third party with respect to the trademark right (Article 95(1) of the Trademark Act), and may also grant a non-exclusive license to a third party (Article 97(1) of the Trademark Act).

Additionally, regardless of the trademark holder's intention, a license may be established if certain statutory conditions are met (Articles 98 and 99 of the Trademark Act).

4) Design Right

A design right holder may grant an exclusive license to a third party with respect to the design right (Article 97(1) of the Design Protection Act), and may also grant a non-exclusive license to a third party (Article 99(1) of the Design Protection Act).

Additionally, regardless of the design right holder's intention, a license may be established if certain statutory conditions are met (Articles 100 to 103 of the Design Protection Act).

5) Copyright

A copyright holder may grant another person an exclusive right or a non-exclusive right to use the copyrighted work (Article 46(1) of the Copyright Act).

A person who has the right to publish or reproduce/transmit a copyrighted work (hereinafter referred to as "publication, etc.") may grant an exclusive right (hereinafter referred to as "exclusive publication right"; excluding publishing rights under Article 63) to another person who wishes to exploit the work for such publication, etc. (Article 57(1) of the Copyright Act).

6) Trade Secret

There is no explicit provision. However, it is understood that trade secret is licensable so long as the licensee agrees to maintain reasonable measures to maintain the secrecy of the trade secret.

14. Is there a requirement to register a licence of

any of these intellectual property rights and, if so, what is the consequence of failing to register?

1) Patent Right

An exclusive license shall become effective only upon registration (Patent Act Article 101(1)(ii)).

Although a non-exclusive license is required to be registered, registration protects the non-exclusive licensee against any person who acquires the patent right or an exclusive license after such registration (Patent Act Article 118(1)).

2) Utility Model Right (Same as patent right; the Utility model Act Article 28 applies Patent Act Articles 101 and 118 mutatis mutandis)

3) Trademark Right

An exclusive or non-exclusive license shall not be effective against third parties unless registered (Trademark Act Article 100(1)(i)).

4) Design Right

An exclusive license shall not become effective unless registered (Design Protection Act Article 98(1)(ii)).

If a non-exclusive license is registered, it shall be effective even against any person who acquires the design right or an exclusive license after such registration (Design Protection Act Article 104(1)).

5) Copyright

An exclusive publication right under Article 57 of the Copyright Act shall not be effective against third parties unless registered (Copyright Act Article 54(ii)).

6) Trade Secret

No registration requirement.

15. Are exclusive and non-exclusive licensees given different rights in respect of the enforcement of the licensed IP, and if so, how do those rights differ?

1) Exercise of Rights Against Infringement of Patent Rights, Utility Model Rights, Trademark Rights, and Design Rights

A) Exclusive Licensee

An exclusive licensee of a patent, utility model, design or trademark right, may demand prohibition or prevention of infringement from any person who infringes or is likely to infringe their rights (Patent Act Article 126(1); Utility Model Act Article 30; Design Protection Act Article 113(1); Trademark Act Article 107(1)).

In addition to a claim for prohibition or prevention of infringement, the licensee may also demand destruction of infringing products, removal of facilities (Patent Act Article 126(2); Utility Model Act Article 30; Design Protection Act Article 113(3); Trademark Act Article 107(2)), and measures for restoring business reputation (Patent Act Article 131; Utility Model Act Article 30; Design Protection Act Article 117; Trademark Act Article 113).

B) Non-Exclusive Licensee

A non-exclusive licensee does not have an exclusive right to exploit the patent (or trademark, etc.), and therefore its rights are not infringed by a third party's acts of exploitation, and it cannot seek injunctive relief against such acts.

Please note, however, the Supreme Court held that "When a patentee grants a license to another person, if the patentee is obligated not to grant a license to any third party other than the licensee, the licensee may be deemed to hold a contractual exclusive license" (Supreme Court Decision 2018Da221676, Nov. 26, 2020). The Court further stated that this principle equally applies to utility model rights, design rights, and trademark rights (Supreme Court Decision 2023Da280358, Oct. 25, 2024).

Regarding the legal status of an exclusive licensee: (1) Under prevailing interpretations by Korean courts and scholars, an exclusive licensee may claim damages for infringement. (2) There is no explicit court ruling on whether such a licensee may directly or by subrogation bring a claim for injunctive relief, and academic opinions are divided on this issue.

2) Exercise of Rights Against Copyright Infringement

In a case where an exclusive licensee was granted the rights to distribute and sell sound recordings by a phonogram producer and sought to stop reproduction right infringement on behalf of the producer, the Supreme Court held:

Unlike the Patent Act, which recognizes exclusive licensees' right to seek injunctive relief, the Copyright Act does not grant such rights to licensees. Therefore, even if the parties to a license agreement enter into an exclusive license, the licensee cannot independently

exercise the right to seek an injunction under the Copyright Act. However, in cases where the property right protected by the Copyright Act is infringed and the right holder does not act to seek an injunction, the exclusive licensee has no other means to protect its interest. Because the rights under a copyright license are not personal in nature, the exclusive licensee may, to the extent necessary to protect its rights, exercise the right to seek injunctive relief under the Copyright Act by subrogation on behalf of the right holder" (Supreme Court Decision 2005Da11626, Jan. 25, 2007).

However, after this decision, the Copyright Act was amended to provide that a person holding the right to publish, reproduce, or transmit a work may establish an exclusive right to use the work for such purposes (Copyright Act Article 57). Such an exclusive publishing right holder may directly bring civil and criminal claims against infringers, including claims for injunctive relief and damages.

3) Exercise of Rights Against Trade Secret Infringement

According to the UCPA, the right to claim injunctive relief or prevention of infringement, damages, and restoration of business reputation is granted to the "holder of a trade secret" (Articles 10 to 12 of the UCPA).

In this regard, the Seoul High Court ruled that "the person entitled to seek prohibition, etc., of trade secret infringement is the holder of the trade secret whose business interests have been or are likely to be infringed by the act of infringement (Article 10(1) of the UCPA), and the 'holder of a trade secret' includes not only the person who first developed or created the technical or business know-how, but also a person who has lawfully acquired it through valid legal transactions, such as an assignee or a person granted a license to use the trade secret under a license agreement" (see Supreme Court Decision 96Ma364, Feb. 5, 1997; Supreme Court Decision 96Da31574, Nov. 26, 1996). This view was adopted in Seoul High Court Decision 2015Na9945, July 6, 2017, which was finalized upon dismissal of appeal.

16. Are there criminal sanctions for infringement of any intellectual property rights, and if so, what are they and how are they invoked?

1) Patent Right

Criminal Penalties: A person who infringes a patent right or an exclusive license shall be punished by imprisonment for not more than 7 years or by a fine not exceeding 100 million won (Article 225(1)).

Initiation of Proceedings: It is a crime not requiring a complaint (i.e., a non-consensual crime), so investigation and prosecution by the Prosecutor's Office are possible without a formal complaint. However, if the victim expresses intent not to punish, prosecution is barred. (Previously a crime required a complaint, but this requirement was amended by Act No. 17536 (Oct. 20, 2020) to improve effectiveness—Article 225(2)).

2) Utility Model Right

Same as patent right (Article 45)

3) Trademark Right

Criminal Penalties: A person who infringes a trademark right or an exclusive license shall be punished by imprisonment for not more than 7 years or by a fine not exceeding 100 million won (Article 230).

Initiation of Proceedings: The Prosecutor's Office does not require a complaint by the right holder and is unaffected by the victim's intent not to punish, in order to protect general consumer interests.

4) Design Right

Criminal Penalties: A person who infringes a design right or an exclusive license shall be punished by imprisonment for not more than 7 years or by a fine not exceeding 100 million won (Article 220(1)).

Initiation of Proceedings: Same as patent right—a non-consensual crime (Article 220(2)).

5) Copyright

Criminal Penalties: A person may be punished by imprisonment for not more than 5 years or by a fine not exceeding 50 million won, or both (Article 136).

Initiation of Proceedings: In principle, requires a complaint (crime requiring a complaint, Article 140). However, complaints are not required for offenses committed for commercial purposes, habitual offenders, or infringement of databases, and the Prosecutor's Office can initiate an investigation and file charges.

6) Trade Secret

Criminal Penalties: A person who acquires, uses, discloses, or leaks trade secrets for unfair advantage, or acquires them through illicit means, shall be punished by imprisonment for not more than 10 years or a fine not exceeding 500 million won. If the economic gain exceeds 500 million won, the fine shall be 2 to 10 times the

amount of gain (Article 18(2)). Additionally, unauthorized overseas transfer of trade secrets is punishable by imprisonment for not more than 15 years or a fine not exceeding 1.5 billion won; provided that if the economic gain exceeds 1.5 billion won, the fine shall be 2 to 10 times the amount of gain (Article 18(1)).

Initiation of Proceedings: The Prosecutor's Office does not require a complaint (non-consensual crime) and proceeds regardless of the victim's intent not to punish.

17. What other enforcement options are available for each of the intellectual property rights described above? For example, civil court proceedings, intellectual property office proceedings, administrative proceedings, alternative dispute resolution.

1) Civil Remedies

For infringement of patent rights, utility model rights, trademark rights, design rights, trade secrets, and copyrights, civil remedies include claims for injunction, preliminary injunction, damages, and restitution of unjust enrichment. Additionally, for infringement of patent rights, utility model rights, trademark rights, design rights, and trade secrets, a claim for restoration of business reputation may also be made. In the case of copyright infringement, claims for restoration of honor and similar remedies may be available.

2) Proceedings Before the Korean Intellectual Property Office (KIPO)

KIPO operates the Special Judicial Police System for Industrial Property Rights, which enables it to investigate and refer criminal cases related to infringement of industrial property rights—such as patents, utility models, trademarks (counterfeit goods), designs, and trade secrets—to the Prosecutor's Office.

3) Customs Procedures

The Commissioner of the Korea Customs Service may suspend customs clearance or take necessary measures against goods infringing patent rights, trademark rights, design rights, copyrights, plant variety rights, or geographical indication rights (Article 235 of the Customs Act).

4) Proceedings Before the Korea Trade Commission (KTC)

Under the Act on Investigation of Unfair International

Trade Practices and Remedy Against Injury to Industry ("**Unfair Trade Investigation Act**"), the importation, domestic sale, exportation or manufacture for the purpose of exportation, of goods infringing patent rights, utility model rights, trademark rights, design rights, or copyrights is prohibited (Article 4(1)(i)). The KTC may, upon application or ex officio, determine whether the imported goods infringe such rights (Articles 5 and 9), and if so, may issue corrective orders such as suspension of importation or destruction of goods, with the opinion of the Minister of Trade, Industry and Energy (Article 10). It may also impose administrative fines on importers (Article 11).

5) Other Alternative Dispute Resolution (ADR) Systems

The Industrial Property Dispute Mediation Committee established under the Invention Promotion Act facilitates settlement of disputes related to infringement of patent rights, utility model rights, trademark rights, design rights, and trade secrets through mutual agreement between the parties. Similarly, for copyright disputes, the Copyright Dispute Mediation System is available through the Mediation Committee of the Korea Copyright Commission, based on the Copyright Act.

18. What is the length and cost of such procedures?

1) Civil Litigation

Although the courts recognize the need for expedited proceedings in civil cases involving intellectual property rights, the time required for adjudication may vary depending on the complexity of the matter and the procedural developments. Therefore, it is difficult to specify a fixed timeline or costs.

2) Customs Procedures

According to the Customs Act, its Enforcement Decree, and the Public Notice on Handling Import and Export Customs Procedures for the Protection of Intellectual Property Rights, if suspected IP-infringing goods are identified during customs clearance, the customs office will notify the interested parties (e.g., the importer/exporter and the IP right holder) of the importation.

The right holder may request suspension of clearance within 7 days from the date of notification by submitting a written opinion and a security deposit (120% of the dutiable value, or 40% for SMEs). If, based on the submitted materials from both the right holder and the

importer/exporter, the customs office determines that infringement is likely, it will notify the parties of the suspension. The right holder must then file a lawsuit or request an investigation by the Korea Trade Commission within 10 days of receiving the suspension notice to maintain the suspension.

Meanwhile, the importer/exporter may submit an application to permit clearance, along with supporting evidence and a security deposit, arguing that the goods do not infringe. The customs office must determine whether to allow clearance within 15 days from the date of receiving the application.

3) Unfair Trade Practice

Upon receiving an application to investigate unfair trade practices, the Korea Trade Commission must decide whether to initiate an investigation within 20 days (Article 5(3) of the Unfair Trade Investigation Act). Once the decision to initiate is made, the Commission must conclude its investigation and render a determination within 6 months from the date of such decision (Article 9(1) of the same Act).

19. Where court action is available, please provide details of which court(s) have jurisdiction, how to start proceedings, the basics of the procedure, the time to trial, the format of the trial, the time to judgment and award of relief and whether any appeal is available.

1) Competent Courts

A) Civil Litigation

(i) Patent rights, Utility model rights, Trademark rights, and Design rights

First Instance: Seoul Central District Court, Daejeon District Court, Daegu District Court, Busan District Court, Gwangju District Court, and Suwon District Court (Among these, Seoul Central District Court has concurrent jurisdiction over all regions.)

Second Instance: Intellectual Property High Court

Third Instance: Supreme Court

(ii) Copyright and Trade Secret

First Instance: All District Courts

Second Instance: High Courts

Third Instance: Supreme Court

B) Criminal Litigation

First Instance: All district Courts

Second Instance: High Courts

Third Instances: Supreme Court

2) Filing Method and Basic Procedure of Civil Lawsuits Involving Intellectual Property Rights

A) Submission and Review of Complaint:

The first instance procedure in civil litigation commences with the filing of a complaint (Article 248 of the Civil Procedure Act). A revenue stamp based on the value of the claim must be attached to the complaint or its equivalent amount paid in cash or by credit card, accompanied by a receipt of payment.

B) Submission of Answer:

If the defendant intends to dispute the plaintiff's claim, the defendant must submit an answer within 30 days from the date the duplicate of the complaint is served (Article 256(1) of the Civil Procedure Act).

C) Oral Proceedings:

Unless the court renders a judgment without holding a hearing, the presiding judge must promptly schedule a date for oral argument (Article 258(1), main text). Once a contesting answer is filed, the standard procedure is to designate a hearing date, clarify the issues through oral argument, and then proceed with evidence examination.

D) Preparatory Proceedings:

Exceptionally, even if a hearing date is scheduled early, the case may be transferred to preparatory proceedings if the court deems it necessary to clarify issues through written submissions (Article 279(2) of the Civil Procedure Act).

E) Submission of Preparatory Briefs:

To promote efficient hearings, parties must prepare their arguments in writing (Article 272(1) of the Civil Procedure Act).

F) Conduct of Hearing Dates:

At hearing dates, the court may hear arguments from both parties, examine documentary evidence, extract and share disputed issues, engage in oral arguments on such

issues, and consider additional evidence requests.

G) Termination of Lawsuit:

As a rule, the lawsuit is concluded by a final judgment (Article 198 of the Civil Procedure Act). However, it may also be concluded by an order of dismissal, decision in lieu of settlement, recommendation of settlement, etc. In addition, a lawsuit may terminate based on the parties' actions such as withdrawal of the claim, deemed withdrawal, settlement in court, mediation, or waiver/acceptance of claims.

3) Time to Judgment

The courts recognize the need for expedited proceedings in civil litigation concerning intellectual property rights. However, due to the complexity of the matter and the progression of the litigation process, the time required until a judgment is rendered may vary, and therefore it is difficult to specify a precise duration.

4) Possibility of Appeal

Parties may appeal a first-instance judgment to a higher court. An appeal must be filed within two weeks from the date the first-instance judgment is served; however, it may also be filed prior to the service of the judgment (Civil Procedure Act, Articles 396(1)). The appellant must submit a statement of appeal grounds within 40 days from the date of receipt of the court's notice of receipt of the appellate record. If the appellant requests an extension within the submission period, the court may extend the deadline once for up to one month (Civil Procedure Act, Article 402-2). If the appellant fails to submit the statement of appeal grounds within the submission period (or the extended period, if applicable), the appeal may be dismissed by the court. However, this does not apply if the grounds for appeal must be examined ex officio or if the statement of appeal grounds is included in the appeal brief (Civil Procedure Act, Article 402-3).

Furthermore, a party who wishes to contest the second-instance judgment may file an appeal to the Supreme Court. The appeal must be filed within two weeks from the date the second-instance judgment is served; however, it may also be filed prior to the service of the judgment (Civil Procedure Act, Articles 425).

20. What customs procedures are available to stop the import and/or export of infringing goods?

Article 235 of the Customs Act

Goods that infringe intellectual property rights such as trademark rights registered under the Trademark Act, copyrights under the Copyright Act, patent rights registered under the Patent Act, or design rights registered under the Design Protection Act shall not be exported or imported. (Article 235(1))

In order to effectively crack down on goods that infringe the intellectual property rights under each subparagraph of paragraph (1), the Commissioner of the Korea Customs Service may require the person who has registered or obtained such intellectual property rights in accordance with applicable laws to report information regarding such rights. (Article 235(2))

Where the head of a customs office determines that any of the goods falling under any of the subparagraphs of paragraph (1) infringe the reported intellectual property rights under paragraph (2), the head shall notify the person who reported such rights of the filing of the import/export declaration or the arrival of such goods at the customs-post office. In such case, the notified person may request the customs office to suspend clearance or detain the goods by providing a security. (Article 235(3))

Any person seeking to protect the intellectual property rights under paragraph (1) may request the head of a customs office to suspend clearance or detain the goods by providing a security. (Article 235(4))

Unfair Trade Practice Investigation System of the Trade Commission

It is prohibited to import or export goods that infringe upon intellectual property rights such as patents, utility models, designs, trademarks, copyrights, neighboring rights, publication rights, database maker's rights, layout-designs of semiconductor integrated circuits, geographical indications, rights to geographical indications, or trade secrets protected under the laws of the Republic of Korea or treaties to which the Republic of Korea is a party. (Article 4(1)(i) of Unfair Trade Investigation Act)

Any person who believes that an unfair trade practice has occurred may file a written request with the Trade Commission for an investigation. (Article 5(1)) Related measures include provisional measures (Article 7), corrective measures (Article 10), and imposition of administrative fines (Article 11).

21. Are any non-court enforcement options or dispute resolution mechanisms mandatory in respect of intellectual property disputes in any circumstances? If so, please provide details.

In addition to the industrial property dispute mediation system and the copyright mediation system mentioned above, various alternative dispute resolution (ADR) procedures—such as settlement, conciliation, mediation, and arbitration—are available for resolving intellectual property disputes. However, there are no mandatory provisions requiring the use of such procedures. If both parties agree or contractually stipulate to resolve the dispute through ADR, an obligation to comply arises based on the binding effect of that agreement or contract.

22. What options are available to settle intellectual property disputes in your jurisdiction?

1) Direct Settlement Between Parties

2) Alternative Dispute Resolution (ADR) Mechanisms

– Industrial Property Dispute Mediation Committee: A mediation body under the Korean Intellectual Property Office (KIPO), established pursuant to Article 41 of the Invention Promotion Act. It aims to facilitate prompt and cost-effective resolution of disputes related to industrial property rights (patents, utility models, trademarks, and designs), employee inventions, trade secrets, and unfair competition through a mediation committee composed of experts from various fields. If mediation is successful, it has the same legal effect as a judicial settlement (Article 46 of the Invention Promotion Act).

– Korea Copyright Commission Mediation: Based on Article 112 of the Copyright Act, a panel of experts facilitates agreement between parties to a copyright dispute. If the parties reach an agreement or do not object to an ex officio mediation decision, the result has the same effect as a judicial settlement (Article 117(5) of the Copyright Act).

– Korean Commercial Arbitration Board (KCAB): A permanent statutory arbitration institution established on March 22, 1966 under the Arbitration Act. It also handles cases involving intellectual property.

– Mediation and Arbitration Committee for SME Technology Disputes: Established under Article 23 of the Act on Support for Protection of Small and Medium Enterprise (SME) Technology, this system supports prompt remedy and legal response for companies

harmed by technology leakage. It resolves disputes involving misappropriation, theft, or unauthorized use of technology belonging to SMEs.

23. What is required to establish infringement of each of the intellectual property rights described above? What evidence is necessary in this context?

1) Patent Right

Requirements:

(1) Direct Infringement: (a) The patent right must be valid and in force. (b) The act must fall within the scope of the patented claim. (c) The act must be carried out in the course of business. (d) The actor must not have a legitimate authority to practice the patented claim.

(2) Indirect Infringement: Acts of producing, assigning, leasing, exporting, or importing, or offering to assign or lease an article used exclusively for manufacturing the patented product or implementing the patented method (Article 127).

Necessary Evidence: Patent registration gazette, structural details of the allegedly infringing product (e.g., photos), materials proving the act of implementation (e.g., sales records), etc.

2) Utility Model Right

Requirements:

(1) Direct Infringement: (a) The utility model must be valid and in force. (b) The act must fall within the scope of the registered claim. (c) The act must be carried out in the course of business. (d) The actor must not have a legitimate authority to practice the utility model.

(2) Indirect Infringement: Acts of producing, assigning, leasing, exporting, or importing, or offering to assign or lease an article used exclusively for manufacturing a product related to a registered utility model (Article 29). Unlike patents, utility models only protect device inventions (not methods).

Necessary Evidence: Same as for patent rights.

3) Trademark Right

Requirements: (a) Existence of a valid trademark right. (b) Use of the mark in a trademark-like manner. (c) Use must fall within the protection scope (i.e., use of identical/similar marks on identical/similar goods). (d)

Use of the trademark without legitimate authority. (e) No applicability of any limitation on effect. (f) The infringement claim must not constitute abuse of rights.

Necessary Evidence: Trademark registration gazette, examples of infringing use, etc.

4) Design Right

Requirements:

(1) Direct Infringement: (a) Existence of a valid design right. (b) Use must fall within the protection scope (i.e., similarity in goods and design). (c) Act must be done in the course of business. (d) No legitimate authority.

(2) Indirect Infringement: Acts of producing, assigning, leasing, exporting, or importing, or offering to assign or lease an article used exclusively for manufacturing products covered by or similar to the registered design (Article 114).

Necessary Evidence: Same as for patent rights.

5) Copyright

Requirements: (a) Copyright must exist. (b) The work must be used based on the original work. (c) There must be substantial similarity between the two works.

Necessary Evidence: The copyright holder's work, the infringing expression, etc.

6) Trade Secret

Requirements: Must qualify as a trade secret [non-publicity, economic value, secrecy management]. Must constitute infringement [unlawful acquisition, unauthorized disclosure, malicious acquisition from an infringer, etc. (Article 2(3))].

Necessary Evidence: Materials proving the existence of a trade secret, materials proving the infringing act of the other party.

24. How does the court acquire any necessary information (fact or technical) and in what circumstances does it do so? In particular a) Is there a technical judge, a judge with technical experience, a court appointed expert, an expert agreed by the parties, and/or parties' expert witness evidence? b) What mechanisms are available for compelling the obtaining and

protecting of evidence? Is disclosure or discovery available?

1) Response to Question (a)

A) There is no separate system for technical judges. However, technical advisors such as technical examiners and technical investigators (seconded from the Korean Intellectual Property Office) are currently assigned to the Supreme Court, the Intellectual Property High Court, and the Seoul Central District Court to assist in the adjudication of intellectual property cases. Their duties include ad hoc consultations with the court on technical or specialized matters, preparation of technical review reports, internal technical briefings for the court, attending hearings to observe arguments, and drafting of opinion statements. These efforts help the court understand technical and specialized facts accurately and provide expert opinions. In addition, expert witnesses may be used to present opinions based on their expertise, and expert opinions obtained through appraisals may also be utilized in hearings. Furthermore, in cases requiring specialized knowledge such as intellectual property disputes, the court may use a system that allows external expert panel members to provide oral or written explanations or opinions.

2) Response to Question (b)

A) Procedures for Evidence Collection

– Order to Submit Materials or Documents: In intellectual property infringement litigation, the court may, upon a party's request, order the opposing party to submit materials and documents necessary for calculating damages or proving infringement (Patent Act Article 132; Utility Model Act Article 30; Design Protection Act Article 118; Trademark Act Article 114; UCPA Article 14-3).

– Article 132(1) of the Patent Act provides: "In litigation concerning infringement of a patent right or exclusive license, the court may, upon request by a party, order the opposing party to submit materials necessary for proving the infringement or calculating damages. However, this shall not apply if the holder of the materials has a justifiable reason to refuse submission." Article 132(3) of the Patent Act further states: "If the materials subject to submission under paragraph (1) constitute a trade secret (as defined in Article 2(2) of the UCPA) and are essential to proving infringement or calculating damages, such trade secret shall not be deemed a justifiable reason for refusal."

– The Utility Model Act Article 30 adopts Article 132 of the Patent Act mutatis mutandis.

– Article 114 of the Trademark Act provides: "In litigation concerning infringement of a trademark right or exclusive license, the court may, upon request by a party, order the opposing party to submit documents necessary for calculating damages resulting from such infringement."

– Article 118 of the Design Protection Act similarly provides: "In litigation concerning infringement of a design right or exclusive license, the court may, upon request by a party, order the opposing party to submit documents necessary for calculating damages resulting from such infringement."

– Article 14-3 of the UCPA provides: "In litigation concerning acts of unfair competition, violations of Article 3-2(1) or (2), or trade secret infringement that cause harm to business interests, the court may, upon request by a party, order the opposing party to submit materials necessary for calculating damages resulting from such infringement."

– In this regard, there are ongoing discussions to amend the UCPA, Trademark Act, and Design Protection Act to expand the subject of evidence submission orders from "documents" to "materials," and to allow such orders not only for damage calculation but also for proving infringement.

– Procedure for Order to Provide Information in Copyright Infringement: Article 129-2(1) of the Copyright Act provides: "In litigation concerning infringement of copyright or other rights protected under this Act, the court may, upon request by a party and if deemed necessary for collecting evidence, order the opposing party to provide the following information in their possession or knowledge:

1. Information identifying persons involved in the infringing acts or production/distribution of infringing copies
2. Information on the distribution route of infringing copies."

– In addition, under the Civil Procedure Act, a party may request the court to order the person in possession of a document to submit it (Article 343), and if the court finds the request to be justified, it may order the person to submit the document (Article 347).

B) Procedure for Preservation of Evidence

– The court may conduct an examination of evidence upon a party's request if it finds that the evidence may be difficult to use unless examined in advance (Civil Procedure Act Article 375). This evidence preservation procedure may be used in cases where there is a concern

that the infringer might destroy or tamper with the infringing products. In such cases, the rights holder may file an application for evidence preservation with the court to inspect and collect evidence related to the infringing products on-site.

C) Discovery System

Korea does not currently have a discovery system. However, discussions are underway regarding the introduction of a "Korean-style discovery system" to improve procedures for evidence collection and investigation.

25. How is information and evidence submitted to the court scrutinised? For example, is cross-examination available and if so, how frequently is it employed in practice?

1) Civil Litigation

A) Evidence submitted to the court is subject to an evidentiary examination procedure. This procedure refers to the court's procedural acts of reviewing the content of personal or material evidence in order to form the judge's opinions. The evidentiary examination proceeds in the following order: submission of evidence → decision on admissibility → conduct of evidentiary examination → formation of conviction based on the result of the examination. If the court is unable to form a conviction, the case is resolved according to the legal principles of burden of proof.

B) The opposing party may present opinions regarding the admissibility or credibility of evidence submitted by the other party (Civil Procedure Act Article 274(1)(v)). In practice, courts may order parties to state their position (admit or deny) regarding the evidence submitted by the opposing party.

C) As a rule, evidentiary examination should be conducted in open court before the trial judge(s), in accordance with the principles of directness and publicity. In such cases, the trial date also serves as the evidentiary hearing date. However, where deemed necessary, such as for site inspections or medical examinations, the court may conduct evidentiary proceedings outside the courtroom, either directly or by delegating the task to another panel judge or a judge from another district court (Civil Procedure Act Article 297(1)).

D) Witness examination is also used as a method of evidentiary investigation. The standard order of examination is: direct examination by the requesting

party cross-examination by the opposing party redirect examination by the requesting party. Further examination (e.g., recross-examination, re-redirect) is only permitted with the judge's approval (Civil Procedure Rules Article 89). In practice, this system is actively used, especially to hear expert witnesses who provide both factual and expert opinions—for instance, in patent infringement cases, regarding the level of ordinary skill in the art at the time of filing, technical details of prior art, or the configuration of the accused product.

E) In the course of evidentiary proceedings, the following confidentiality protection measures are available:

(1) A Confidentiality Protection Order system prohibits parties, representatives, and others from using trade secrets or other confidential information learned during the litigation process for purposes outside of the lawsuit, or from disclosing such information to third parties. This system is codified under Article 224-3 of the Patent Act, Article 44 of the Utility Model Act, Article 227 of the Trademark Act, Article 217 of the Design Protection Act, Article 129-3 of the Copyright Act, and Article 14-4 of the UCPA.

(2) In-camera proceedings are also provided for. Article 347(4) of the Civil Procedure Act states: "The court may, if it finds it necessary in determining whether a document falls under the category subject to production obligation pursuant to Article 344, order the person holding the document to present it. In such a case, the court shall not allow any other person to view the document."

Likewise, Article 129-2(4) of the Copyright Act provides: "Where the court deems it necessary to determine whether there exists a legitimate reason for refusing to provide information—such as protection of trade secrets (as defined in Article 2(2) of the UCPA), personal privacy, or other justifiable grounds—it may require the opposing party to provide the information. In such cases, unless the opinion of the requesting party or its representative must be specifically heard to determine the existence of such grounds, the court shall not disclose the provided information to any other person."

2) Criminal Proceedings

A) The prosecutor, the defendant, or defense counsel may submit documents or objects as evidence and may also request the examination of witnesses, expert witnesses, interpreters, or translators (Criminal Procedure Act, Article 294). The court must make a ruling on such evidentiary motions and may also conduct evidentiary examinations ex officio (Article 295).

B) Evidence submitted to the court is subject to evidentiary examination procedures, as in civil litigation (Article 290). The court shall examine the evidence submitted by the prosecutor first, followed by the evidence submitted by the defendant or defense counsel. Thereafter, the court shall examine any evidence designated ex officio. However, the court may, either on its own authority or upon the request of the prosecutor, the defendant, or defense counsel, change the order of examination described above (Article 291-2).

C) Witness examination also constitutes a form of evidentiary examination in criminal proceedings. As a rule, such examination is conducted during the trial phase. The witness is first examined by the party who requested the examination—i.e., the prosecutor, defense counsel, or defendant—and subsequently by the opposing party. After both parties have completed their examinations, the presiding judge may question the witness (Article 161-2(1) and (2)). As in civil litigation, the examination proceeds according to the principle of cross-examination: direct examination cross-examination redirect examination further examination.

26. What defences to infringement are available?

The primary defenses to allegations of infringement of patent rights, utility model rights, trademark rights, design rights, copyright, and trade secrets are as follows:

1) Patent Right:

- The accused act does not fall within the scope of the patent right.
- The act was non-commercial in nature.
- Defense of invalidity.
- Defense of abuse of rights.
- Defense based on prior art or publicly available technology.
- Defense of exhaustion.
- Defense based on the establishment of a legitimate license.
- Defense based on the limitations of patent rights.

2) Utility Model Right:

- The accused act does not fall within the scope of the utility model right.
- The act was non-commercial in nature.
- Defense of invalidity.
- Defense of abuse of rights.
- Defense based on prior art or publicly available technology.
- Defense of exhaustion.

- Defense based on the establishment of a legitimate license.
- Defense based on the limitations of utility model rights.

3) Trademark Right:

- The accused act does not fall within the scope of the trademark right.
- The use was not trademark use.
- Defense of invalidity.
- Defense of abuse of rights.
- Defense of exhaustion.
- Defense based on the establishment of a legitimate license.
- Defense based on the limitations of trademark rights.
- Defense of parallel import of genuine goods.

4) Design Right:

- The accused act does not fall within the scope of the design right.
- The act was non-commercial in nature.
- Defense of invalidity.
- Defense of abuse of rights.
- Defense of publicly available designs (freely usable designs).
- Defense of exhaustion.
- Defense based on the establishment of a legitimate license.
- Defense based on the limitations of design rights.

5) Copyright:

- Defense based on statutory limitations on economic rights, such as: Use for educational purposes, Use for news reporting, Quotation of published works, Non-profit performances or broadcasts, Private reproduction, Temporary reproduction during use of a work, Fair use of copyrighted works.
- Defense based on the existence of a legitimate license.
- Defense of abuse of rights.

6) Trade Secret

- The information in question does not meet the legal requirements for trade secret protection – publicly available information or not maintained as secret.
- The information was developed independently by the recipient without reference to the discloser's information.

27. Who can challenge each of the intellectual

property rights described above?

1) Patent Right

- Trial for Invalidation (Patent Act Article 133): May be requested by an interested party or an examiner. Under Article 133(1) of the Patent Act, an "interested party" who may request a trial for invalidation of a registered patent refers to a person who has a direct and actual interest likely to suffer disadvantage because of the continued existence of the patent right, such as being subject to or at risk of being subject to the enforcement of the patent right. This includes those who manufacture or sell, or intend to manufacture or sell, goods of the same type as the patented invention (Supreme Court Decision 2007Hu1022, Jan. 28, 2010).
- Request for Patent Revocation (Article 132-2): May be filed by any person.
- Trial for Confirmation of Scope of Right (Patent Act Article 135): May only be filed by an interested party.

2) Utility Model Right

- Trial for Invalidation (Utility Model Act Article 31(1)): May be requested by an interested party or an examiner. An interested party who may request a trial for invalidation of a registered utility model refers to a person who manufactures or sells, or intends to manufacture or sell, goods of the same type as the registered utility model and who has a direct and actual interest likely to suffer disadvantage because of the continued existence of the right. This includes persons who realistically hope to manufacture and sell in the future. Whether a person is an interested party is determined based on the time of the trial decision (Supreme Court Decision 81Hu59, Mar. 27, 1984).
- Trials for invalidation, request for cancellation, and trials for confirmation of scope of rights are the same as for patent rights.

3) Trademark Right

- Opposition (Trademark Act Article 60): Anyone may file an opposition once the application is published.
- Trial for Invalidation (Trademark Act Article 117(1)): Interested party or examiner.
- Trial for Cancellation of Trademark Registration (Trademark Act Article 119(5)): May be filed by any person or an interested party depending on the cause of cancellation.
- Trial for Confirmation of Scope of Right (Article 121): Interested party.

4) Design Right

- Trial for Invalidation (Design Protection Act Article 121): Interested party or examiner.
- Trial for Confirmation of Scope of Right (Design Protection Act Article 122): Interested party.

5) Copyright

Lawsuit for Confirmation of Invalidity of Copyright Registration (Disposition): A person who has a legal interest in seeking confirmation of the validity or existence of the disposition, etc. (Administrative Litigation Act Article 35).

6) Trade Secret

No related procedure appears to exist.

28. When may a challenge to these intellectual property rights be made (e.g. during any registration process or at any time during the subsistence of the right)?

1) Patent Right

- Trial for Invalidation (Patent Act Articles 133(1), (2)): May be filed even after the patent right has lapsed (i.e., at any time after registration and even after the right is extinguished).
- Request for Patent Revocation (Patent Act Article 132-2): Within 6 months from the publication date after registration.
- Trial for Confirmation of Scope of Right (Patent Act Article 135): No specific filing period is stated in Article 135 (may be filed at any time after registration and before the extinction of the right).

2) Utility Model Right

- Trial for Invalidation, Request for Revocation of Utility Model Registration and Trial for Confirmation of Scope of Right: Same as patent rights.

3) Trademark Right

- Opposition (Trademark Act Article 60): Within 30 days from the date of publication of the application.
- Trial for Invalidation (Trademark Act Article 117): May be filed even after the trademark right has lapsed.
- Trial for Cancellation of Trademark Registration (Trademark Act Article 119): No time limit except for the cancellation due to the reason that use of the trademark constitutes unfair competition.
- Trial for Confirmation of Scope of Right (Article 121):

No specific filing period is stated (may be filed at any time after registration and before the extinction of the right).

4) Design Right

- Trial for Invalidation (Design Protection Act Article 121): May be filed even after the design right has lapsed.
- Trial for Confirmation of Scope of Right (Design Protection Act Article 122): No specific filing period is stated (may be filed at any time after registration and before the extinction of the right).

5) Copyright

Administrative Litigation for Confirmation of Invalidity of Copyright Registration (Disposition): May be filed at any time without limitation after notification of the registration disposition.

6) Trade Secret

No related procedures appear to exist.

29. Briefly, what is the forum and the procedure for challenging each of these intellectual property rights and what are the grounds for a finding of invalidity of each of these intellectual property rights?

1) Patent Right

A) Procedure and Tribunal

(1) Trial for Invalidation before the Intellectual Property Trial and Appeal Board (IPTAB) (Article 133 of the Patent Act)

(2) Lawsuit to Cancel IPTAB Decision before the Intellectual Property High Court (Article 186 of the Patent Act)

B) Grounds for Invalidation (Article 133(1) of the Patent Act):

Violation of the legal capacity of foreigners (Article 25), industrial applicability, novelty, inventive step, requirements for expanded prior applications (Article 29), invention not eligible for patent (Article 32), violation of first-to-file rule (Article 36(1)–(3)), failure to meet patent application requirements (Article 42(3)(i) or 42(4)), lack of entitlement to patent right under Article 33(1) or violation of joint application requirement (Article 44), etc.

2) Utility Model Right

A) Procedure and Tribunal

(1) Trial for Invalidation before the IPTAB (Article 31 of the Utility Model Act)

(2) Lawsuit to Cancel IPTAB Decision before the Intellectual Property High Court (Article 33 of the Utility Model Act, applying Article 186 of the Patent Act mutatis mutandis)

B) Grounds for Invalidation (Article 31(1) of the Utility Model Act):

Violation of registration requirements under Article 4, ineligible device under Article 6, violation of first-to-file rule (Article 7), violation of the legal capacity of foreigners (Article 25 of the Patent Act), etc.

3) Trademark Right

A) Procedure and Tribunal

(1) Trial for Invalidation before the IPTAB (Article 117 of the Trademark Act)

(2) Lawsuit to Cancel IPTAB Decision before the Intellectual Property High Court (Article 162 of the Trademark Act)

B) Grounds for Invalidation (Article 117(1) of the Trademark Act):

If the trademark registration or additional designation of goods was made by a person not eligible to register a trademark (Article 3), violation of foreigner's legal capacity (Article 27), violation of registration requirements (Article 33), unregistrable trademark (Article 34), violation of first-to-file rule (Article 35), etc.

4) Design Right

A) Procedure and Tribunal

(1) Trial for Invalidation before the IPTAB (Article 121 of the Design Protection Act)

(2) Lawsuit to Cancel IPTAB Decision before the Intellectual Property High Court (Article 166 of the Design Protection Act)

B) Grounds for Invalidation (Article 121(1) of the Design Protection Act):

Lack of entitlement to register a design under Article 3(1) or violation of joint application requirement (Article 39),

violation of foreigner's legal capacity (Article 27), violation of registration requirements (Article 33); unregistrable design (Article 34); or violation of requirements for related designs (Article 35), etc.

5) Copyright

No trial for invalidation. Invalidity of the administrative disposition (copyright registration) may be challenged by way of a lawsuit for confirmation of invalidity of copyright registration before the Seoul Administrative Court.

Grounds for invalidity include lack of copyrightable subject matter (Article 2(1) of the Copyright Act).

6) Trade Secret

No trial for invalidation.

(Reference: A case exists where confirmation of the absence of liability for damages due to violation of the UCPA by misappropriation of trade secrets was sought – Suwon District Court Seongnam Branch, July 24, 2018, 2016Gahap203199, 2015Gahap207255).

30. Are there any other methods to remove or limit the effect of any of the intellectual property rights described above, for example, declaratory relief or licences of right?

1) Patent Right

- Trial for Confirmation of Scope of Rights (Article 135 of the Patent Act)

Note: A trial for confirmation of scope determines, in relation to a specific product or process, the scope within which a patent right is effective.

- Registration of Exclusive or Non-exclusive License (Articles 100 and 102 of the Patent Act)
- Request for Patent Cancellation (Article 132-2 of the Patent Act)
- Non-exclusive license based on prior use (Article 103)
- Non-exclusive license based on use prior to registration of assignment following a claim for patent assignment (Article 103-2)
- Non-exclusive license based on use prior to request for trial for invalidation (Article 104)
- Non-exclusive license after expiration of the duration of a design right (Article 105)
- Expropriation of Patent Rights (Article 106)
- Working of Patented Invention by Government, etc. (Article 106-2)
- Adjudication for Grant of Non-exclusive License

(Article 107)

2) Utility Model Right

- Trial for Confirmation of Scope of Rights (Article 33 of the Utility Model Act, applying Article 135 of the Patent Act)
- Registration of Exclusive or Non-exclusive License (Article 28 of the Utility Model Act, Articles 100 and 102 of the Patent Act)
- Request for Cancellation of Utility Model Registration (Article 30-2 of the Utility Model Act)
- Pursuant to Article 28 of the Utility Model Act, the following provisions of the Patent Act apply mutatis mutandis: Non-exclusive license based on prior use (Article 103), Non-exclusive license based on use prior to registration of assignment following a claim for assignment (Article 103-2), Expropriation of Utility Model Right (Article 106), Working by Government, etc. (Article 106-2), Adjudication for Grant of Non-exclusive License (Article 107)

3) Trademark Right

- Trial for Confirmation of Scope of Rights (Article 121 of the Trademark Act)
- Registration of Exclusive or Non-exclusive License (Articles 95 and 97 of the Trademark Act)

4) Design Right

- Trial for Confirmation of Scope of Rights (Article 122 of the Design Protection Act)
- Registration of Exclusive or Non-exclusive License (Articles 97 and 99 of the Design Protection Act)
- Non-exclusive license based on prior use (Article 100)
- Non-exclusive license based on use prior to registration of assignment following a claim for assignment (Article 100-2): will become effective from November 28, 2025.
- Non-exclusive license based on earlier application (Article 101)
- Non-exclusive license based on use prior to request for trial for invalidation (Article 102)
- Non-exclusive license after expiration of the duration of a design right (Article 103)

5) Copyright

Lawsuit for Confirmation of Invalidity of Copyright Registration challenging the validity of the administrative disposition (Seoul Administrative Court)

6) Trade Secret

No applicable procedure appears to exist.

31. What remedies (both interim and final) are available for infringement of each of the intellectual property rights described above?

1) Patent Right

- Claim for Injunction and Prevention of Infringement (Article 126)
- Claim for Damages (Article 128(1))
- Claim for Restoration of Business Reputation (Article 131)

2) Utility Model Right (Same as Patent Rights; Articles 30 and 33 apply mutatis mutandis)

- Claim for Injunction and Prevention of Infringement (Article 30)
- Claim for Damages (Article 30)
- Claim for Restoration of Business Reputation (Article 30)

3) Trademark Right

- Claim for Injunction and Prevention of Infringement (Article 107)
- Claim for Damages (Article 109)
- Claim for Restoration of Business Reputation (Article 113)

4) Design Right

- Claim for Injunction and Prevention of Infringement (Article 113)
- Claim for Damages (Article 115)
- Claim for Restoration of Business Reputation (Article 117)

5) Copyright

- Claim for Injunction and Prevention of Infringement (Article 123)
- Claim for Damages (Article 125)
- Claim for Restoration of Reputation (Article 127)

6) Trade Secret

- Claim for Injunction and Prevention of Infringement (Article 10 of the UCPA)
- Claim for Damages (Article 11)
- Claim for Restoration of Business Reputation (Article 12)

32. What are the costs of enforcement proceedings and is any kind of costs recovery

available for successful parties? Is there a procedural mechanism enabling or requiring security for costs?

1) Costs Incurred in the Course of Enforcing Rights

Litigation costs can largely be divided into two categories. First, court costs prescribed by law, including filing fees, service fees, appraisal fees, and witness expenses. Second, expenses incurred by the parties in the course of litigation, such as attorneys' fees.

2) Availability of Mechanisms for the Prevailing Party to Recover Costs

- As a general rule, the losing party bears the litigation costs (Article 98 of the Civil Procedure Act). In the case of partial defeat, the court determines the apportionment of litigation costs between the parties (Article 101 of the Civil Procedure Act). Therefore, under the Civil Procedure Act, the prevailing party is generally entitled to claim litigation costs from the opposing party.
- In this context, attorneys' fees paid or payable to a lawyer representing a party are recognized as litigation costs within the limits prescribed by the Regulations on the Inclusion of Attorneys' Fees in Litigation Costs. That is, the recoverable attorneys' fees are limited to the lesser of (i) the amount actually paid or payable and (ii) the amount prescribed by the

Supreme Court regulations, which are significantly lower than the actual attorneys fees. Within this cap, the amount is calculated for each instance of the proceeding based on the value of the claim and a set standard.

3) Availability of Procedures for Security for Litigation Costs

- Article 117(1) of the Civil Procedure Act provides: "Where the plaintiff does not have a domicile, office, or place of business in the Republic of Korea, or where it is evident from the complaint, preparatory briefs, or other records that the claim is groundless, or in other cases where the court deems it necessary to secure litigation costs, the court shall, upon the defendant's request, order the plaintiff to provide security for litigation costs." Article 117(2) further provides: "In such cases, the court may, ex officio, order the plaintiff to provide security for litigation costs." Thus, the Act establishes a procedural mechanism under which the plaintiff may be required to provide security for litigation costs upon the defendant's motion or the court's own authority under certain circumstances.
- If the plaintiff fails to provide the required security within the prescribed period, the court may dismiss the complaint by judgment without holding a hearing. However, if the plaintiff provides the security before the judgment is rendered, this does not apply (Article 124 of the Civil Procedure Act).

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