

Intellectual Property Rights

1. Intellectual Property Rights System

Intellectual Property Rights are defined as the legal rights bestowed upon a person's intellectual creation that is considered worthy of receiving legal protection. Intellectual property rights include industrial property rights and copyrights. With cultural and technological advancements, new intellectual property rights such as trade secret rights and semiconductor layout rights are increasing. In Korea, industrial property rights and copyrights are governed by the Korean Intellectual Property Office and the Ministry of Culture, Sports and Tourism, respectively.

- Types of Intellectual Property Rights
- Intellectual Property Rights Application and Registration Process
- Copyright
- New Intellectual Rights

1-1 Types of Intellectual Property Rights

Definition of Intellectual Property Rights

Intellectual Property Rights are defined as the legal rights bestowed upon a person's intellectual creation that is considered worthy of receiving legal protection. The owners of real estate such as buildings and land and moveable assets like machinery may use them or lend them to others in return for compensation, since their ownership is equivalent to property rights. As such, the owners of intellectual property rights may also use or lend their rights to others.

Types of Intellectual Property Rights

Intellectual property rights	Industrial property rights	Patent rights	Source/core technology (major invention)
		Utility model rights	Peripheral/remedial technology (minor invention)
		Design rights	Design of product
		Trademark rights	Distinguishable symbol / character, figure
	Copyright	Copyright	Creative work in the field of art and literature
		Neighboring right	Right of performers, phonogram producers, broadcasting organizations
		Database	Producers of databases
New intellectual property rights	Newly emerging industry property rights	Industrial copyright, information property rights	

1-2 Intellectual Property Rights Application and Registration Process

(1) Patent

Subject of Protection

- The highly advanced creation of technical ideas that exploit natural laws

Requirements to Obtain a Patent

An invention for which an application for patent has been made should satisfy the following requirements to obtain a patent:

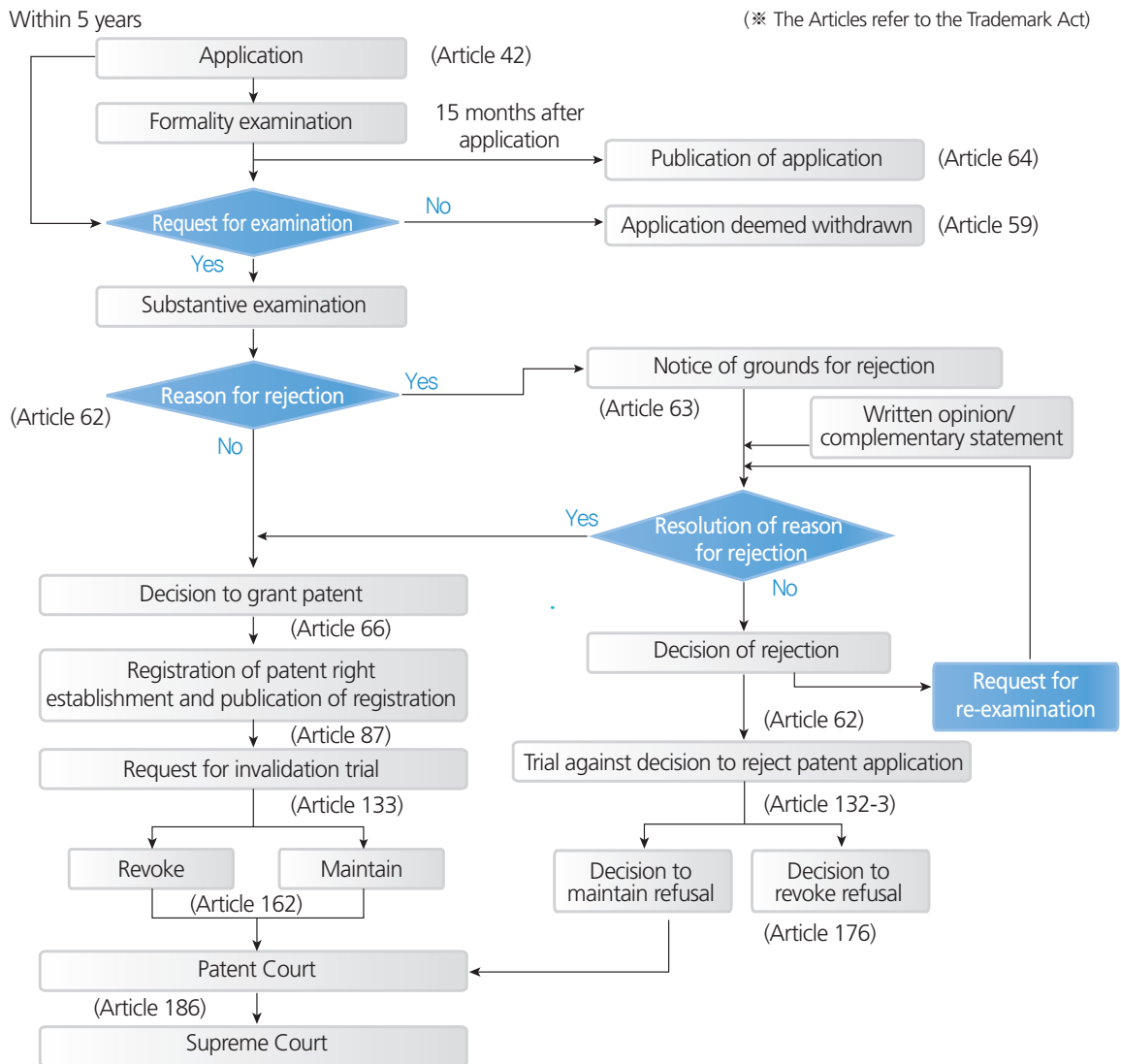
- The invention should be able to be used for industry (industrial applicability).
- The invention should not be a technology (existing technology) known prior to the application for a patent (novelty).
- The invention, although different from an existing technology, should not be easily conceivable as having originated from an existing technology (inventiveness).

Process Overview

- Formality Examination
 - Formality assessment is to check whether there are defects in the process (e.g., missing information on submitted documents, observation of period, attachment of required certificates, payment of fees)
- Request for Examination
 - An application for a patent is examined only when an applicant requests an examination. If a request for an examination is not filed within five years of the application, the application will be deemed invalid (Three years in the case of utility models).
 - * Defensive patent application: Application to prevent other parties from obtaining a patent.
- Disclosure of Application
 - The Korean Intellectual Property Office discloses the patent application 18 months after the application date to prevent delays in the public disclosure of technologies for which an application has been submitted.
- Substantive Examination
 - Substantive examination reviews the invention's industrial applicability, novelty and inventiveness. A patent is granted on condition of disclosure, so a review is conducted on whether the specification is appropriate for use by the public.
- Decision on Patent
 - The applicant will be notified of the decision to grant a patent when the examination result shows no reason for rejection.
- Registration and Publication of Registration
 - The applicant shall pay a registration fee to register the patent immediately upon receiving notification of the decision to award a patent. The patent right enters into effect upon establishment of registration. The registered application for a patent will then be published and disclosed to the public.
- Decision to Refuse Registration
 - A patent will not be granted when the reason for refusal remains unchanged after the applicant's submittal of a written opinion and complementary statement.

- Appeal against Examiner’s Decision to Refuse Registration
 - An applicant who has received a rejection decision may file a claim to assert that the decision is incorrect and to request that the decision be reversed.
 - Invalidation Trial
 - An examiner or an interested party (anyone from the date when the establishment of patent right is registered to the date on which three months have passed since public notification of the registration) may request the invalidation of a patent right, citing the grounds for such invalidation (requirements for patentability, improper description, misappropriated application, etc.).
- * The patent right will be rendered null and void in the event of a trial decision of invalidation.

< Patent Application and Examination Process Flowchart >



(2) Utility Model Right

Subject of Protection

- The shape or structure of an article, or a combination of articles that is industrially feasible.

Fast-Track Registration of Utility Model (applicable to applications filed from July 1, 1999 to September 30, 2006)

- The fast-track registration system was introduced to protect utility model technologies whose lifecycle is comparatively short and which are easily imitated, and to encourage small and mid-sized start-ups to develop and commercialize their technologies.
- Since rights are granted without any substantive examination of the registration conditions, there is a possibility that the rights will be defective. Thus, the technology evaluation system was introduced to prevent any cases of defective rights arising from quick registration.

Current System (registration after examination, applicable to applications filed on or after October 1, 2006)

- The advantages of the fast-track registration system have been weakened by a significant reduction of the examination process period. Also, certain drawbacks with the fast-track registration system, such as the abuse of rights registered without examination, the burden on applicants stemming from the complicated nature of the examination process, and the low efficiency of examination, have surfaced. Against such a background, the registration system has been changed to registration after examination.
- The examination processes for utility models and patents are now the same, thus improving the convenience of applicants.

(3) Trademark Right

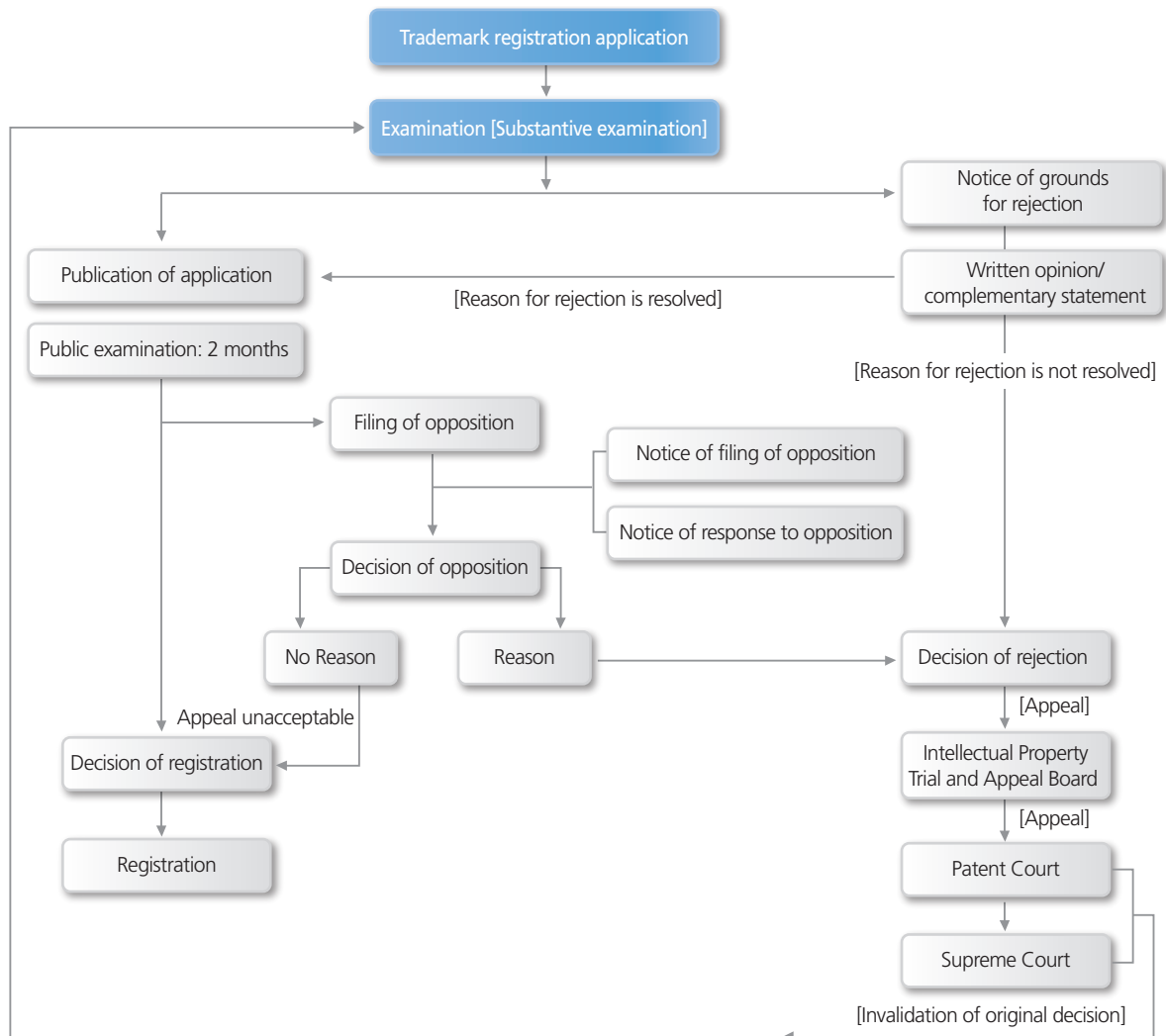
Concept of Trademark

- Definition of Trademark under the Trademark Act
 - The scope of a trademark was previously limited to a sign, letter, figure, three-dimensional shape, color or combination thereof. On July 1, 2007, however, the definition of trademark was expanded to include all marks that can be visually recognized such as a combination of colors, a hologram, and motion marks. In a broader sense, a trademark may include a service mark, collective mark or business emblem, and serves to distinguish the goods related to a person's business from those of other entities.
- Service Mark
 - Service mark refers to a mark used by a person who conducts a service business (advertisement business, telecommunication business, banks, restaurants, etc.) for the purpose of distinguishing his/her service business from other such businesses.
- Collective Mark
 - Collective mark refers to a mark intended to be used directly by a corporation established by joint producers/sellers of goods, or by the corporation's members for the goods or services for sale.
- Business Emblem
 - Business emblem refers to a mark which is used by a person who conducts a nonprofit business for the purpose of indicating his/her business (YMCA, Boy Scouts, etc.).

Examination Process

- Publication of Application
 - The trademark application is published before the establishment of the right is registered in order to collect opinions and allow requests for opposition, with the aim of making the examination fair. An applicant may request compensation when other persons use the trademark for which he/she has filed an application without obtaining due authorization and subsequently cause losses to his/her business.
- Objection
 - Anyone can raise an objection to a trademark for which an application has been published within two months of the publication date (the period cannot be extended). A specified form should be filled out to apply for objection, and the reasons for objection and the necessary evidence should be stated.

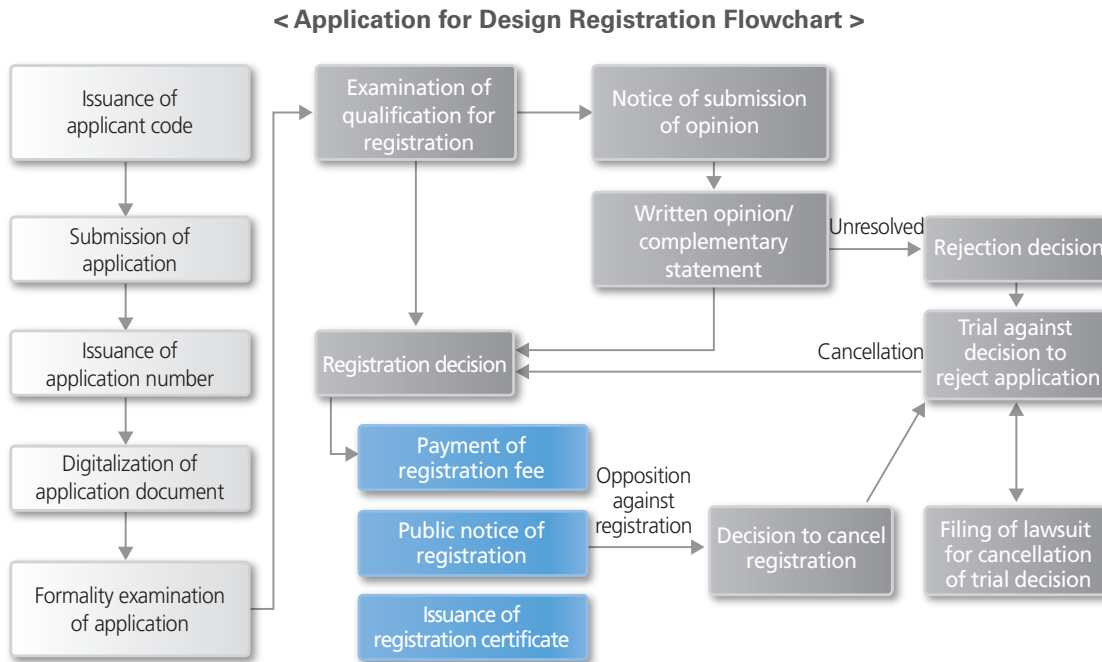
< Trademark Examination Process Flowchart >



(4) Design Right

Application and Examination Process

- There are two types of application for design registration: Application for examined design registration and application for unexamined design registration
- Designs for goods sensitive to trends and with a short lifecycle, such as foods (A1), clothes (B1), bedding (C1), papers and printouts (F3), containers (F4), fabrics (M1), miscellaneous goods (B2), shoes (B5), teaching materials (F1), and office supplies (F2), are registered without examination, while designs for other goods are registered after examination.



Unique Systems under the Design Protection Act

- Similar Design
 - All owners of a design right or applicants for design registration may register designs that changed the shape, pattern or color of their registered design or their design for which an application for registration has been filed (basic design) as similar designs in order to prevent imitations or appropriations of the design.
- Design of One Set of Articles
 - Where two or more goods are used together as a single set of goods, and where the design of the set of goods shows unity as a whole, an application for registration of the goods as one single design may be filed (tea set, smoking set, etc.).
- Secret Design
 - If an applicant requests confidentiality, the Korean Intellectual Property Office will not announce the registration of the design for three years from the registration date.

1-3 Copyright

The Copyright Act is composed of three rights: copyright granted to a person who has created a creative work that expresses human thoughts and emotions; neighboring right granted to a person who gives a stage performance, music record producer and broadcasting service provider; and database rights granted to producers of database.

- Copyright works refers to creative works that express human thoughts and emotions (Article 2, Subparagraph 1 of the Copyright Act) and are not limited exclusively to literature and the arts.
- A creative database is protected as a copyright work. With the amendment of the Copyright Act in 2003, provisions on the right of copyright producers have been added, providing a legal ground for protection of database without creativity.

(1) Copyright Act

Definition

- Copyright is divided into moral right and economic right.
- Moral right exists to protect the honor of the author, whereas economic right aims to protect the economic benefit of the author.

Types

- Moral right: right of publicity, right of paternity, right of integrity
- Economic right: right of reproduction, right of performance, right of broadcast transmission, right of exhibition, right of distribution, right of rental, and right of derivative work

Legal Characteristics of Copyright

- Generation of copyright: A copyright is generated with the creation of a work, and does not require specific procedures or methods. It differs from industrial property right in that industrial property rights are not generated without application and registration at the Korea Intellectual Property Office.
- Legal characteristics of copyright: Copyright is an exclusive right. Therefore, a person using a creative work must obtain permission from a copyright holder before using it. Economic right can be transferred to another person, whereas moral right cannot be transferred or inherited.

Limitation of Economic Right

- Economic right is the right to use a work exclusively. Considering that a work is created with direct or indirect support from society, recognizing the monopoly of a work's creator without limit is not beneficial to the public good and also hinders cultural development. Therefore, certain limitations are imposed on copyrights.

Copyright Protection Period

- Principle: During the lifetime of the copyright holder and up to 70 years from the death of the copyright holder.
- Work of an unknown author, work for business objectives, video works, and program works: Within 70 years of the date of declaration
- Joint works: Within 70 years of the death of the last surviving copyright holder
- Initial date of the protection period: January 1 of the year that follows the year in which the copyright holder has died or the creative work has been declared.

- On Jul. 1, 2013, the copyright protection period was extended from 50 years to 70 years from the date of death or announcement of death of the copyright holder. In this regard, in the case of creative works for which the copyright protection period expired before Jul. 1, 2013, it is considered that the copyright protection period of 50 years is expired.

Registration of Copyright

- A copyright can be legally protected without registration, but registration generates the following legal benefits:
 - Estimation: Estimation by registered author, economic right holder, and date of creation and declaration. However, when the date of creation is registered after one year has passed since creating the work, it is not estimated that the work was created on the registered date. When the right of the registered work is infringed, it is estimated that the infringement occurred by error.
 - Resistance: In the case that transfer of economic right or establishment of right of publication is registered after the transfer or establishment, those that have made the registration shall have resistance to a third party claim in the event of double transfer or establishment of rights.

(2) Neighboring Right

Definition

- Neighboring right is bestowed upon persons who contribute to distributing copyright works to the public through financial support or creative means.

Neighboring Right Holders

- Performers: A person who gives a stage performance by expressing works through acting, dancing, playing, singing, orally narrating, reciting or other artistic methods or by expressing things other than works in a similar way, including a person who conducts, directs or supervises a stage performance
- Record producers: A person who makes an overall plan and takes charge of fixing sound into music records
- Broadcasting service provider: A person who engages in broadcasting business

The Right of Neighboring Right Holders

- Like the right of copyright holders, the right of neighboring right holders is limited for the benefit of the public in using creative works, and protection of neighboring right does not affect copyright. Therefore, when broadcasting and performing a creative work, permission must be obtained not only from the neighboring right holders but also from the copyright holders.

Neighboring Right Protection Period

- Performance: 70 years from the performance thereof
- Record: 70 years from the release of recordings thereof
- Broadcasting: 70 years from the broadcasting thereof

(3) Right of Database Producers

The Copyright Act protects the right of database producers. Databases without creativity are also protected as well.

Definition of Database

- Database means the compiled matters whose subject matters are systematically arranged or composed, so that they may be individually approached or retrieved (Article 2-19 of the Copyright Act).

Right of Database Producers

- Database producers shall hold the rights to reproduce, distribute, broadcast, or transmit (hereafter referred to as the “reproduction, etc.” in this Article) the whole or considerable parts of relevant database (Article 93 (1) of the Copyright Act).

Protection Period

- The rights of database producers shall originate from the time of completing a production of database, and shall continue to exist for five years reckoning from the year thereafter (Article 95 (1) of the Copyright Act). Where a considerable investment has been humanly or physically made for the renewal, etc. of database, the rights of database producers for the relevant parts shall originate from the time of making relevant renewal, etc., and shall continue to exist for five years reckoning from the year thereafter (Article 95 (2) of the Copyright Act).

(4) Infringement Remedy

Principle

- Copyright holders may apply for corrective action concerning the infringement of their rights.

Civil Lawsuit

- Victims may file a lawsuit against a copyright infringer file a claim for damages.
- The right to claim damages should be filed within 10 years of the date of the infringement or within three years of becoming aware of the infringement or the identity of the infringing party; otherwise, the right to such will expire.

Criminal Charge

- A copyright holder may ask the investigation authority to bring charges against copyright infringers.
- Infringement of copyrights is a crime indictable upon complaint, and the victim should file a lawsuit within six months of becoming aware of the infringement. Therefore, a third party may report an infringement to the copyright holder, but may not directly sue the infringing party.
- A fine of less than KRW 50 million or imprisonment of five years or less may be imposed on persons who infringe the copyright law.

- A fine of up to KRW 30 million or imprisonment of up to three years may be imposed on persons who infringe the moral right, neighboring right or database producer right. (Article 136 (2) of the Copyright Act)

1-4 New Intellectual Property Rights

With the advancement of science and technology, there has a growing awareness on the value of intellectual properties in new domains (new intellectual properties) other than traditional intellectual properties. Also, there are active international discussions on how to establish a system to protect intellectual rights that cannot be protected under the existing system, such as traditional knowledge,

new plant species, geographical indications. New intellectual property rights include high-technology copyright, industrial copyright, information property right, geographical indications, internet domain names, and trademarks for tastes, sounds and smells, and each are governed by the relevant government authority.

The government established the National Intellectual Property Commission in May 2011 based on the Framework Act on Intellectual Property to strengthen support for and management of national intellectual properties.

2. Efforts to Protect Intellectual Property Rights

Korea has carried out administrative innovation on various fronts related to intellectual property rights in a bid to become an intellectual property powerhouse. The Korean government has streamlined the administrative procedures concerning intellectual property rights and improved the relevant systems at the Korean Intellectual Property Office to aggressively deal with changes in the global trade environment. Furthermore, Korea has developed close cooperative relationships with a number of international organizations in the domain of intellectual property rights and has strengthened global cooperation in the field as an increasing number of countries are actively pursuing FTAs with other countries.

- Reinforcement of the Protection of Intellectual Property Rights
- Intensification of International Cooperation

2-1 Reinforcement of the Protection of Intellectual Property Rights

The Korean government has set a long-term goal of becoming an intellectual property rights powerhouse by strengthening the creation, protection and utilization of intellectual property rights, and is seeking continuous innovation of the administrative systems of IPR-related organizations. The Korean Intellectual Property Office (KIPO) has been improving its efficiency and productivity as Korea's intellectual property rights authority to better deal with the changes in the international trade environment.

Establishment of a World-class Intellectual Property Service System

KIPO has been making efforts to establish a world-class intellectual property service system by increasing cooperation with major advanced nations, sharing knowledge with developing countries, and streamlining the examination and ruling process.

As a result of its efforts to enhance the competitiveness of its patent application examination period, KIPO could shorten the period to 18.5 months in 2010, which is shorter than that of the U.S. (25.8 months as of 2009) and Japan (29.1 months as of 2009). Also, KIPO provides a customized 3-track examination system that enables patent applicants to choose the timing of examination.

KIPO has also strengthened cooperation with advanced countries by establishing a cooperation system with the intellectual property offices of G5 advanced countries in the IP fields* and jointly implementing 10 key projects to effectively respond to the global surge in patent applications and reduce the time and expense for obtaining an intellectual property right overseas. Moreover, KIPO

has expanded the project for sharing its intellectual property with developing nations and the world's poorest countries and shared its experience in successfully becoming a recipient-turned-donor nation with the international community, which greatly contributed to improving Korea's image abroad and securing friendly relations with developing nations.

* G5: The patent offices of the five countries (China, the U.S., Japan, Korea and Europe) that together account for about 80 percent of the world's patent applications.

Related Laws and System Improvements

As the importance of trademarks has been increasing with the continuous growth of the trademark design market, the protection of intellectual property rights for trademarks has been broadened to include hologram marks and motion marks. Also, the relevant laws are being revised in order to apply certain details of the FTA agreement between Korea and the U.S. to the Korean domestic market. Furthermore, the many different formats of civil affairs documents have been integrated into a single format to meet civil needs. The newly-integrated format is designed to improve the convenience of civil petitioners and enhance administrative efficiency regarding patents.

Prevention of Counterfeit Products Distribution

KIPO is strengthening coordination with the prosecutor's office, the police, and local governments in order to prevent the piracy of patented products more effectively, as well as educating government officials to distinguish counterfeit products from originals.

The government has also enacted a regulation to reward those who report counterfeit products (Enacted on February 25, 2010).

Efforts to Educate the Public about Intellectual Property Rights Protection

Public awareness of the importance of protecting intellectual property rights is essential to prevent violations of intellectual property rights. Patentees must be fully acquainted with follow-up measures when their intellectual property rights are being infringed. In addition, the general public must acknowledge the damage caused by purchasing counterfeit products. The Korean government has strongly advocated the protection of intellectual property rights, producing and distributing educational videos on the subject.

Information on Intellectual Property Rights and Counseling Services

Anyone can report or receive counseling about counterfeit products or business confidentiality infringements online by accessing the Brand Police website under the Korean Intellectual Property Office (<http://www.brandpolice.co.kr>). Also, small and medium-sized enterprises may receive public patent attorneys' counseling services for general IPR-related concerns, including application submission and conflict countermeasures.

2-2 Intensification of International Cooperation

Intensification of Multinational Cooperation

With the strengthening of mutual cooperation among the intellectual property offices of Korea, the U.S., Japan, China and the EU since 2009, the countries have been making efforts to secure mutual trust in their respective inspection results and coordinate their inspection criteria.

Intensification of Bilateral Cooperation

To effectively respond to the global expansion of FTAs, Korea effectuated FTAs with Singapore, EFTA, ASEAN, India, EU, Peru, the U.S., Turkey, Australia and Canada. Korea is also having FTA talks with Indonesia, RCEP, etc. As such, Korea is making various efforts to expand international cooperation in the field of intellectual property rights.

International Patent Application System According to the Patent Cooperation Treaty (PCT)

The Patent Cooperation Treaty (PCT) is a multilateral agreement concluded in 1970 and entered into force in 1978 (As of Aug. 2014, 148 countries are members to the treaty).

Koreans can file applications for international patents with WIPO or KIPO as Korea has been admitted to Section I (1984) and Section II (1990) of the PCT.

It is strongly recommended that special attention be focused on ensuring that South Korea (the Republic of Korea) is designated in the application and NOT North Korea (DPRK), as incorrect designation can cause significant problems in the application process. There have been incidences where the correction deadline for country designation has expired, or the wrong designation has been discovered in the process of integrating an application into the Korean system, even though one can confirm the preliminary designated country within 15 months of the application under Rule 4.9(b) of the PCT. Such mistakes can cause fatal problems since it is impossible to obtain a patent for a new invention in Korea if the invention already exists in WIPO.

Protection of Internationally Recognized Trademarks

According to the Trademark Act of Korea, a well-known and widely recognized trademark cannot be registered as a trademark irrespective of whether the trademark concerned is registered or not. Registration of a trademark by an individual who is not the authentic owner of the trademark will be rejected, and will be subject to a trademark registration cancellation trial even if such registration has already occurred.

Also, an application for a trademark which could cause errors or confusion concerning production or service sources will be rejected even if the products or services associated with the new trademark are dissimilar to famous ones. Even if registration has already been completed, the authentic owner of the trademark may lodge an appeal for a trademark registration revocation trial.

Internationally recognized trademarks are protected under the Unfair Competition Prevention and Trade Secret Protection Act and the Trademark Act. If an owner has been damaged or is likely to be damaged by unfair competition by others, using signs that include a registered name, firm name or famous trademark which could cause confusion with the products or operational facilities of other business entities, the individual may claim infringement prevention, compensation for damage and/or recovery of the business credit, and charge the infringer with a crime.

- Contact for inquiries concerning industrial property rights (patents, trademarks and designs): Korea Intellectual Property Office Call Center (+82-1544-8080)
- Contacts for inquiries concerning copyrights: Korea Copyright Committee (+82-2-2660-0000)
- Ministry of Culture, Sports and Tourism (+82-44-203-2000) (Division in charge: Copyright Policy Division under the Cultural Contents Project Office)