Patent Litigation in Korea: Key Features and Strategic Insights for Foreign Investors

In today's global economy, the protection and enforcement of patent rights have become more critical than ever. As cross-border investment and technology transfers grow, so does the need to understand how different jurisdictions handle patent disputes.

Korea, as one of the world's most innovation-driven economies, presents both opportunities and challenges in patent enforcement. This article provides practical guidance on Korea's patent litigation system.

Bifurcated System Structure

Korea adopts a bifurcated approach, separating invalidation from infringement proceedings. The Korean Intellectual Property Trial and Appeal Board (KIPT) has exclusive jurisdiction over invalidation trials, which may only be initiated by parties with a vested interest. Infringement remedies, such as damages or injunctions, are pursued through civil litigation in district courts. While invalidity arguments may be raised in court under the legal doctrine of abuse of rights, the court's finding of invalidity in this context does not have a binding effect on the public at large. Appeals from both types of proceedings follow a unified appellate route through the Patent Court and, ultimately, the Supreme Court.

Remedies and Enhanced Damages

Patent holders may seek injunctive relief to prohibit or prevent the manufacture and sale of infringing products, as well as request the destruction of infringing materials and the removal of equipment used in infringing activities. Such relief may also be pursued through preliminary injunctions if specific requirements are met. Preliminary injunctions are generally regarded as the fastest and most effective interim relief.

Damages must be sought through main proceedings. While patent holders must establish the occurrence of damage, they may seek compensation based on reasonable royalties even without direct proof of actual economic loss. Since mid-2019, Korea has strengthened protection for IP rights holders by introducing enhanced damages, which are up to five times the base amount for infringement of patents, utility models, and trade secrets, and up to three times for trademarks and designs. However, the cap for the latter will increase to five times effective July 22, 2025.

Procedural Features

A notable feature of Korean patent litigation is its sequential hearings, often commencing before all evidence is fully submitted. Main proceedings typically involve 3 to 6 hearings at 4 to 6-week intervals; preliminary injunctions typically require 1 to 3 hearings, spaced 2 to 3 weeks apart. Although Korea lacks formal discovery, courts permit various evidence-gathering methods, such as document production, testimony, expert appraisals, fact-finding inquiries, and site inspections. In preliminary injunctions, admissible evidence is generally limited to written materials. First-instance rulings in main proceedings may include provisional execution orders, which can be suspended upon appeal with a cash bond. By contrast, preliminary injunctions are rarely suspended, making them powerful enforcement tools.

Procedural Flexibility

Korean patent litigation offers greater procedural flexibility than many other jurisdictions. For instance, (i) new claims may be added during litigation; (ii) the amount of damages claimed may be increased post-filing; (iii) courts may assess damages before confirming infringement; (iv) new patents may be added to the case during proceedings; (v) defendants may raise invalidity arguments under the doctrine of abuse of rights, and the underlying grounds for invalidation and/or supporting prior art may be subsequently supplemented or amended during the proceedings; (vi) expert testimony is permitted if a written expert opinion is submitted, although rarely used; and (vii) courts often await the outcome of a KIPT trial if a related infringement lawsuit is pending, though formal stays are uncommon.

Invalidation Trials

Korean Invalidation trials are inter partes proceedings between the petitioner (typically an alleged infringer) and the patent holder. Key features include: (i) the respondent must respond within 30 days (extendable) of receiving the petition and may amend claims during this period but, unlike EU practice allowing multiple auxiliary requests, only one set of amendments is permitted; (ii) the trial panel sets deadlines for submissions, generally stricter than in civil litigation; (iii) petitioners may introduce new invalidity grounds or prior art during proceedings; (iv) the panel may examine unraised grounds ex officio but must allow parties to comment; (v) claim amendments are permitted in response to newly introduced grounds, prior art, or panel requests; (vi) evidence collection mirrors civil litigation, though most evidence is submitted in writing; (vii) oral hearings are typically limited to one session, with post-hearing written submitted permitted; (viii) once the panel deems all key issues addressed, it sets a final deadline for any additional briefs or evidence, disregarding late submissions, then issues a notice of conclusion followed by a decision usually within 2 to 3 days; and (ix) trials typically conclude within 6 to 12 months if involving prior art, or 4 to 6 months without prior art or under expedited review (often granted when related litigation is pending).

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