

## Administrative Revocation and Invalidation Mechanisms

### Republic of Korea

The Republic of Korea provides for a quasi-judicial invalidation trial. The administrative review system is a part of the three instance procedure which consists of the Intellectual Property Trial and Appeal Board (IPTAB) of the Korean Intellectual Property Office (KIPO), composed of a president and administrative judges, the Patent Court and the Supreme Court. Its purpose is to promote and strengthen the protection of patents while guaranteeing fair and prompt settlements of patent-related disputes.

According to Article 133 of the Patent Act, an interested party or an examiner may demand a review to invalidate the patent. The grounds for invalidation of a patent are generally the same as reasons for the rejection of a patent application covering, in particular, the substantive patentability criteria. If the patent contains two or more claims, a request for the invalidation trial may be made for each claim.

A trial for invalidation of a patent may be demanded even after the expiration of the patent right. Where a trial decision invalidating a patent has become final and conclusive, the patent right shall be deemed never to have existed; however, where a patent is invalidated by any reason that has arisen after the grant of a patent, the patent right is deemed not to have existed from the time when such reason originated.

According to Article 146, a trial shall be conducted by a board comprised of three or five administrative patent judges. The consultations of the board are not open to the public. The submission by the requester will be submitted to the defendant and the response will be submitted by the presiding administrative judge to the requester. If an administrative judge was an examiner who granted a patent, he/she shall be excluded from the trial. The trial proceedings could be oral or documentary. The oral proceedings are generally public. Evidence may be taken on the request of either party or *ex officio*. The trial decision has *erga omnes* effect, unless the final decision is a dismissal. During the trial proceedings, civil litigation must be stayed.