

ANTICOUNT- TERFEITING ACTIVITIES OF KIPO

Anticounterfeiting Activities of KIPO

2012 <http://www.kipo.go.kr>



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I. Introduction



Korea has built status as a strong country in intellectual property field while its applications of industrial property rights including patent and trademarks have been ranked fourth in the world, and its creativity of intellectual property rights has arisen to the level of America, Japan and other advanced countries. Along with Korea's strong international status, its role in the area of protecting intellectual property rights has become greater, and the protection of intellectual property rights has internationally recognized as one of the essential subjects.

Although the protection level of intellectual property rights of Korea has been increased internationally every year, its level may be regarded as remaining low since distribution of illegal pirated copies and counterfeit goods are found in both online and offline markets.

Accordingly, KIPO officially launched a Special Judicial Police Force (hereinafter called SJPF) for trademark rights in September 8 of 2010, as a result of its efforts in implementing the Special Judicial Police Force system to eradicate the distribution of counterfeit goods and thus to build a foundation for protecting intellectual property rights.

Crackdown activities were strengthened through the SJPF, for example, by giving the SJPF the power to criminally book the suspect of counterfeiting offence. As a consequence, the record of crackdown has been improved significantly compared to previous years (a monthly average number of criminal booking is increased by about six times and the seizures of counterfeit goods is increased by about eleven times compared to the year of 2010).

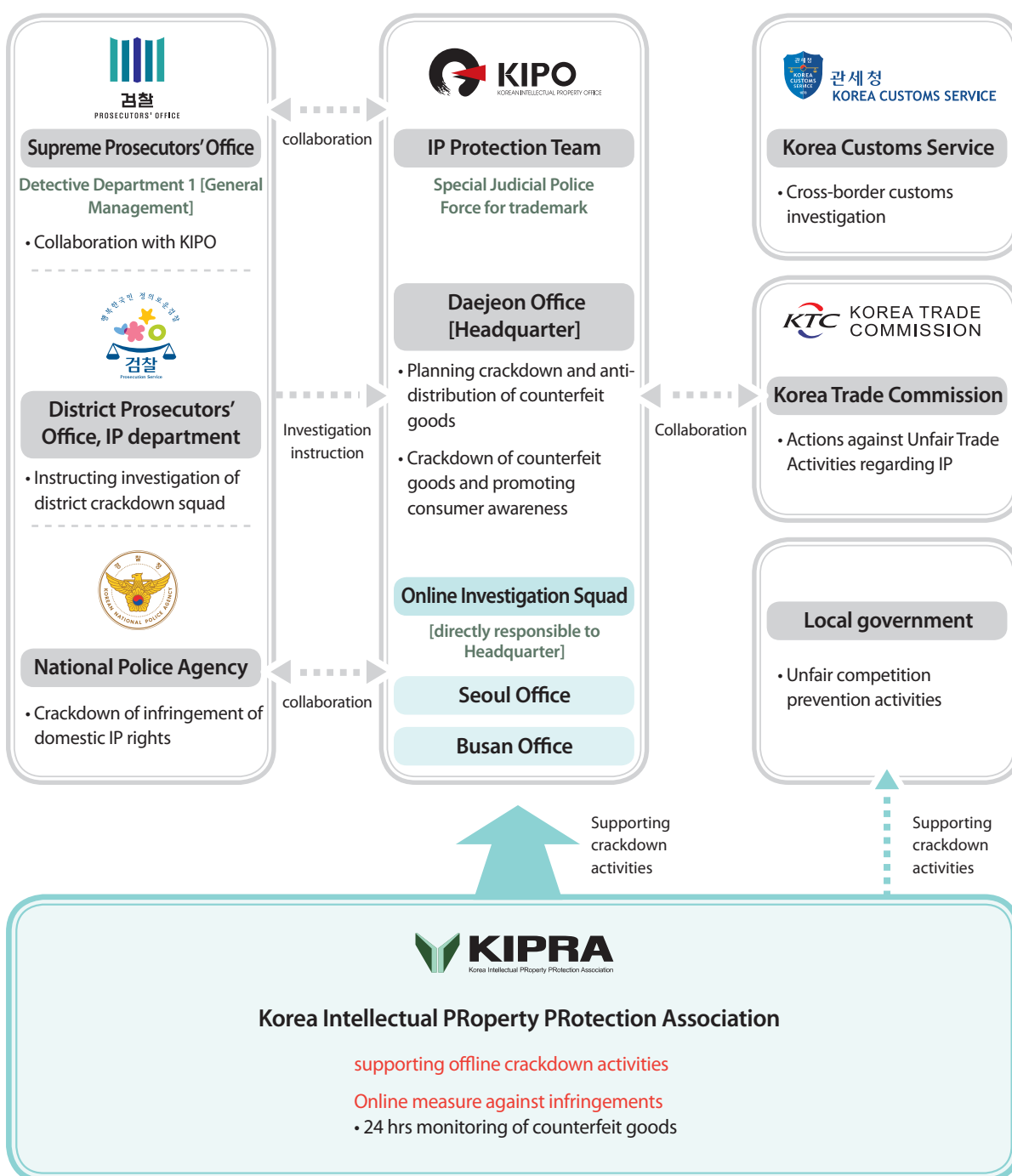
Additionally, in order to promote campaign to create a society in which intellectual property is respected, KIPO has enhanced collaboration with consumer organizations and continuously promote consumer awareness about recognizing the importance of intellectual property rights. Furthermore, KIPO has established a cooperation framework with agencies such as the American Chamber of Commerce in Korea (AMCHAM), the European Union Chamber of Commerce in Korea (EUCCK) and the Seoul Japan Club (SJC) in efforts to provide an optimal environment for foreign enterprises to invest in Korea to regulate their business operations.



II. Present Condition of Crackdown on Counterfeit Goods

1. Crackdown System on Counterfeit Goods

1.1 Korea Intellectual Property Office (KIPO)



1.1 Korea Intellectual Property Office (KIPO)

KIPO is in charge of the laws of four industrial property rights including patent, utility model, trademarks and design as well as Unfair Competition Prevention and Trade Secret Protection Act (hereinafter referred to as "Unfair Competition Prevention Act").

In particular, as KIPO has been provided with authorities over the Special Judicial Police Force (SJPF), the SJPF for trademark rights of KIPO has been able to penalize intellectual property criminals of manufacturing, distributing and selling counterfeit goods by arresting them and dispatching them to the prosecutor's office. This practice has strengthened the enforcement of crackdown on counterfeiters or infringers who manufacture, distribute, and sell counterfeit goods.

1.2 Regional Offices for the Special Judicial Police Force

In February of 2009, KIPO has set up three regional offices in Seoul (Capital District), Daejeon (Chungcheong/Homan District), and Busan (Youngham District) in order to perform intensive crackdown activities on a regular basis in the areas with high frequency of counterfeiting or infringing goods. These regional offices are operated for the Special Judicial Police officers after the SJPF has launched, and there are in total twenty-three (23) Special Judicial Police officers working at the regional offices.



1.3 Korea Intellectual PProperty PRotection Association

Korea Intellectual PProperty PRotection Association (KIPRA) was established in 2009 under civil law as a corporation in charge of managing the business for intellectual property protection, and it was designated as one of public institutions by the government in 2010. KIPRA supports the SJPF of KIPO and local government to quickly and efficiently investigate and crackdown on counterfeit goods. It also has established and is operating an online monitoring system for suspending a sale of counterfeit goods on online open market or shopping mall or shutting down the websites selling counterfeit goods.



1.4 Prosecutors' Office and Police Agency

The prosecutors' office and police agency have investigated manufacturers or sellers of counterfeit goods for the purpose of imposing criminal penalties against them. In particular, the prosecutors' office has established "a head office of joint investigation of infringement of IP rights" in Supreme Prosecutors' Office in order to expel counterfeit goods and strengthen protection of intellectual property rights. The prosecutors' office has further established "a regional joint investigation team" in major district public prosecutor's offices and its branch offices throughout the nation and assigned a prosecutor to each of the district or branch offices to manage intellectual property rights.

1.5 Korea Customs Service

The Korea Customs Service (KCS) is a government agency established to control the integrated management for importing and exporting goods, which has strengthened the protection of intellectual property rights in customs procedure by applying WTO/TRIPs to Customs Law as of January 1 of 1994. Furthermore, the KCS has authorities over the SJPF in regards to infringement of intellectual property rights relating to imported and exported goods and their Custom clearance as well as trademark rights, copy rights, design rights, patent rights and utility model rights.

1.6 Korea Trade Commission

Under the Act on the Investigation of Unfair International Trade Practices and Remedy against Injury to Industry, the Korea Trade Commission is taking necessary actions for suspending illegal acts of importing, exporting, selling and manufacturing of goods which infringe intellectual property rights such as patent rights, trademark rights, design rights, copy rights, and trade secret, eliminating or destroying such infringing goods, making corrective advertisement, making an official announcement of orders made by the Korea Trade Commission to correct any violations of the law, and making other required corrections.

1.7 Local Governments

Both KIPO and local governments throughout the nation have authority to investigate counterfeit goods. Previously, KIPO has delegated its authority to investigate counterfeit goods to the local governments, however, such authority has been transferred to the local governments since 2011, which allow them to practice the power in investigating unfair competition activities. Each district of local governments cooperates with KIPRA in conducting investigation activities to crack down on distribution of counterfeit goods.



2. Legislation for Preventing the Distribution of Counterfeit Goods

Trademark Act and Unfair Competition Prevention Act provide legal basis to take legal actions against manufacturing and distributing counterfeit goods. Both Acts are important to establish fair trade order by protecting trademarks. The activities of manufacturing, selling, importing and exporting counterfeit goods may be considered as trademark infringement or unfair competition activities under these laws.



2.1 Trademark Act

2.1.1. Protecting Trademark Owners

Under Trademark Act, an owner of trademark registered with KIPO has exclusive rights to use the mark in relation to designated goods or services. Furthermore, the trademark owner also has right to prohibit unauthorized use of a similar mark of another person that may cause confusion with the registered mark. If an unauthorized person uses a mark identical or similar to a registered mark to goods or services identical or similar to designated goods or services of the registered mark, then such action is considered as an infringement of a trademark right.

2.1.1.1. Civil Relief

• Prohibition of Infringement

A trademark owner or an exclusive licensee may request a person who is infringing or is likely to infringe the trademark or exclusive license to discontinue or refrain from the infringement. The trademark owner or the exclusive licensee may demand destruction of infringing articles, removal of facilities used for the act of infringement, or other measures necessary to prevent the infringement.

• Claim for Compensating Damages

A trademark owner or an exclusive licensee may make a civil claim for compensation for damages against an infringer who has caused the damages by intentionally or negligently infringing the trademark right. The amount of damage may be calculated as the amount of sales of the infringer multiplied by the profit per unit obtained by the cost calculation of the trademark owner or the exclusive licensee.

• Other Valid Relief

Upon request of a trademark owner or an exclusive licensee, the court may, in lieu of or in addition to damages, order a person who has injured the business reputation of the trademark owner or exclusive licensee, by intentional or negligent infringement of the trademark right or exclusive license, to take necessary measures to restore the business reputation of the owner or exclusive licensee.



2.1.1.2 Criminal Sanction

A person who has infringed a trademark right or an exclusive license is liable to imprisonment with labor not exceeding seven years or to a fine not exceeding 100 million won. Where a representative of a legal entity or an agent, employee or any other servant of a legal entity or natural person has infringed such right with regard to the business of the legal entity or natural person, the legal entity or the natural person is also liable to a fine not exceeding 300 million won.



2.1.2 Protection of Unregistered Well-known Mark

According to the Trademark Act, a claim of prohibiting unauthorized use of an unregistered mark by a third party is not permitted even if such mark is well known. However, such well-known mark is indirectly but strongly protected in that a mark identical or similar to such well-known mark is prohibited from being registered with KIPO. More specifically, trademarks defined below may not be registered:



- (i) trademarks that are identical or similar to another person's trademark well-known among consumers and are to be used on goods identical or similar to that other person's goods;



- (ii) trademarks that are liable to cause confusion with the goods or services that are clearly recognized by consumers as belonging to another person;

- (iii) trademarks that are identical or similar to a trademark recognized as indicating goods of a particular person by consumers inside or outside the Republic of Korea and are used with unjustifiable purpose such as obtaining unfair profits or causing harm on the particular person;

2.2 Unfair Competition Prevention and Trade Secrets Protection Act

The protection of well-known trademark (especially unregistered well-known mark) is not only defined by Trademark Act but also by Unfair Competition Prevention Act.

The use of trademark which is identical or similar to a mark well-known in Korea will be considered as an act of unfair competition if such use causes confusion with another person's goods. Accordingly, any person who is or likely to be damaged due to the act has a right to claim prohibition of the use, compensation for damages, or restoration of reputation for damaged business. In addition, the regulations of criminal penalties are provided in the foresaid law to impose imprisonment with labor not exceeding three years or a fine not exceeding 30 million won against any person who committed acts of unfair competition.

Also, the KIPO and local governments will be entitled to conduct an administrative investigation on the unfair competition activities and make a recommendation for correcting the acts of violator under the foresaid law.

When the acts of unfair competition by a person are found, the Commissioner of KIPO or a Head of local governments may issue a corrective recommendation to the person to cease such acts, or remove or destroy the infringing mark within a specific period not exceeding thirty days.



III. Key Subjects and Strategic Goals of KIPO for IP Protection

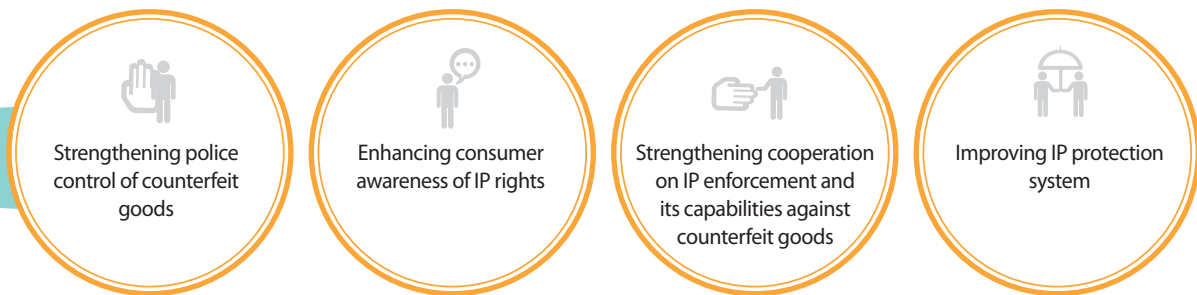
3.1 Vision and Strategy



Despite our government's efforts in enhancing the protection of IP rights, including police control of counterfeit goods, enhancement of public awareness on intellectual property rights and improvement of intellectual property system, the manufacture, distribution, and sale of counterfeit goods are still found.

The distribution of counterfeit goods can disturb business order, prevent enterprises from developing brands with their unique characteristics, impede growth in market of authentic goods, endanger our health and safety, and furthermore, damage the nation's reputation which may adversely affect our economy.

Accordingly, the KIPO has created four strategic goals to 1) strengthen the police control over cracking down on counterfeit goods; 2) enhance consumer awareness of IP rights; 3) strengthen the capacity of protecting IP rights and level of cooperation between related organizations; and 4) improve IP protection system. These goals are intended to establish the level of intellectual property protection to the level of advanced countries by the year of 2015.



3.2 Strengthening Crackdown on Counterfeit Goods by SJPF

The Special Judicial Police Force (SJPF) for trademark rights is established by KIPO to strengthen the practice of criminal penalty on counterfeit goods. KIPO hired ten (10) experienced investigators, and increased the number of crackdown officers. Additionally, the KIPO created an on-line investigation team equipped with digital forensic tools to effectively detect counterfeit goods transacted online.

Such investigation team has facilitated its efforts to prohibit online distribution, transaction or movement of counterfeit goods by tracking down infringers or counterfeiters and penalizing them with intellectual property crime.

The SJPF for trademark rights has seized 28,589 counterfeit goods (to the amount of 14.5 billion won of genuine goods) and charged 139 infringers or counterfeiters with intellectual property crime last year. As a result of expanding law enforcement capacities to crackdown on counterfeit goods, the number of prosecuting intellectual property criminals has significantly increased in comparison to the previous year.



(Unit: persons, items)

Number of Criminally Charged Persons and Seized Counterfeit Goods

	2007	2008	2009	2010	2011
Charged persons	116	34	122	60	139
Seized Goods	27,594	88,724	57,005	31,489	28,589

(*) Figures until August of 2010 are based on collaborated crackdown of the police and the public prosecutors

In view of the number and types of criminal activities, 111 persons were charged for selling counterfeit goods in retail or wholesale stores, 18 persons for selling counterfeit goods online, 7 persons for manufacturing counterfeit goods, and 3 persons for distributing counterfeit goods.

With respect to the number and types of the seized counterfeit goods, 4,158 were the types of bags and purses, 2,751 were for clothing, 2,480 were electronic devices, 1,443 were the types of accessories or jewelries, and 1,176 were the types of shoes. It is notable that targeted goods are not merely confined to high brand clothing and bags but its scope has become wide to cover daily necessities such as a memory card and an electronic mat.



To prevent any further distribution of counterfeit goods, KIPO has created a "Online Monitoring System for Counterfeit Goods" since December of 2009 to prohibit sale or transaction of such goods by suspending or shutting down the websites such as online shopping malls and open markets such as auctions where counterfeit goods are illegally sold. In 2011, counterfeit goods detected by the online monitoring system has increased significantly in comparison to the previous year, which is a result of efforts to prevent the expansion of damage caused by distribution of counterfeit goods.

(Unit: cases)

Achievements of Online Monitoring System for Detecting Counterfeit Goods

	09, 12	2010	2011	Total
Suspended Sale of Counterfeit Goods in Open Markets	144	2,890	3,566	6,600
Suspended Websites or Shopping Malls	-	207	364	571
Total	144	3,097	3,930	7,171

(*) The online monitoring system has been operated since December of 2009

3.3 Enhancing Consumer Awareness and Perception of IP Rights

KIPO has focused on consumer awareness in realizing illegality of counterfeit goods as a key factor in order to enhance the protection level of intellectual property rights. Accordingly, KIPO has developed a variety of ways to promote consumers to recognize the importance of protecting intellectual property rights.

TV ads, newspaper ads, portal sites, blogs, twitters, and many other media sources are utilized to strengthen the promotion of intellectual property rights. Particularly, public campaigns and informational TV programs of KBS are utilized to promulgate the effects of counterfeit goods and form a social consensus about establishing a culture of consuming authentic goods.



Followed by promoting intellectual property rights, an advertisement contest for university students has held for the purpose of encouraging consumers to participate in establishing such culture and help them to acknowledge the importance of protecting intellectual property rights. In addition, KIPO has cooperated with consumer organizations to conduct a nation-wide campaign in preventing the distribution of counterfeit goods. Furthermore, KIPO has conducted consumer education for university students, house wives and office workers about the protection of intellectual property rights.

Particularly, KIPO has provided educational content-based video for elementary and middle school students to foster the recognition to respect intellectual property rights from their childhood. Also, KIPO has provided opportunities for students to experience and compare the differences between authentic and counterfeit goods.



▲ Scene from TV campaign requesting implementation of consumers



▲ Scene from KBS TV program warning name-brand syndrome



▲ Collaborative Campaign with Consumer Organization



▲ Youth's Experiential Learning on Counterfeit Goods



3.4 Improving the System for Protecting Intellectual Property Owners' Rights

With respect to the Korean Patent System, a patent is entitled to an extension of the patent terms if the issuance of the patent is unduly delayed during patent examination, trial, or litigation procedure.

In regards to the trademark system, the protection of trademark was reserved only for visual marks, however, the scope of trademark protection has extended to invisible trademarks, such as smells or sounds. Such extension of the scope has secured creativity on marks sensible in various ways, which has enhanced the competitiveness of enterprises.

In addition, business emblem is introduced in the Trademark Act to guarantee quality of goods and to provide accurate information about authenticity of goods in order for consumers to choose their optimal goods. Furthermore, a legal system has been improved to strengthen protection of intellectual property rights against infringement so that the trademark owner may claim a reasonable amount of damage determined by the court within a range of fifty million won as long as an evidence of infringement is identified without requiring proof of an actual damage of infringement.

3.5 Strengthening Capabilities of IP Enforcement Officials

KIPO has focused on strengthening the capabilities of intellectual property enforcement officials including prosecutors, police officers and local officials who are in charge of cracking down on intellectual property rights.

In this regard, a guidebook has been created and distributed to intellectual property officials with the transaction tendency of counterfeit goods and guidelines on how to distinguish counterfeit goods from authentic goods. Also, KIPO has been coordinating training programs focusing on educating intellectual property enforcement officials about intellectual property system and their practices to crack down on intellectual property rights on site throughout the year prior to a joint crackdown for intellectual property enforcement at local levels.

Furthermore, an International Intellectual Property Training Institute affiliated with KIPO has operated intellectual property instructor courses for officials in charge of unfair competition prevention to participate in such training courses.

The Institute also holds a workshop to educate intellectual property enforcement officials with techniques for investigating and prosecuting counterfeit goods and infringement. To boost morale and ability of intellectual property enforcement officials, a best intellectual property official is awarded.

3.6 Enhancing Cooperation with Organizations of Foreign Companies in Korea

Finally, KIPO has established a cooperation system with organizations of foreign companies such as European Union Chamber of Commerce in Korea (EUCCK) in order to enhance the protection of intellectual property rights. In 2011, KIPO announced a role of the Special Judicial Police Force for trademark at a seminar hosted by EUCCK, to the attendants of embassy-related personnel from twenty-seven different countries and more than eight hundred CEOs of foreign investment enterprises. Furthermore, when JETRO and Korea Intellectual Property Group (IPG) have jointly hosted an informational seminar about protecting intellectual property rights in Korea, KIPO attended the seminar and gave a lecture on KIPO's strategy on protecting intellectual property and achievements of the Special Judicial Police Force for trademark rights. By such various ways, KIPO strengthens cooperation with foreign associations and organizations with regard to protection of intellectual property rights.

Within an improved and strengthened cooperative relation with foreign companies in Korea, KIPO has continuously tried to support foreign companies to operate creative and productive businesses in Korea and also provided an amicable environment for the protection of their intellectual property rights.



IV. Future Activities Plan



KIPO will focus more on strengthening capabilities of the Special Judicial Police Force for trademark rights in order to prosecute contributors of manufacturing, importing or distributing counterfeit goods. In addition, KIPO will reinforce the protection of intellectual property rights against counterfeit pharmaceutical and electrical goods which endanger national health and safety.

In accordance to the increased online distribution of counterfeit goods and more sophisticated methods of transacting counterfeit goods by counterfeiters or infringers, the online investigation squad will step up its efforts to catch and criminally charge the counterfeiters and infringers.

As a way to enhance intellectual property enforcement activities, KIPO will operate a tailored crackdown program by collecting and reflecting opinions and requests made by companies possessing well-known domestic and foreign brands and by associations of foreign investment enterprises (AMCHAM, EUCCK, SJC, etc.)

In the meanwhile, KIPO will actively carry forward public awareness about intellectual property protection as well as strengthening online and offline crackdown activities through the Special Judicial Police Force for trademark rights. In this regard, various media including TV, internet, and SNS will be utilized for educating and informing different classes of consumers such as teenagers, college students, housewives, and office workers.

In addition to the above-mentioned activities, KIPO will actively participate in the multinational agreement of Anti-Counterfeiting Trade Agreement for strengthening enforcement of intellectual property rights. KIPO will also proactively participate in APEC Anti-Counterfeit and Piracy Initiative.

Accordingly, Korean government will make utmost efforts to improve administration on IP matters and thereby national reputation to the level of advanced countries, by continuously developing intellectual property laws and systems in accordance with international standards for the protection of intellectual property rights, and by continuously carrying forward practical and effective policies.





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