

# Strengthening IP Protection

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COVID-19 Prevention System  
Korea's excellent COVID-19 prevention system has received great attention from around the world. The Korean government has promised continuous cooperation with the international community to respond to COVID-19.



# “Reasonably Expected” Damage Compensation in Effect

A partial amendment of the Patent Act went into effect on December 10, 2020 which entitles a more reasonable compensation for damages from infringement. The amendment stipulates that a patent holder can claim damages for the infringer’s product sales that surpass beyond the patent holder’s own production capacity (Article 128, Patent Act).

Previously, the amount of compensation was subject to an amount “ordinarily expected” in royalties which was limited to the production capacity of the patent holder. For example, even when an infringer sells 10,000 units of a product, if the production capacity of the original patent holder is 100 units, damages could not be claimed for the 9,900 units that is beyond his/her own production capacity.

However, instead of having a deterrent effect, larger corporations with larger production sales could profit by taking advantage of the limited production capacity of smaller businesses. They would only need to pay a relatively small amount for infringement damages rather than going through the process of making proper license agreements.

With the amendment in force, right holders are able to claim damages that is calculated as a “reasonably expected” amount in royalties which can go beyond the original production capacity (e.g. remaining 9,900 units of the infringer’s sales). This calculation method has been widely recognized in major developed countries such as France, Japan. UK, and the U.S.

Moreover, in the case that there is willful infringement of the patent right, the courts can award compensation up to three times the recognized amount of damages as well as on all profits made on infringement

products sales. Enforcement of this amendment will help establish stronger protection of patent rights against large-scale, deliberate and malicious infringements.

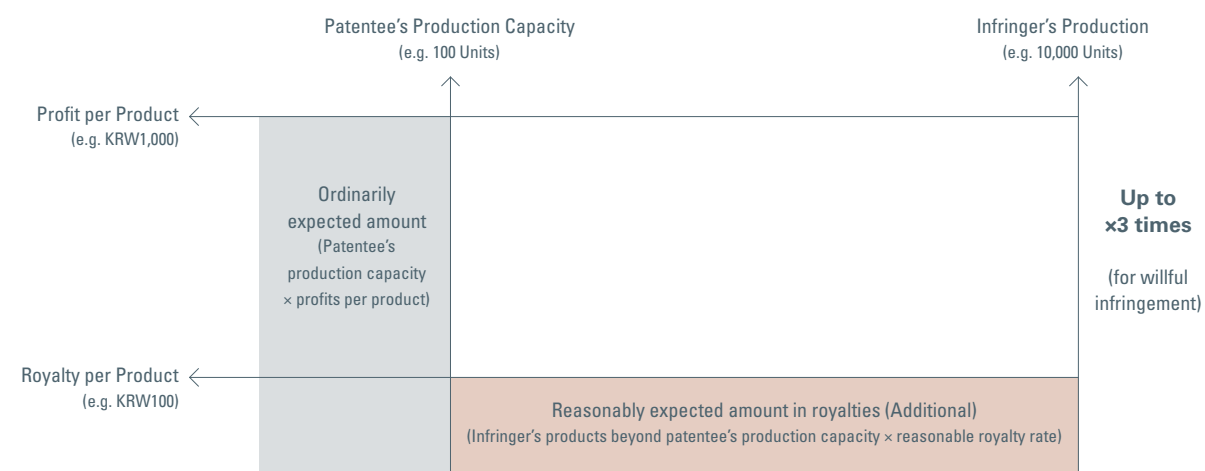
## 10th Anniversary of The Special Judicial Police

In 2020, the KIPO Special Judicial Police (SJP) on Industrial Property celebrated its 10th anniversary. In September 2010, KIPO established the SJP as Korea's first-ever investigative authority dedicated to enforcement against counterfeit products from trademark infringements. By March 2019, amendments were made to expand the scope of authority and allow investigations on all IP, such as patents, trade secrets, and design infringement along with trademarks.

Moreover, online consumption has rapidly increased due to the growth of the “untact” or “contact-free” industry. Subsequently, more and more counterfeit products are being traded on online markets and platforms. Accordingly, the SJP focused its investigation capabilities on online transactions of counterfeits and even made an arrest that involved a whole family who sold KRW 62.5 billion worth of counterfeit luxury items through live broadcasts on social media.

True to its role as enforcers of IP protection, the SJP has been able to handle about 45,000 case since beginning 10 years ago. In the process of investigations, about 3,500 trademark infringers have been charged with criminal activity and about 12 million items of counterfeit products (valued at KRW 500 billion in genuine goods) have been confiscated.

The SJP not only focuses investigations on products related to public health and safety but has been expanding its attention to the growing popularity of Korean pop culture (K-pop) and related merchandise. Last year in particular, the SJP cracked down on counterfeit products related to BTS, a world-famous Korean boy band, which helped spread the importance of IP



- > With consideration that a patent can be licensed by multiple people at the same time  
(Patentee's production capacity x profits per product) + (Infringer's products beyond patentee's production capacity x reasonable royalty rate)  
\*Up to 3 times in compensation for willful infringement
- >> Important to calculate damage compensation based on a reasonable royalty rate

protection for the K-pop industry.

In total, there are 35 investigators across the three branch offices of Daejeon, Seoul, and Busan who are actively responding to IP infringement cases across the

nation. Members with specific technical specialties are recruited in order to provide prompt and accurate assessment regarding infringements, thereby helping to lead the way to eliminate IP infringements and enhance IPR protection.

# Response to IP Infringement and Dispute

## Opening the IPR Dispute Response Center

In November 2020, KIPO opened the “Intellectual Property Right Dispute Response Center” with the Korea Intellectual Property Protection Agency (KOIPA) to expand support for Korean companies exporting to overseas markets. The center will be dedicated to providing companies with relevant information and consultations on IPR disputes.

In particular, there has been rising concern regarding disputes where overseas companies are the original patent holder



and Korean companies are the latecomers. Also, the overseas trade environment may become increasingly unstable and international IPR disputes may increase due to recent global trade disputes and the COVID-19 crisis. To address these issues, the IPR Dispute Response Center will provide information and consultation regarding IP disputes and appropriate response measures to SMEs who lack IP dispute response capabilities.

Furthermore, IPR infringements related to Korean brands (K-brands) have been rising due to the increased popularity and export of Korean culture and entertainment products. In an effort to fight against overseas K-brand infringement, the IPR Dispute Response Center will also monitor counterfeit products circulating online and bad faith registration of trademarks of K-brands by trademark brokers and provide follow-up measures.

## IPR support in the New Southern Market

KIPO has been working together with the Korea Trade-Investment Promotion Agency (KOTRA) to provide diverse support for protecting the IPRs of Korean SMEs entering local markets especially in the South and Southeast Asian Region. In 2017, the Korean government launched a diplomatic initiative aimed at realizing mutual prosperity and peace by seeking to elevate Korea's relations with ASEAN member states and India in the political, economic, social and cultural spheres.

To help Korean companies enter markets in this region, also called “New Southern Markets,” companies are offered services at no costs through KOTRA-led exhibitions, buyer consultations, and delegation parties to search for similar trademarks in the respective local market. As long as there

are no preexisting similar trademarks, they will receive the support to file a trademark application through the IP-DESK located in the respective country.

These IP-DESKS have been established in various parts of the world in order to provide support to Korean companies in international markets by helping secure trademark rights and respond to infringement disputes and by hosting informational sessions on dealing with trademark brokers. The most recent IP-DESK was established in Manila, Philippines in March 2020. Korean companies in the Philippines will be able to receive the various services provided by the local IP-DESK, such as consultation with local IPR experts and financial support to secure rights and to respond against disputes.



\* Association of Southeast Asian Nations (ASEAN): Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, the Philippines, Singapore, Thailand, and Vietnam.