

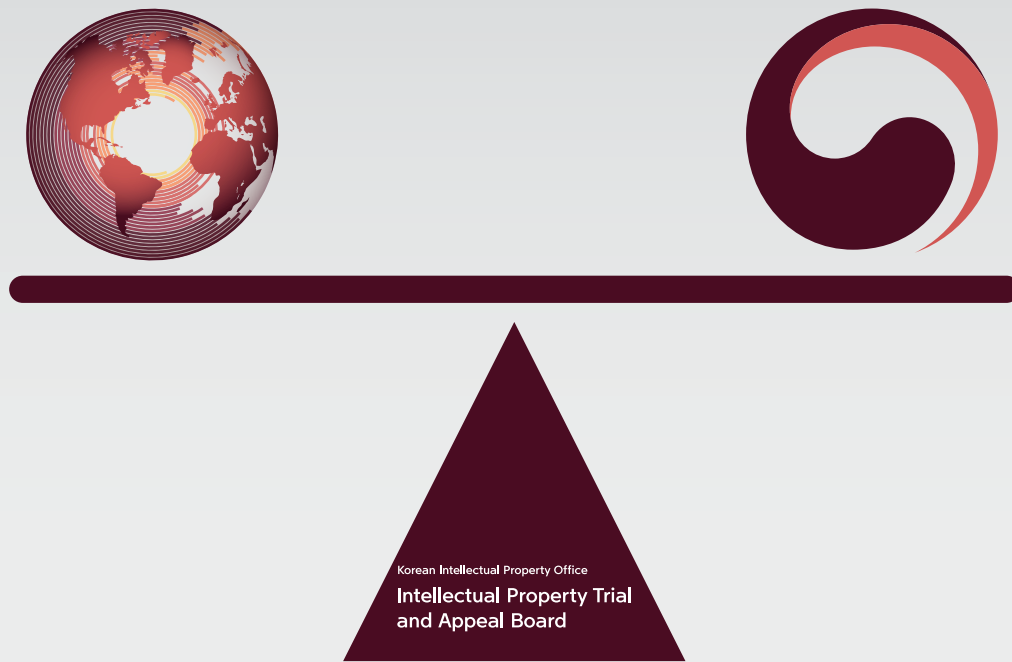
Intellectual Property Trial and Appeal Board  
2021 Annual Activity



The Future of Intellectual Property,  
Opened Together with the People



KIPO  
Intellectual Property Trial  
and Appeal Board



## The IPTAB will solve patent disputes correctly and fairly

The IPTAB dreams of creative human beings  
and a greater future by resolving disputes over  
intellectual property in a fair manner.

The IPTAB lays a foundation for coexistence and  
coprosperity.

The IPTAB will open the era of the 4<sup>th</sup> Industrial  
Revolution and the future of intellectual property  
together with the people.

## Intellectual Property Trial and Appeal Board 2021 Annual Activity



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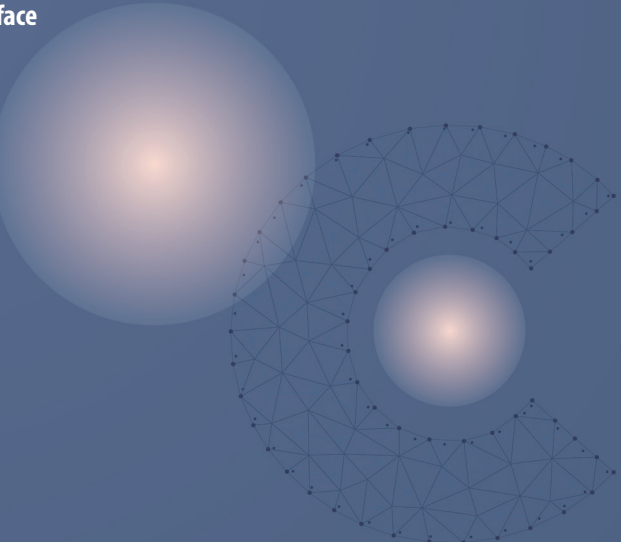
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# The IPTAB will pursue more correct and fair patent trials and appeals



The IPTAB has endeavored to develop and advance IP lawsuits since its establishment in 1998. The IPTAB is proud to have grown to the level of corresponding institutions in developed countries with the hard work of its administrative patent judges. The IPTAB has improved the quality of patent trials and appeals and

developed a stable litigation environment.

The year 2021 was unusually busy and special even for the continually changing and innovating IPTAB. An era of change triggered by the 4<sup>th</sup> Industrial Revolution, together with COVID-19, held back or pushed us in uncontrollable ways.

Administrative patent judges of the IPTAB believed that in order to lessen the burden of parties to trial who may be in a difficult situation caused by COVID-19, the only way was to resolve any dispute in a swift and fair manner. Thus, the IPTAB reduced the number of trials pending dramatically while stably maintaining the period for handling trials at an average of 7 months.

Also, the IPTAB established institutional strategies, such as timely presentation, concentrated trial, etc., to prevent excessive court debate, intentional trial delay, etc. The IPTAB did its best to resolve disputes in a swift and economic way by introducing the system to link trial with mediation and expanding the expedited or preferential trials.

In a rapidly changing social and technical environment, the people have high hopes for the reliability, expertise, and fairness of the IPTAB. Thus, the IPTAB has tried to meet such hopes by introducing the expert commissioner system in which an external expert may participate in a trial involving state-of-the-art technologies, such as AI, autonomous driving, biology, etc., and amending the provisions related to IPTAB-appointed agents, etc.

In the exceptional situation caused by COVID-19, the IPTAB expanded the existing video oral hearing and introduced a new system of Internet oral hearings to meet the obligations of the times (so-called “social distancing”) and to guarantee the “right to present an opinion of the party to a trial.”

With this publication, we finish off the 2021 that led our hectic lives. We hope that this publication will be able to show the effort and performance of the IPTAB and its passion and sincerity for better quality. We appreciate your encouragement, support, and cool-headed advice. The IPTAB will continue to try to promote trials and appeals in a prompt, accurate, and fair way.

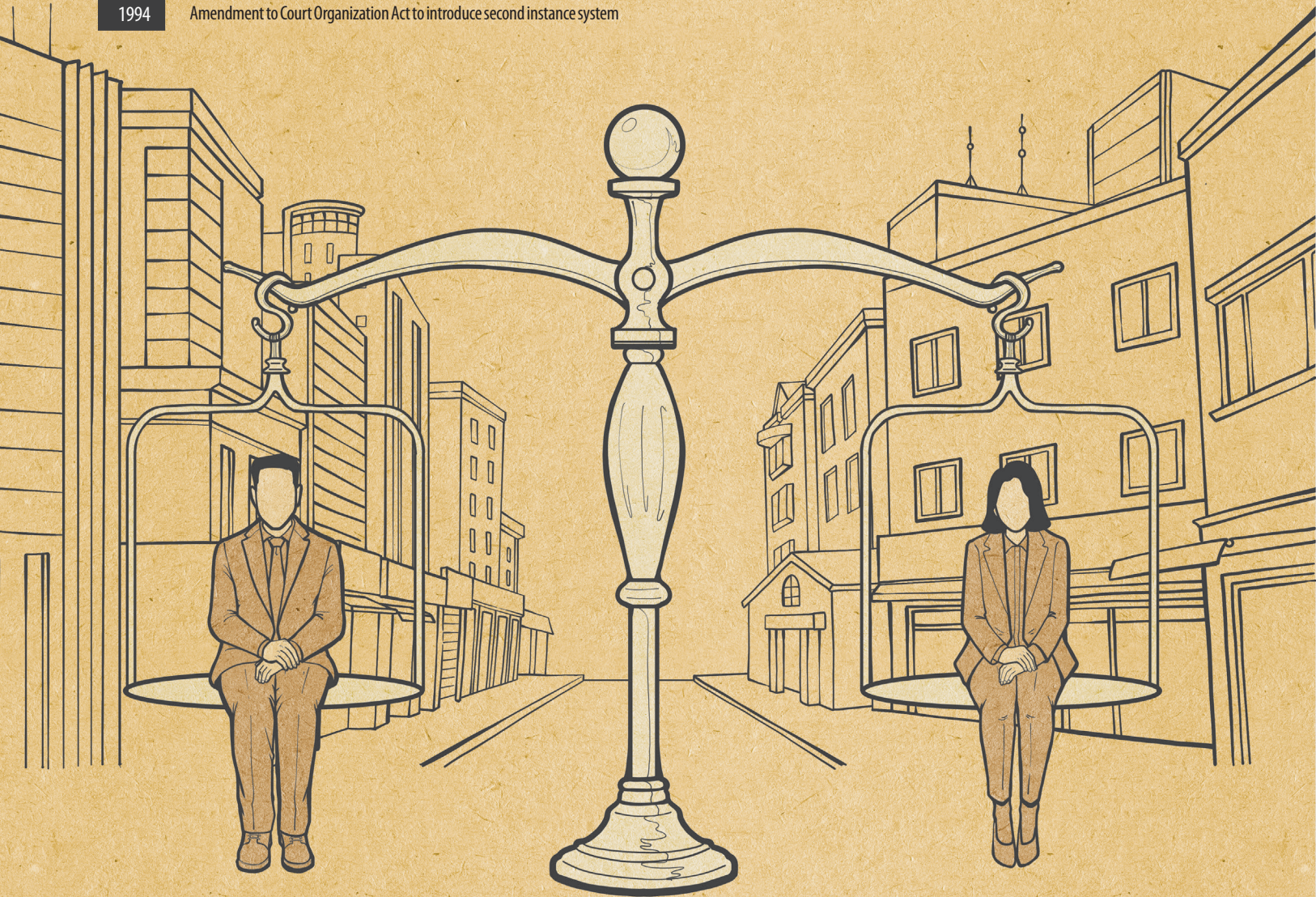
March 2022  
Commissioner of the IPTAB, **Ju Youngsik**





# History of the IPTAB

1946	Enactment of Patent Act
1949	Establishment of Patent Bureau; Trial and Appeal Department under Foreigner Patent Bureau of the Ministry of Commerce and Industry takes charge of trials and appeals
1977	Establishment of KIPO, IPTAB, and Appellate Tribunal
1994	Amendment to Court Organization Act to introduce second instance system



1995	Amendment to Patent Act
1998	Establishment of IPTAB under KIPO, integration of IPTAB and Appellate Tribunal, and establishment of Patent Court of Korea as level of high court
2006	Opening of first trial tribunal and introduction of oral hearing system
2010	Expansion into 5 trial tribunals
2014	Introduction of remote video oral hearing
2017	Promotion of hearing by collegiate tribunal comprised of 5 administrative patent judges and enactment of code of ethics for administrative patent judges
2019	Introduction of IPTAB-appointed agent system to help socially and economically disadvantaged
2021	Introduction of expert commissioner system

# MORE FAIRLY

More correctly and fairly

The IPTAB continues to research and present alternatives to judge quickly and correctly and resolve disputes in a fair way.



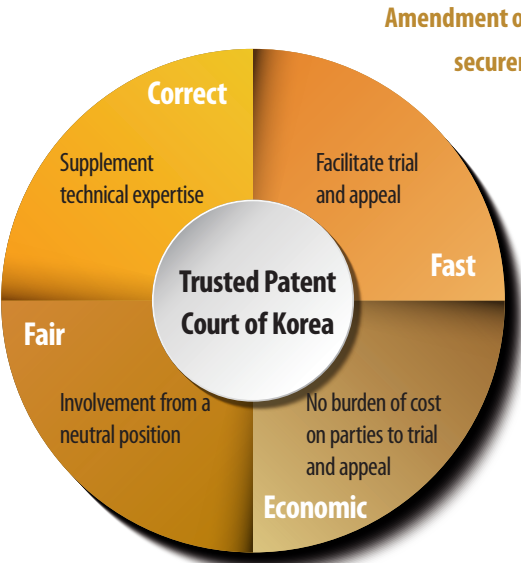
# The IPTAB improves its expertise in patent trials and appeals with the expert commissioner system

Since October 21, 2021, the IPTAB has enforced the expert commissioner system, in which private technical experts with specialized knowledge and experience participate in patent trials and appeals. An expert commissioner would help the IPTAB improve its expertise in trials and appeals by presenting his/her opinion in writing or orally.

## Need to use external experts of fast-changing technology

Even if incumbent administrative patent judges of the IPTAB are equipped with more than 10 years of experience in examination, trial and appeal, technology, etc., they are subject to a certain degree of limitations to the handling of all cases in a perfect way. Thus, there has been a continuing need for external experts for fast-changing state-of-the-art technology and field knowledge to supplement the expertise of the IPTAB.

The expert commissioner system is to have an external expert participate in trials and appeals to supplement expertise. Thus, an expert commissioner will supplement the technical knowledge of an administrative patent judge by presenting his/her opinion at the request of the administrative patent judge.



## Amendment of relevant laws, securement of 130 candidates in 11 fields

As an amendment to the Patent Act, etc., which has an expert commissioner participate in patent trials and appeals, was proclaimed on April 20, the IPTAB has established subordinate laws and regulations as well as relevant administrative rules necessary to implement this system.

To be specific, the following were included: a basic operational direction of the expert commissioner system; procedures for designation and participation of commissioners; forms, such as notice of procedures for designation of commissioner, etc.; criteria for provision of fees after completing the



procedures, etc.

Meanwhile, in August, the state-of-the-art technical fields and the technical fields which require field knowledge were selected, and candidates of the expert commissioner were recruited. To date, about 130 candidates have been recruited.

A total of 11 fields were selected as follows: AI; autonomous driving; secondary fuel cell; wireless communication (5G/6G); video and audio compression; FinTech; semiconductors; robot control; ground stabilization; transmission; and bio and health. Also, whenever it is recognized that a new candidate is required, such new candidate can be added to the list at any time.

## The expertise in trials and appeals is improved with the expert commissioner system

Where a presiding judge determines that it is required for an expert commissioner to participate in trials and appeals, the presiding judge may designate 1 or more expert commissioners from candidates in the relevant technical field. An expert commissioner shall be designated after hearing opinions of both parties so that no one party would be disadvantaged. Parties may suggest, by submitting a written statement, that an expert commissioner shall participate in trials and appeals. Even in such cases, a presiding judge ultimately determines the participation.

An expert commissioner designated to resolve a dispute shall submit a written statement from a neutral position or explain or state his/her opinion in an oral hearing or a briefing session of trial and appeal. This system will greatly help an administrative patent judge render his/her decision in a fast and correct way. Thus, it is expected that the quality of trials and appeals would be improved substantially.

The expert commissioner system supplements the expertise of the IPTAB by having an external expert participate in patent trials and appeals regarding fields in which the technology changes fast or fields in which technology is required.



It is essential for correct trials  
and appeals to examine  
evidence thoroughly. The IPTAB  
establishes and implements a  
plan to reinforce evidence  
examination to deviate from  
the existing evidence  
examination practice that was  
relatively passive and resolve  
any problem regarding the  
evidence presentation in an  
active way.

# Establishment and promotion of plan to reinforce evidence examination in patent trials and appeals

In September 2021, the IPTAB established a foundation to promote the fairness and accuracy in trials and appeals by announcing the “Plan for Reinforcement of Evidence Examination in Patent Trial and Appeal” that contained 6 strategies and detailed tasks. The detailed tasks will be implemented in order through the cooperation with other agencies in accordance with the future schedule.

## Change practice to examine and present evidence

An administrative patent judge of the IPTAB determines the facts asserted by parties by examining evidence. Thus, thorough evidence examination is essential in determining in a correct manner. The IPTAB established and implemented the “Plan for Reinforcement of Evidence Examination in Patent Trial and Appeal” to resolve problems, such as a gradual decrease in the number of trials and appeals in which a witness was interrogated and a site inspected, etc. due to the following: somewhat passive examination of evidence other than that presented by parties; improper evidence; belated evidence presentation, etc.

## 6 strategies to reinforce evidence examination

First, evidence examination support system has been newly developed. An administrative patent judge who lacks experience in evidence examination is trained on the practical evidence examination by publishing and sharing a casebook with case analysis. The judge may be not accustomed with evidence examination that is not frequently performed. Thus, the rules for evidence examination which contain procedures, forms, etc. by type of evidence examination will be prepared and reflected in the trial and appeal system in the future.

Second, an external cooperative system has been developed in relation to digital forensics. As more digital evidence is presented, the digital forensics service providers are selected, and the cost of digital forensics is provided for the financially disadvantaged, such as individuals, SMEs, etc., who may feel burdened by the cost.

Third, where a party fails to respond to the evidence examination, he/she would be subject to an administrative fine. Where a party fails to respond to the evidence examination, an administrative fine may be imposed even pursuant to the Patent Act. However, no administrative fine has been imposed in practice.

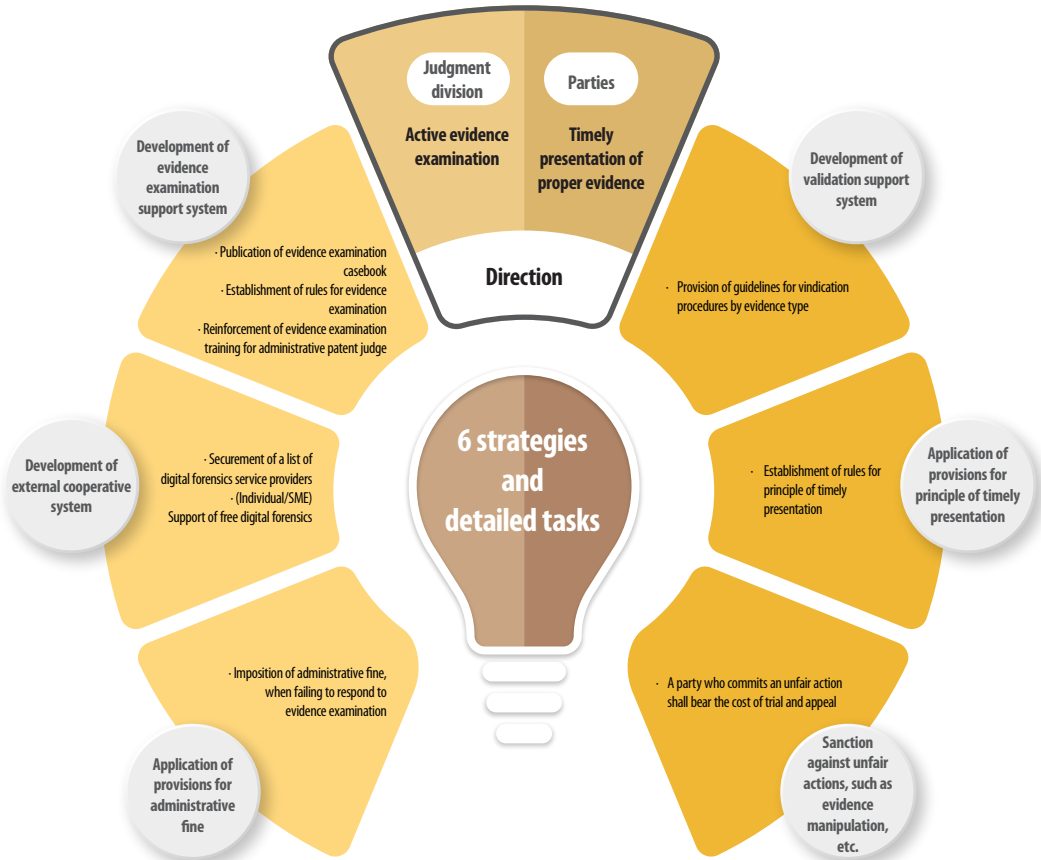
Fourth, a system has been developed to allow proper evidence to be presented and proved in a proper time. The guidelines for validation procedures by type are established and provided so that a party whose understanding

of validation is insufficient would not present improper evidence.

In addition, the IPTAB will help a judgment division to proceed with trials and appeals in a quick and fair manner by sharing the rules for principle of timely presentation. Also, the IPTAB will promote the fairness in trials and appeals by charging a party who has presented evidence late or false evidence with the cost of the trial and appeal irrespective of whether he/she won the case.



## Correct and fair patent trials and appeals



Strategies and tasks for  
reinforcement of  
evidence examination  
in patent trials and  
appeals



The IPTAB will prevent in advance an unfair action and induce trials and appeals in a faithful and fair manner by amending the public announcement so that a party who committed an unfair action bears the cost of trial and appeal.

# A party who commits an unfair action will bear more of the cost of trial and appeal

On January 25, 2022, the “Public Announcement of Determination on Cost of IP Cost and Appeal” was enforced to improve the effectiveness of the cost of trials and appeals and prevent in advance an unfair action. In the future, a party who commits an unfair action shall bear the entire cost incurred by the other party in relation to the trial and appeal, irrespective of whether the case is won.

## Should I bear the cost, even if I lose a case unfairly?

In inter partes cases, a losing party shall, in principle, bear the cost of trial and appeal, such as fee for requesting trial and appeal, legal fees, fee for drafting request form, other document, drawing, etc. A winning party shall bear the whole or a part of the cost only in exceptional cases, such as delay in hearing, etc. Meanwhile, the need for supplementing such system has continued to be raised as to the following: where a party loses a case due to an unfair action committed by the other party, the losing party shall bear even the cost of the trial and appeal; and even if a party who committed an unfair action is ordered to bear the cost of the trial and appeal, such order has no effectiveness in terms of the amount.

The public announcement was amended to prevent an unfair action by laying a foundation to have a party who committed an unfair act bear the entire cost of the trial and appeal, irrespective of whether he/she has won the case.

## The cost of trials and appeals increases significantly against a party who commits an unfair action

According to the amendment, the following are defined as an unfair act: where it is found that a trial is ruled with a right acquired by a false or unfair action; where it is found that an unfair act is committed in a hearing; or where a case is won by presenting evidence, etc. in delay after failing to present the same intentionally or negligently. A party who commits an unfair act shall bear the entire cost incurred in the trial and appeal by the other party, irrespective of whether the case was won.

In addition, where a party who commits an unfair action bears the cost of the trial and appeal, the other party may charge an actual legal fee (up to 7.4 million won) from the cost of the trial and appeal. In the past, the legal fee that could be charged as the cost of trial and appeals notwithstanding an unfair action was recognized only up to the cost (hundreds of thousands of won) of the trial and appeal under the rules. Thus, a party affected by an unfair action was

not compensated in full with the cost of the trial and appeal, even if the party spent millions of won as the legal fee. In light of the fact that the ordinary amount of request for IP trials and appeals is 240 thousand won per case (trademark and design), a party who commits an unfair action shall provide up to 30 times the legal fee compared to the past.

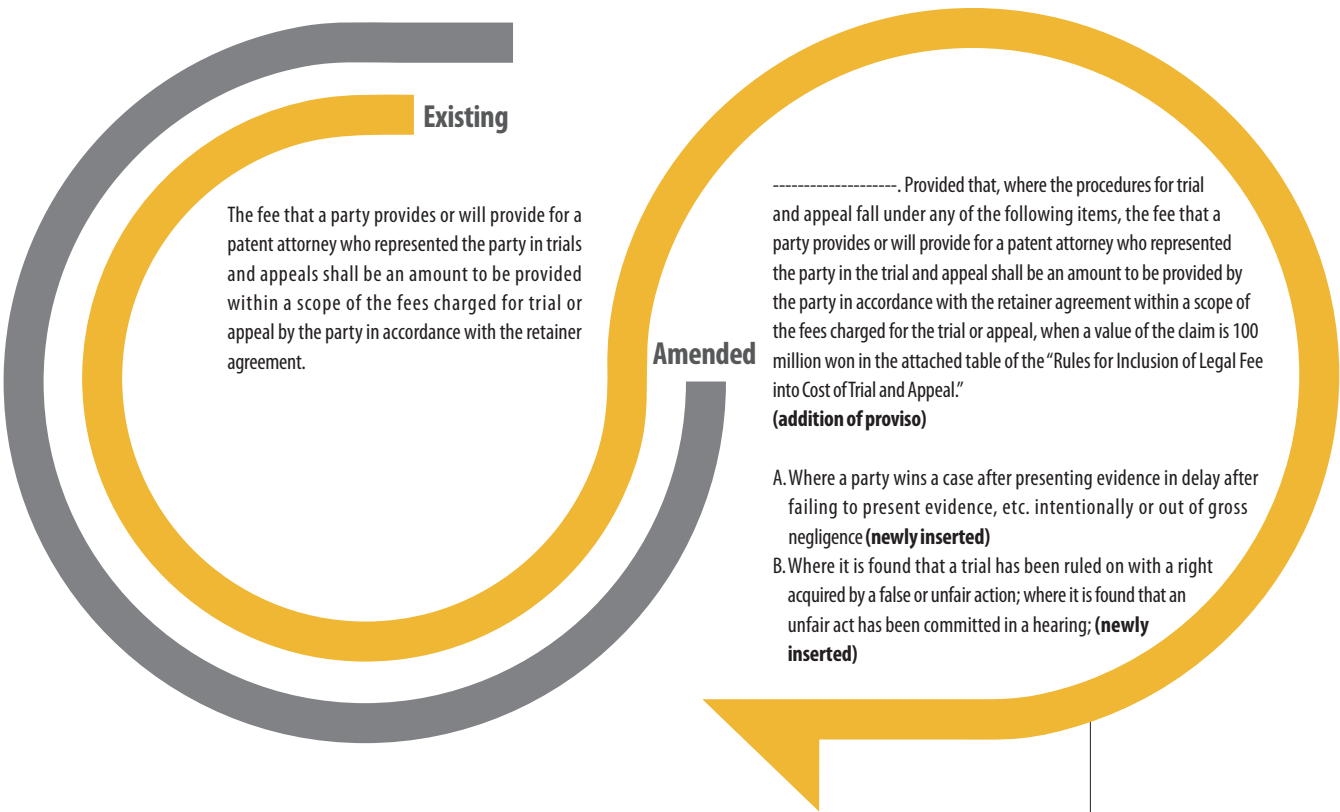
## The IPTAB will respond strictly to an unfair action in trials and appeals

It is expected that this amendment would promote faithful and fair trials and appeals by aggravating a burden of the cost of trial and appeal on a party who commits an unfair action, such as unlawfulness, intention, gross negligence, etc. Ju Youngsik, the Commissioner of the IPTAB, stated that “it is required to eradicate unfair actions from trials and appeals for correct and fair trials and appeals” and added that “the IPTAB will respond strictly to unfair actions, such as data manipulation, false allegations, etc., with positive administration by amending the laws and regulations, etc.”



### Amendment

Amended provisions: Article 9 Subparagraph 2 (Criteria for Calculation of Cost)

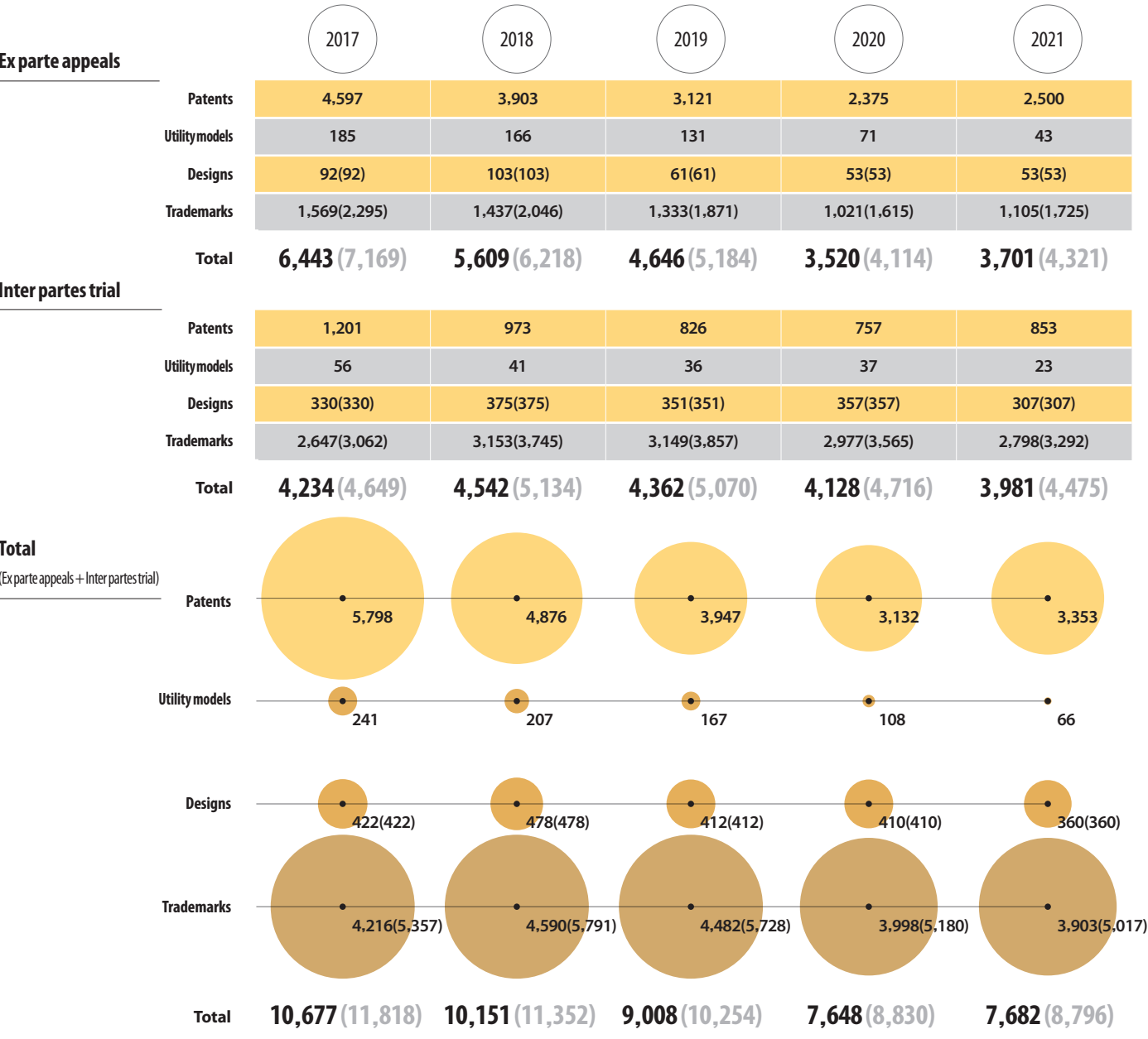




Major statistics

The IPTAB has endeavored in various ways to expedite trials and appeals and improve the quality thereof. As a result, the period required to process trials and appeals has been shortened significantly in the last 3 years. Also, the number of cases pending has continued to decrease since 2017. Here, the IPTAB introduces major statistics that indicate such change.

Number of Cases Filed

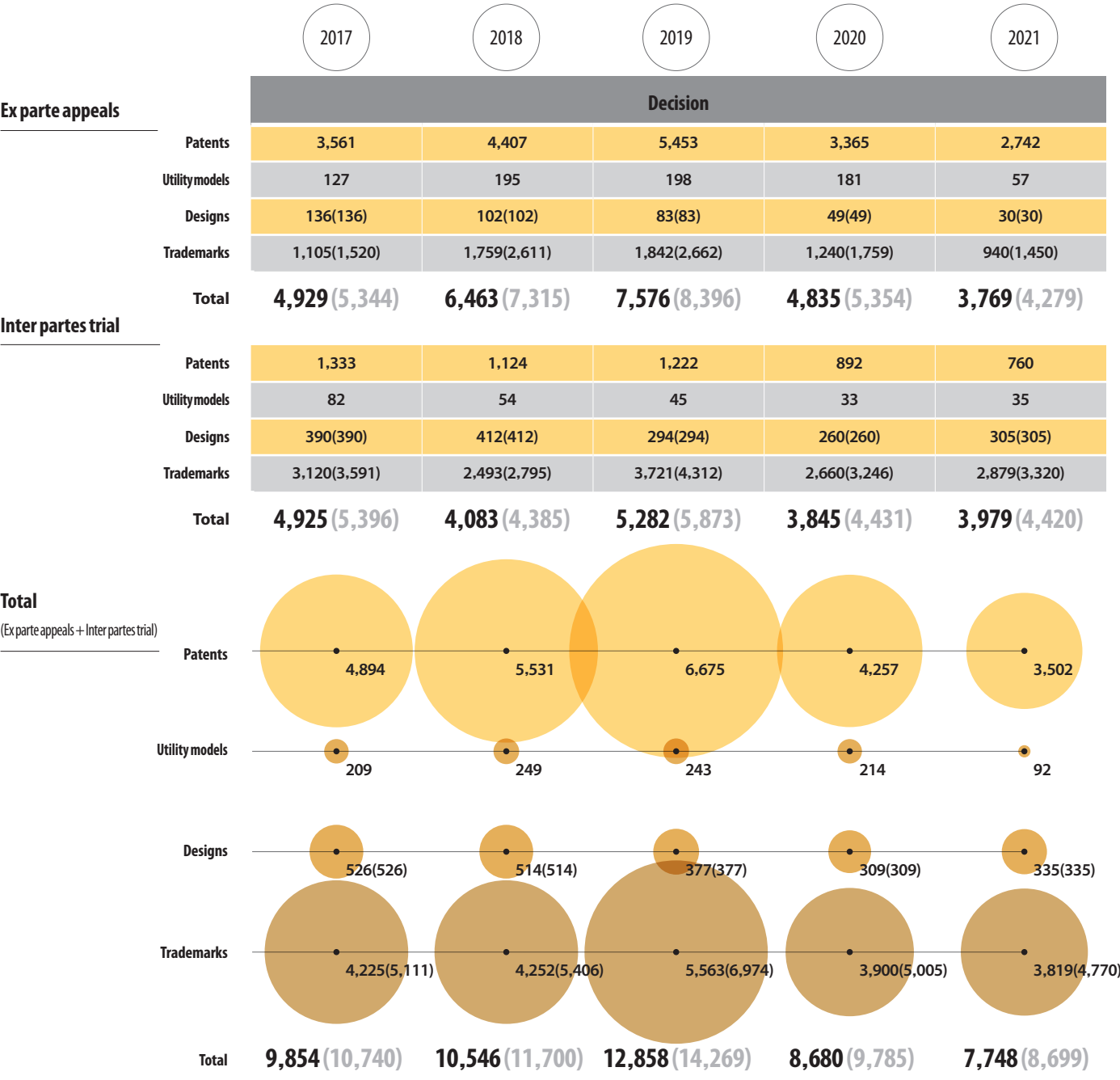


· Based on multiple designs (the number of designs) and multiple class trademarks (the number of good classifications)

· Including 755 application for revoking patent implemented in March 2017 (111 cases in 2017, 154 cases in 2018, 175 cases in 2019, 155 cases in 2020, and 160 cases in 2021)

Unit: case

Number of Cases Disposed



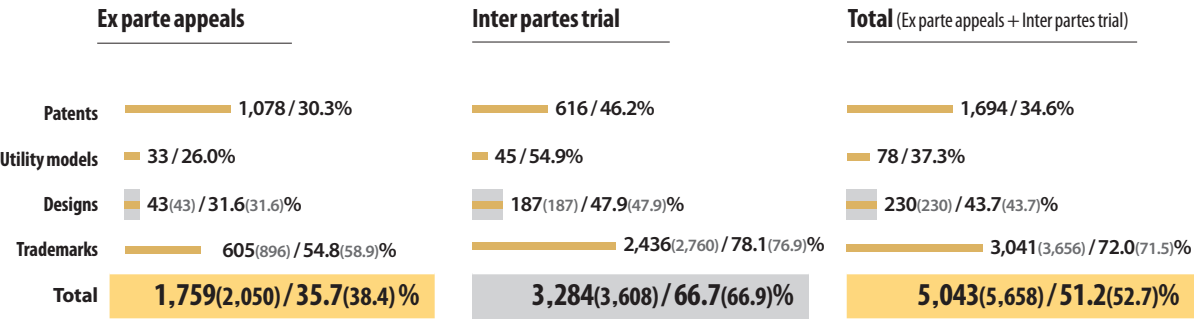
· Based on multiple designs (the number of designs) and multiple-class trademarks (the number of good classifications)

· The trial ruling refers to affirmation, dismissal, rejection, or withdrawal

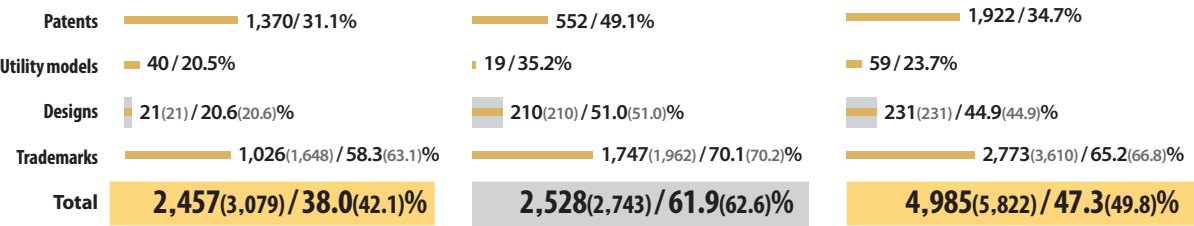
Unit: case

Cases Affirmed

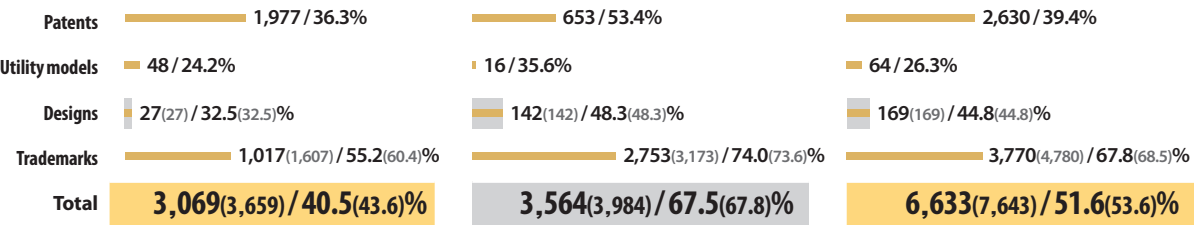
2017



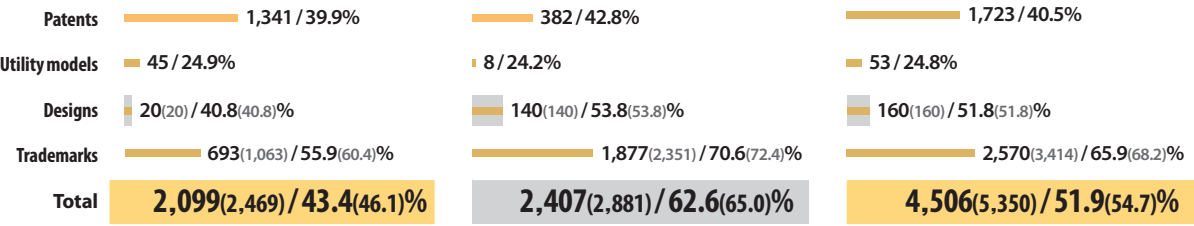
2018



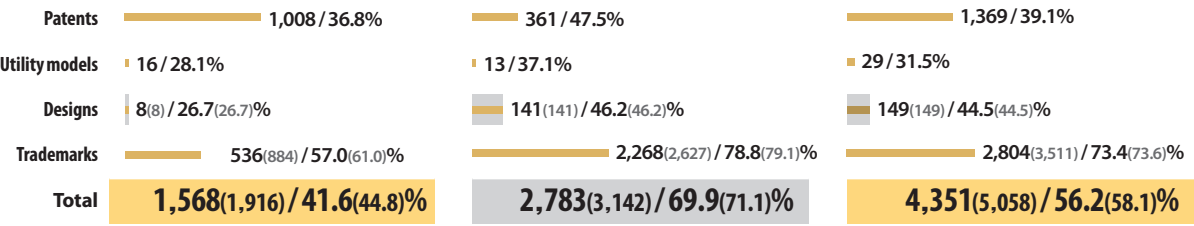
2019



2020



2021

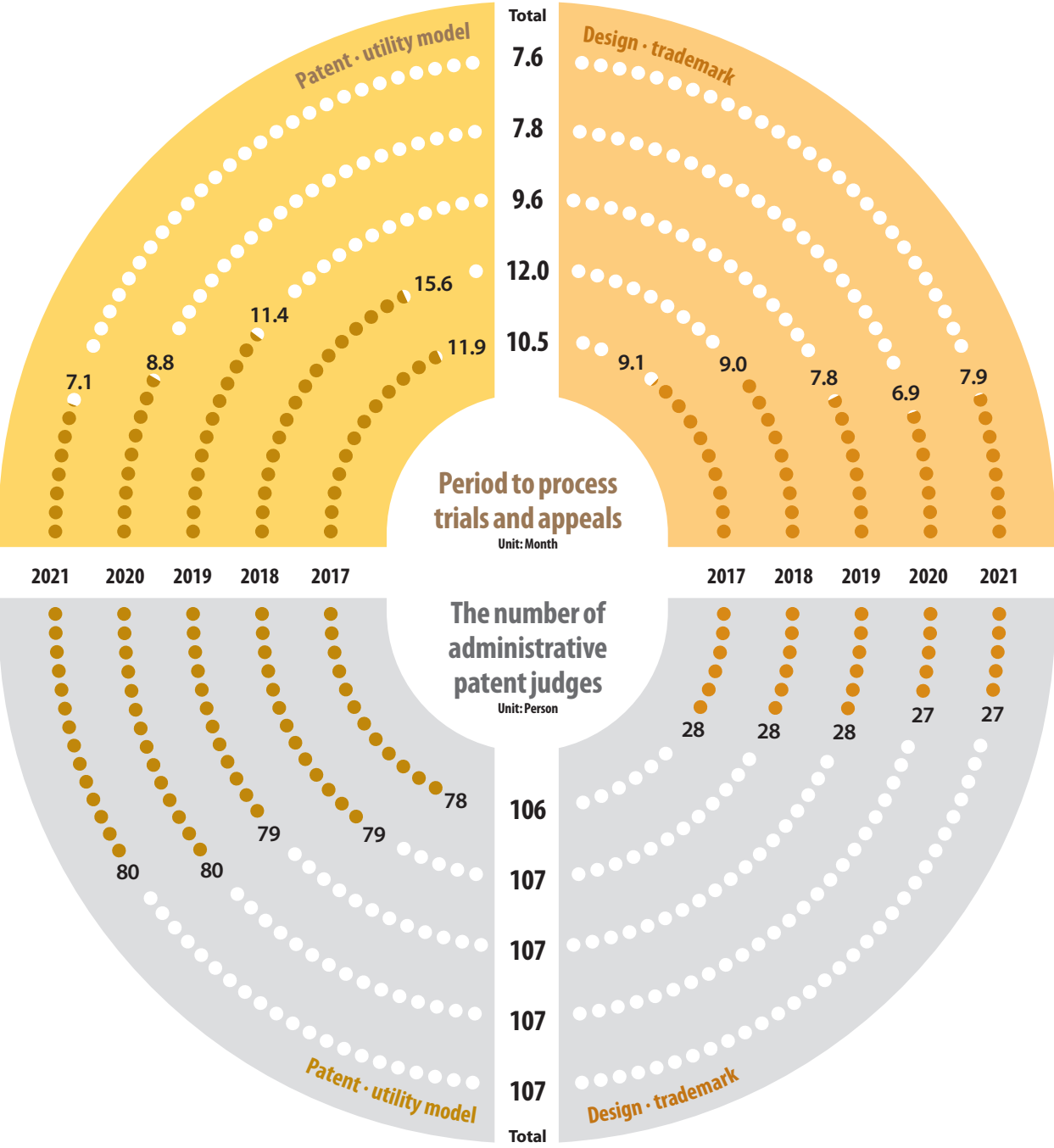


Unit: Affirmation (case)/affirmation rate (%)

• An affirmation rate means the number of affirmed cases divided by the number of trial rulings. The number of affirmed cases means the sum of affirmation in full and affirmation in part. Of this, the number of trial rulings excludes invalidation, reexamination before trial, and registration determination.

• A number between parentheses means the number of designs and the number of good classifications.

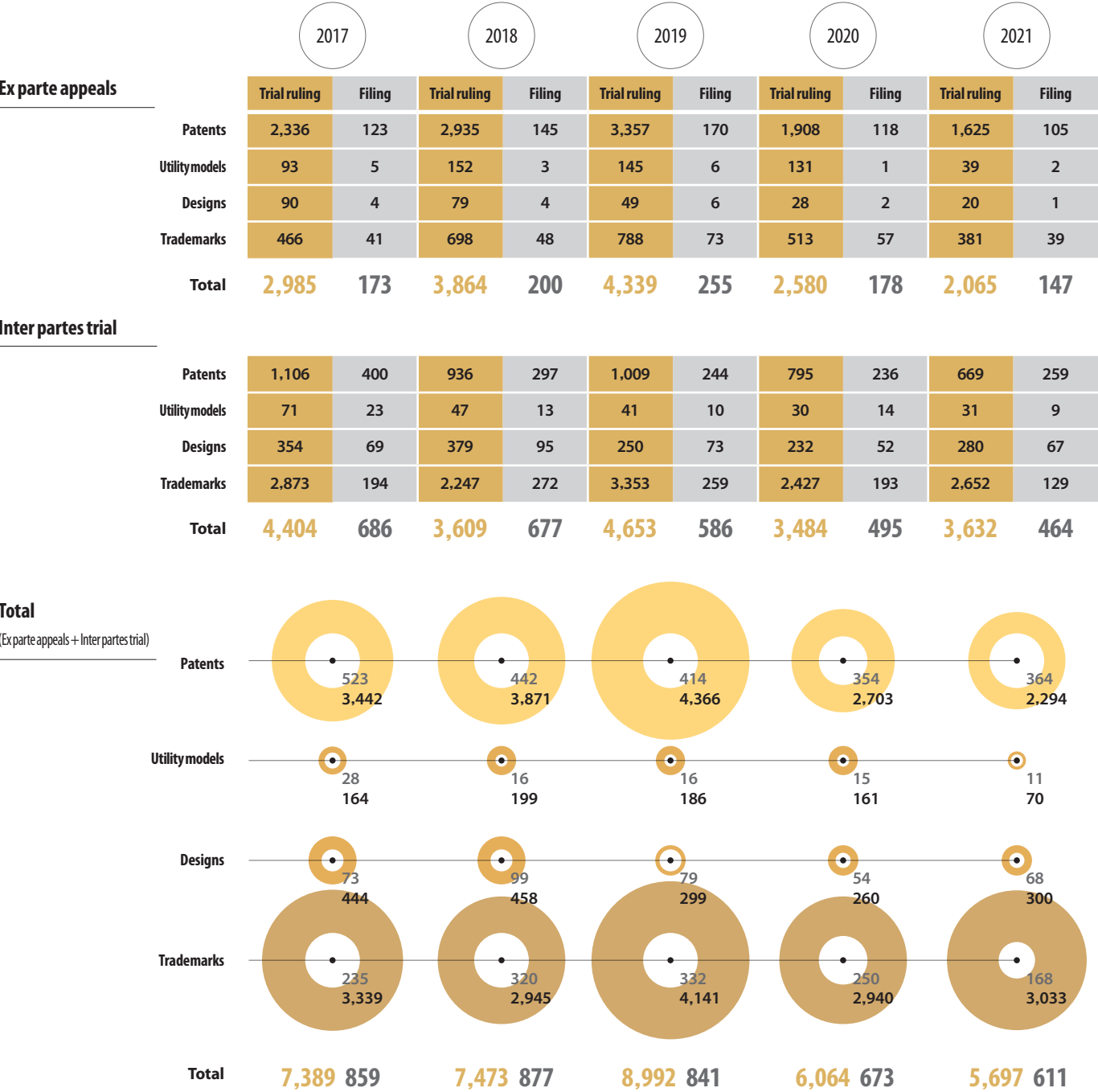
Trial Pendency and the Number of Administrative Judges



• As of the end of year, including a presiding judge



## Cases Appealed to the Patent Court



• The number of trial rulings refers to the number of trial rulings for which a case is brought. In the case of ex parte cases, it means the number of trial rulings dismissed and rejected. In the case of inter partes cases, it means the number of trial rulings excluding withdrawn cases.  
• Add 1 case number as 1 case.

Unit: case

## Patent Court Decisions

### Patents

	Request	Rejection order	Won by the plaintiff	Won in part by the plaintiff	Lost by the plaintiff	Rejection	Withdrawal	Others	Total
2017	523	8	103	16	307	14	114	-	589
2018	442	13	89	9	296	6	110	4	527
2019	414	11	97	2	219	5	94	1	429
2020	354	12	85	11	207	11	66	-	392
2021	364	15	74	5	165	5	52	-	316

### Utility models

	Request	Rejection order	Won by the plaintiff	Won in part by the plaintiff	Lost by the plaintiff	Rejection	Withdrawal	Others	Total
2017	28	1	6	1	12	-	9	-	29
2018	16	-	1	-	9	-	1	-	11
2019	16	1	6	-	8	-	3	-	18
2020	15	1	4	-	5	-	3	-	13
2021	11	-	4	-	7	-	2	-	13

### Designs

	Request	Rejection order	Won by the plaintiff	Won in part by the plaintiff	Lost by the plaintiff	Rejection	Withdrawal	Others	Total
2017	73	5	26	-	31	1	15	-	78
2018	99	-	20	-	33	1	23	-	77
2019	79	-	24	-	51	-	10	-	85
2020	54	3	21	-	33	-	6	-	63
2021	68	-	14	-	18	-	17	-	49

### Trademarks

	Request	Rejection order	Won by the plaintiff	Won in part by the plaintiff	Lost by the plaintiff	Rejection	Withdrawal	Others	Total
2017	235	12	59	6	149	4	45	-	275
2018	320	10	77	1	119	-	65	-	272
2019	332	9	75	-	129	6	47	-	266
2020	250	5	84	5	155	5	44	-	298
2021	168	7	54	1	105	3	46	-	216

### Total

	Request	Rejection order	Won by the plaintiff	Won in part by the plaintiff	Lost by the plaintiff	Rejection	Withdrawal	Others	Total
2017	859	26	221	23	499	19	183	-	971
2018	877	23	187	10	457	7	199	-	883
2019	841	21	202	2	407	11	154	1	798
2020	673	21	194	16	400	16	119	-	766
2021	611	22	146	6	295	8	117	-	594

• Add 1 case number as 1 case / Yearbook and monthly court statistics of the Supreme Court

Unit: case

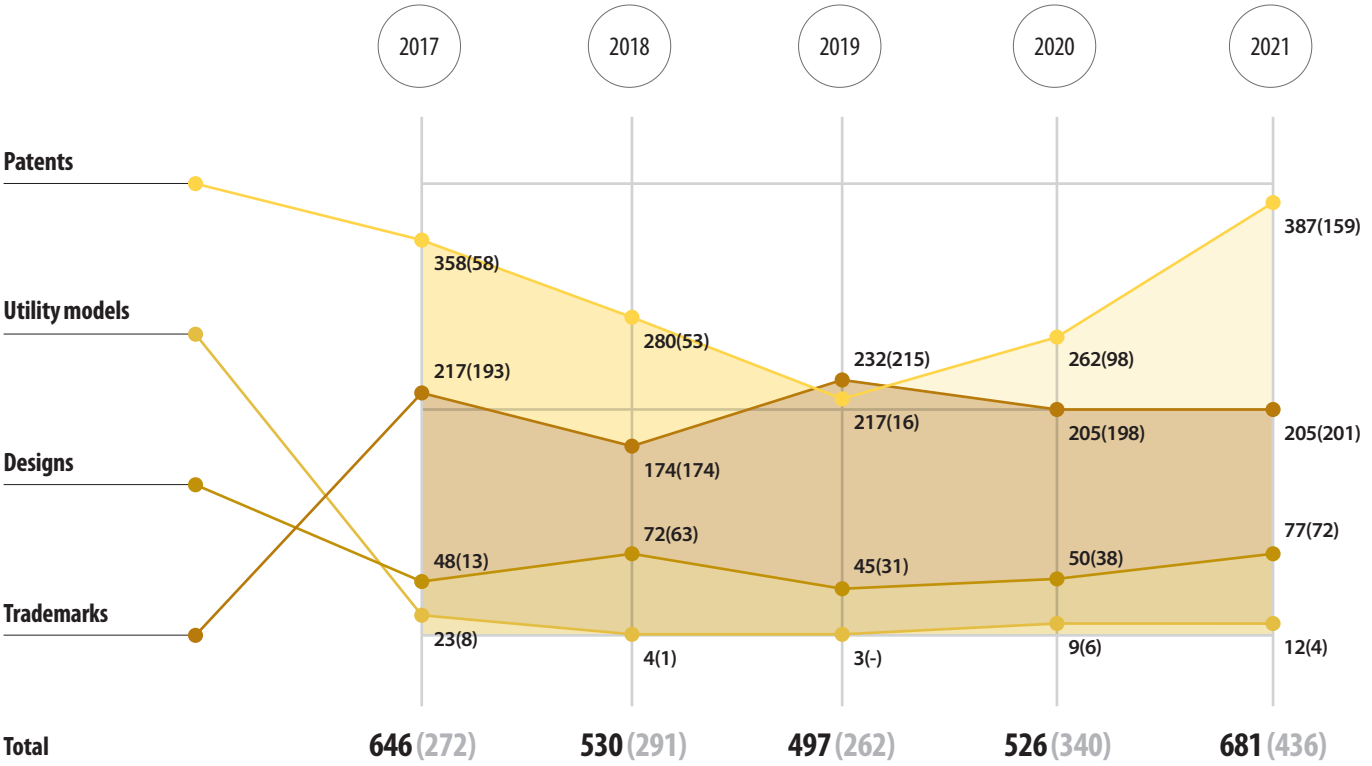
## Supreme Court Decisions

Patents		Appeal	Rejection order	Appeal dismissal	Reversal and rendering	Reversal and remand	Withdrawal	Appeal withdrawal	Others	Total
2017		194	1	160	3	6	3	2	-	175
2018		152	-	155	2	8	4	5	1	175
2019		118	-	115	5	8	4	3	2	137
2020		112	-	102	5	4	2	5	-	118
2021		91	2	74	4	10	3	2	-	95
Utility models		Appeal	Rejection order	Appeal dismissal	Reversal and rendering	Reversal and remand	Withdrawal	Appeal withdrawal	Others	Total
2017		5	-	10	-	-	-	-	-	10
2018		5	-	5	-	-	-	-	-	5
2019		4	-	2	-	1	-	-	-	3
2020		5	-	3	-	1	2	-	-	6
2021		6	-	5	-	-	-	-	-	5
Designs		Appeal	Rejection order	Appeal dismissal	Reversal and rendering	Reversal and remand	Withdrawal	Appeal withdrawal	Others	Total
2017		24	-	21	-	-	-	-	-	21
2018		19	-	19	-	-	-	-	-	19
2019		26	-	23	2	-	-	1	-	26
2020		13	-	23	1	-	-	-	-	24
2021		7	-	4	-	-	-	-	-	4
Trademarks		Appeal	Rejection order	Appeal dismissal	Reversal and rendering	Reversal and remand	Withdrawal	Appeal withdrawal	Others	Total
2017		100	-	80	-	5	1	5	-	91
2018		74	1	58	-	12	3	3	-	77
2019		72	-	71	1	3	-	1	-	76
2020		81	-	72	-	7	-	5	-	84
2021		52	-	52	-	3	1	1	-	57
Total		Appeal	Rejection order	Appeal dismissal	Reversal and rendering	Reversal and remand	Withdrawal	Appeal withdrawal	Others	Total
2017		323	1	271	3	11	4	7	-	297
2018		250	1	237	2	20	7	8	-	275
2019		220	-	211	8	12	4	5	2	242
2020		211	-	200	6	12	4	10	-	232
2021		156	2	135	4	13	4	3	-	161

Unit: case

· Add 1 case number as 1 case / Source unit: Case: Yearbook and monthly court statistics of the Supreme Court

## Oral Hearings



Rate of video hearing compared to the entire oral hearing

42.1	54.9	52.7	64.6	64.0
(272/646)	(291/530)	(262/497)	(340/526)	(436/681)

Rate of oral hearing compared to inter partes trial ruling

13.1 (646/4,925)	13.0 (530/4,083)	9.4 (497/5,282)	13.7 (526/3,845)	17.1 (681/3,979)
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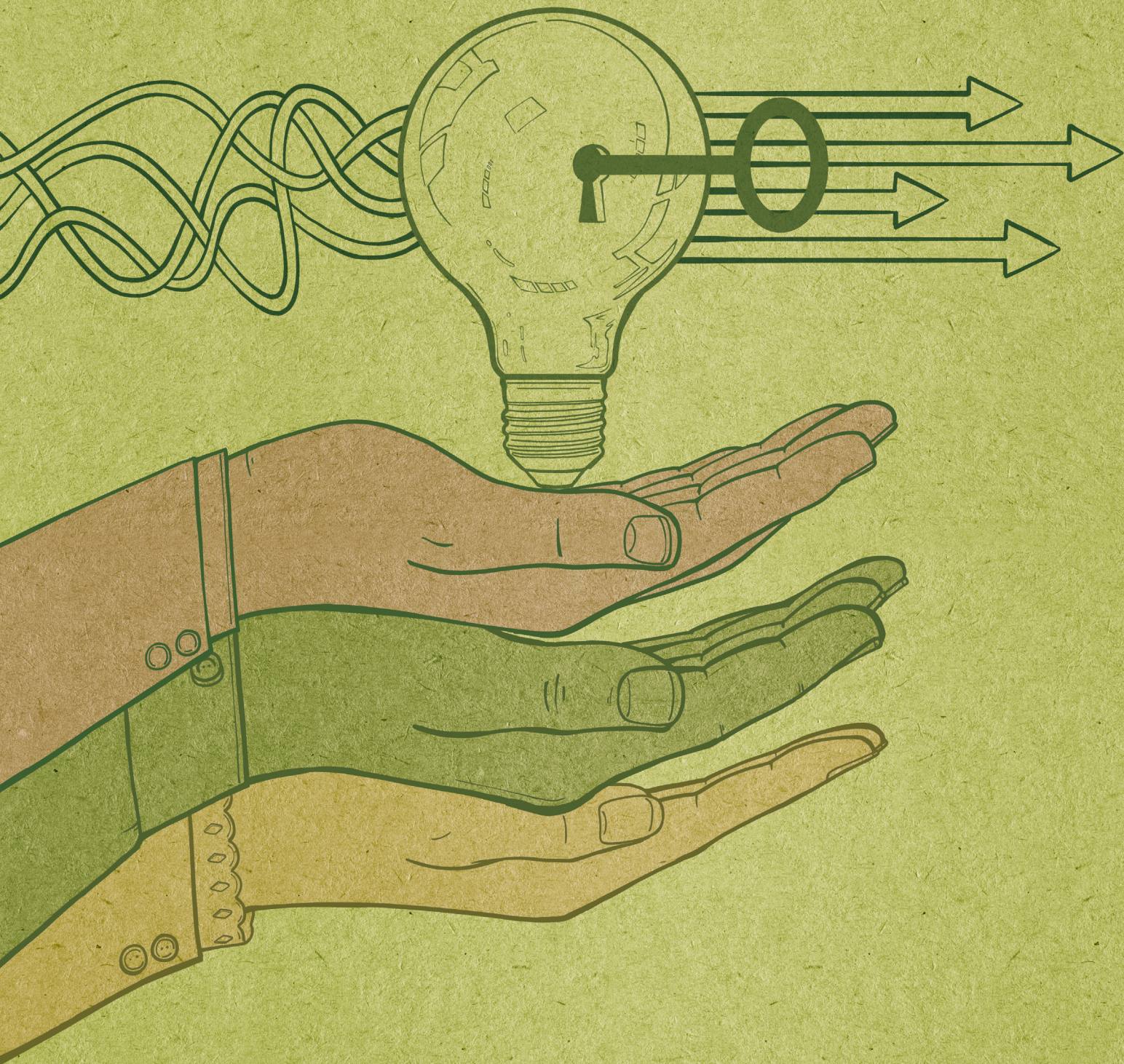
Rate of oral hearing compared to ex parte trial ruling

6.6 (646/9,854)	5.0 (530/10,546)	3.9 (497/12,858)	6.1 (526/8,680)	8.8 (681/7,748)
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Unit: case

· As of the date of oral hearing / A number between parentheses is the number of video oral hearings





# M<sup>⚙️</sup>ORE INNOVATIVELY

**More professional and innovative solutions**

The IPTAB endeavors to provide the highest level of trial administration service  
based on changes and innovations in the trial system.

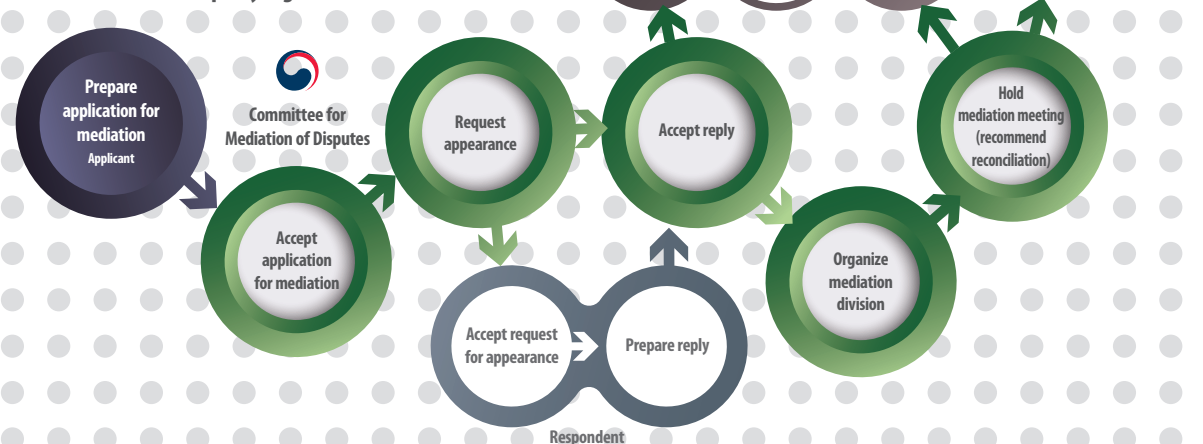




## Introduction of linkage of trial with mediation and principle of timely presentation and laying of legal basis for trial research officer

Since November 18, 2012, the IPTAB has implemented the mediation linkage system, in which both parties may terminate a trial through mutual consultation, and the principle of timely presentation, whereby assertion and evidence shall be presented intensively in an early stage of a trial. Also, the IPTAB laid a legal basis for the trial research officer to reinforce its trial expertise (on or after February 18, 2022). It is expected that these will contribute significantly to the dispute resolution for individuals, SMEs, etc. with insufficient time and resources as mechanisms to resolve disputes in a fast and accurate way in trials and appeals.

### Procedures for mediation by the Committee for Mediation of Disputes over Industrial Property Rights



### Resolve disputes fast and accurately by amending 4 laws, such as the Patent Act, etc.

On July 23, the amendments to the Patent Act, Trademark Act, Design Protection Act, and Invention Promotion Act passed the plenary session of the National Assembly. Together with the introduction of linkage of trial with mediation and principle of timely presentation, a foundation was laid to provide trial support staff who investigate and research state-of-the-art technology. Accordingly, it became possible to resolve disputes fast in patent trials and appeals and improve expertise and accuracy in state-of-the-art technology.



#### Early termination of dispute with linkage of trial with mediation

The linkage of trial with mediation is a system implemented since November 18, 2021, by which a patent trial can be terminated early through mutual consent of parties. Where both parties sharply oppose one another and a judgment division could not take one or the other party, such dispute would continue along in the IPTAB, the Patent Court of Korea, and the Supreme Court. In the meantime, the cost of the trial and appeal would increase sharply, and it would take several years to handle the dispute.

When a presiding judge determines that it would be advantageous to resolve a dispute early through mediation rather than trial, the presiding judge may suggest that both parties refer the case to the Committee for Mediation of Disputes over Industrial Property Rights. If both parties agree thereto, the case is referred to the Committee for Mediation of Disputes over Industrial Property Rights. A trial referred to the Committee shall be terminated quickly, if both parties settle the case no later than 3 months from the date on which the case is referred.

Where a party determines that it is required to refer the case when requesting a trial or in the course of trial, the party may propose mediation of the case. However, the final determination shall be made by the presiding judge. Until the mediation is completed, a trial is suspended. If the mediation is made between the two parties, it is as valid and effective as a settlement by a court. Thus, the request for trial would be withdrawn.



#### Principle of timely presentation that promotes evidence presentation in an early stage of trial

The principle of timely presentation in which assertion and evidence shall be presented intensively in an early stage of trial prevents intentional delay in trial and expedites hearings. If a party misses a deadline set by a presiding judge, the party may not present his/her assertion or apply for evidence. A presiding judge shall reject the assertion or evidence presented late ex officio or upon request of the other party.

Also, where it is required to confirm evidence or an assertion presented by a party during trial, a presiding judge may order the party to vindicate the same. Where the party fails to respond to the order without justifiable grounds, the presiding judge may not reflect the evidence or assertion in the hearing. The principle of timely presentation applies only when a hearing is delayed by late presentation of evidence by intention or gross negligence of a party. Whether the assertion or evidence was presented in a timely manner shall be determined depending on the progress of the trial on an individual basis.





### Provisions for the principle of timely presentation in the Civil Procedure Act

**Article 146 (Principle of Timely Presentation)** The method of offense or defense shall be produced at a time pertinent to the progress of litigation.

**Article 147 (Restriction on Presentation Period)**

- ① The presiding judge may, upon hearing the opinions of the parties, set the period to produce an averment or to apply for examination of evidence for either side or both sides of the parties, with respect to the specified matters.
- ② When the parties have passed the period under paragraph (1), they shall not produce an averment, nor apply for examination of evidence: Provided, That the same shall not apply where the parties have vindicated that they failed to produce or apply within such period for justifiable reasons.

**Article 149 (Rejection of Inopportune Offense and Defense)**

- ① Where it is deemed that a party has, in contravention of Article 146, caused a delay of the conclusion of litigation by belatedly producing the means of offence or defence intentionally or by gross negligence, the court may reject it by its ruling, either ex officio or upon motion of the other party.
- ② Where the purport of the means of offence or defence produced by a party is not clear, if the party has failed to make a required elucidation or to appear on the date of elucidation, the court may reject it by its ruling, either ex officio or upon motion of the other party.

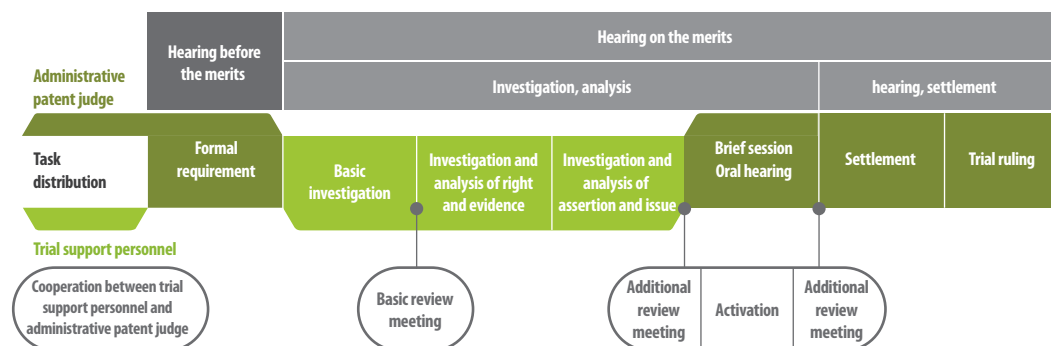


### Laying of foundation for trial research officer to improve trial expertise

The IPTAB has laid a foundation for trial support personnel pursuant to the amended Patent Act. It is required to have a trial research officer who investigates and researches state-of-the-art technology to hear patent invalidation trials, etc. faithfully in circumstances where one patent administrative judge shall process a larger amount of cases and to reinforce expertise in state-of-the-art technology.

As the trial support personnel takes charge of the basic investigation, analysis of right, evidence and issues, case studies, analysis of revoked cases, etc., it is expected that an administrative patent judge would be able to concentrate on the oral hearing, briefing session, settlement, and determination through the cooperation with the trial support personnel.

### Duties of trial support personnel and administrative patent judge



Review of findings of **basic review meeting**, determination of investigation scope, necessity for examination and verification of witness, case study, etc.

## Resolution of inconvenience of trial petitioner by improving the Design Protection Act

**An amendment to the Design Protection Act, which improved the trial procedures for the convenience and interest of trial petitioners passed, on January 11, 2022, the plenary session of the National Assembly. The convenience of trial petitioners was promoted such that if a request for trial is defective, only a part of the procedures may be rejected by improving the procedures that a trial petitioner may find complicated.**

### Only the Commissioner of KIPO may determine whether a period of request for trial may be extended

The former Design Protection Act prescribed that not only the Commissioner of KIPO but also the Commissioner of the IPTAB may determine whether a period for request for trial may be extended. Thus, in many cases, a trial petitioner was confused procedurally where an application for extension of period shall be filed. To resolve this inconvenience, the amendment clarified the fact that the Commissioner of KIPO determines whether a period for request is extended, when a trial of design is filed against a disposition made by an examiner, such as rejection of application for registration of design, etc.

### Where only a part of a procedures is defective, only such part shall be rejected

The dismissal of petition for trial was improved. It was stipulated that the entire petition for trial shall be dismissed, unless procedural defects in trial or trial petition, such as violation of requirement for appointment of agent, violation of obligation for payment of fees, violation of order, etc., are amended in a designated period. However, the amended Design Protection Act prescribes that if a part of the procedures is defective, only that part shall be dismissed. Thus, the amended Design Protection Act intended to protect the interests of the trial petitioner.

### Comparison of former and amended provisions

Former	Amended
<p>Article 128 (Dismissal of Petition for Trial without Prejudice)</p> <p>② If a person ordered to amend a petition under paragraph (1) fails to amend it within the specified period, the chief administrative patent judge shall dismiss, by its ruling, the petition for the administrative patent trial without prejudice</p>	<p>Article 128 (Dismissal of Petition for Trial without Prejudice)</p> <p>② -----(identical) ----- or where an amended matter violates Article 126(2) or 127(2), the petition for trial shall be dismissed by determining petition for trial or the relevant procedures, etc.</p>



Promotion of amendment to 4 laws,  
such as the Patent Act, etc.

## Innovation of the IPTAB by amending 4 laws, such as the Patent Act, etc.

**The IPTAB improved the trial and appeal system on a large scale to realize high-quality patent trials and improve the stature of the IPTAB. Under the objective of “patent trials that are more accurate, fair, prompt, and economical,” the IPTAB expedited in 2021 the amendment of 4 laws, such as the Patent Act, Utility Model Act, Trademark Act, and Design Protection Act.**

### Submission of the final amendment to the National Assembly after collecting various opinions

The IPTAB began amending 4 laws, such as the Patent Act, etc., so that a patent trial which falls under the first instance in fact functions more effectively in resolving disputes and could be better trusted by the people.

In early 2021, the IPTAB established a plan for innovating the trial system and then collected various opinions from academic circles, industrial circles, legal circles, etc. from February to July. Then, the final amendment determined through the review of the 3<sup>rd</sup> Industrial Property Legal Council held in August was submitted to the National Assembly in November and is pending passage in the plenary meeting.

### Realize basic principles for patent trials and reinforce evidence examination

First, the amendment stipulates a basic principle for the patent trial. The principle of good faith and the principle of free evaluation of evidence are basic principles of the patent trial. However, the IPTAB will establish the principle that “a party that has broken the trust will not win a trial.”

Second, the authority of the presiding judge is reinforced. The existing provision did not stipulate that a presiding judge directs hearings and is not clear as to what measures the presiding judge could take. Thus, the amendment included a provision that an administrative fine is imposed where a party fails to comply with a court’s order to maintain peace and order.

Third, the examination of evidence in a patent trial is reinforced. The Patent Act stipulates how to examine evidence in a patent trial and newly inserted a provision to increase an upper limit to administrative fines imposed when failing to respond to the examination of evidence from the existing 500 thousand won to 5 million won.

### Reinforcement of faithfulness in trial and acceleration of processing of trial

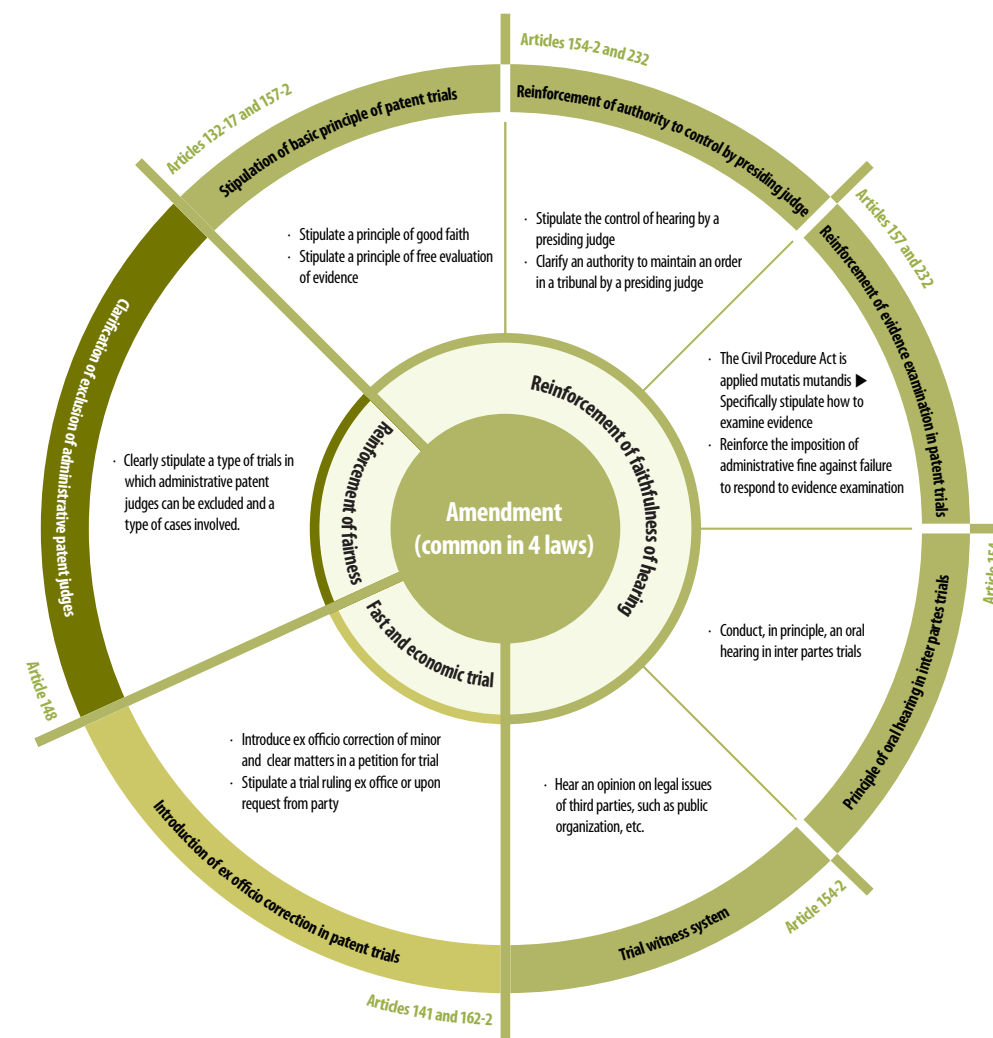
Fourth, the existing practice with focus on documentary examination will be improved by stipulating that an oral hearing shall, in principle, be conducted in an inter partes trial, and the documentary examination may be conducted only in exceptional cases, such as withdrawal of petition for trial, dismissal of trial, very simple and clear case, etc.

Fifth, where it is recognized that it is required to hear a case, a presiding judge may hear opinions of a witness, such as a public organization, etc. as to legal issues or the effect thereof on industries.

Sixth, unlike the existing provision that stipulated grounds for exclusion of an administrative patent judge in a comprehensive and ambiguous way, the amendment clearly stipulated a type of trials from which an administrative patent judge could be excluded.

Lastly, where a petition for trial contains a minor clerical error, it could be corrected ex officio. It was enabled to process a trial in a fast and economical way by stipulating the correction of trial ruling ex officio or upon request.

Summary of  
major  
amendment







## Petition for revoking patent, responsibility is reinforced and procedures are expedited

The IPTAB will improve on a large scale the petition for revoking patents introduced in 2017 to remove poor patents in an early stage with public examination. The IPTAB will establish and share with judgment divisions the guidelines that improve the problems, such as psychological burden caused by poor petitions, prolonged processing, etc.

### High responses but continued commentary

The petition for revoking a patent is a petition to retroactively extinguish a patent right with a ground for revocation from the date of registration of the patent right to 6 months from the date of public announcement of registration. Even if this system would be available only within 6 months from registration, 732 petitions had been filed by November 2021, which were a third of the number of petitions for revoking patents.

However, it is difficult to determine whether a petition shall be revoked for grounds such as failure to specify a specific minimum reason, presentation of excessive evidence, etc. Administrative patent judges continued to point out that it is required to improve problems such as extension of processing, etc.

### Preparation and distribution of improved guidelines

Thus, the IPTAB will prepare a plan for improvement of the following: to establish the criteria for determination in light of the purport of public examination, to establish the procedures for fast processing; to improve the fee system for petition of revoking patent, etc. Further, the IPTAB will collect internal and external opinions in March and then finalize and distribute the final guidelines. It is expected that the legal stability of patent rights would be reinforced and the market confusion would be minimized by reinforcing the function of public examination and removing poor patents early with the simplified fast procedures.

#### Details of plan for improvement

##### Strategy

- ① Establishment of criteria for determination to comply with an intent of public examination
- ② Preparation of procedures for simplified and fast processing
- ③ Reorganization of fee system for petition for revoking a patent

##### Detailed duties

- ① [Reinforcement of burden of proof] Determine based on the evidence presented by a petitioner
- ② [Improvement of level of proof] Revoke a patent, where it is clearly proved beyond reasonable doubt
- ① [Prevention of offense and defense] Introduction of principle for dismissal of assertion and evidence whose gist was changed.
- ② [Prevention of offense and defense] Prohibit from serving a duplicate of document that a patentee submits to a petitioner
- ① Introduce an additional charge by claim as to the fee for petition of revoking a patent

## Amended laws, Guide to trials together with precedents in 4 years

The IPTAB amended and published the “13<sup>th</sup> edition of the guide to trials” on January 5, 2021, for the following: to reinforce the practice of evidence examination; the latest precedents; to state the criteria for examination by right, etc. The guide to trials is a type of explanation and guideline which helps administrative patent, trademark, and design judges, agents, and the people in understanding the criteria for complying with the practice and procedures for trials and appeals.

### For faithfulness of hearing, such as how to examine evidence, etc.

This guide to trial is the 13<sup>th</sup> amendment since the publication of its first edition in 1978 and added the following: laws, regulations, enforcement rules, etc. amended since the publication of the 12<sup>th</sup> edition in 2017; and the latest major precedents, etc. to which an administrative patent judge shall pay attention in practice.

In particular, it contained the detailed procedures and methods, such as how to examine evidence, guidelines for surveying of trademark recognition, how to adopt online evidentiary documents, etc. Thus, it put an emphasis on enabling an administrative patent judge to understand a case in depth and conduct hearings faithfully. Also, it classified its contents so that administrative patent judges, agents, etc. could look up and understand the precedents by right, criteria for trials and appeals, such as patents, utility models, trademarks, etc. in trials to confirm a scope of rights or trials to invalidate, etc.

### Reflection of amendments to instruction and established rules

If a trial for correction is filed at the IPTAB while an invalidation trial is pending before a patent court, the amendments to instruction, established rules, etc. were reflected so that an object for expedited trial was expanded for a court to refer to the result by hearing a case quickly. An electronic version of the amended guide to trials can be downloaded at [www.kipo.go.kr/ipt](http://www.kipo.go.kr/ipt). The Commissioner of the IPTAB stated that “a patent trial shall be supported by the law, institutions, and system for consistency and accuracy of determination” and added that “the amended guide to trials will improve the consistency of criteria for trials and appeals, and the IPTAB will continue to endeavor to improve the quality of trials and appeals by improving the institution and system further.”





# MORE CLOSELY

**Closer to the people and the world**

**The IPTAB meets the standards of the people and cooperates globally to advance the intellectual property rights of Korea.**





# Extension of period to apply for IPTAB-appointed agent and expansion of targets for support

Since November 2021, the IPTAB has enforced an amendment to the “Rules for Appointment and Operation of IPTAB-appointed Agent” for the following: to extend a period to apply to appoint a IPTAB-appointed agent; to expand targets for support; and to simplify the procedures for application.

## Use a IPTAB-appointed agent in a patent trial at any time without difficulty!

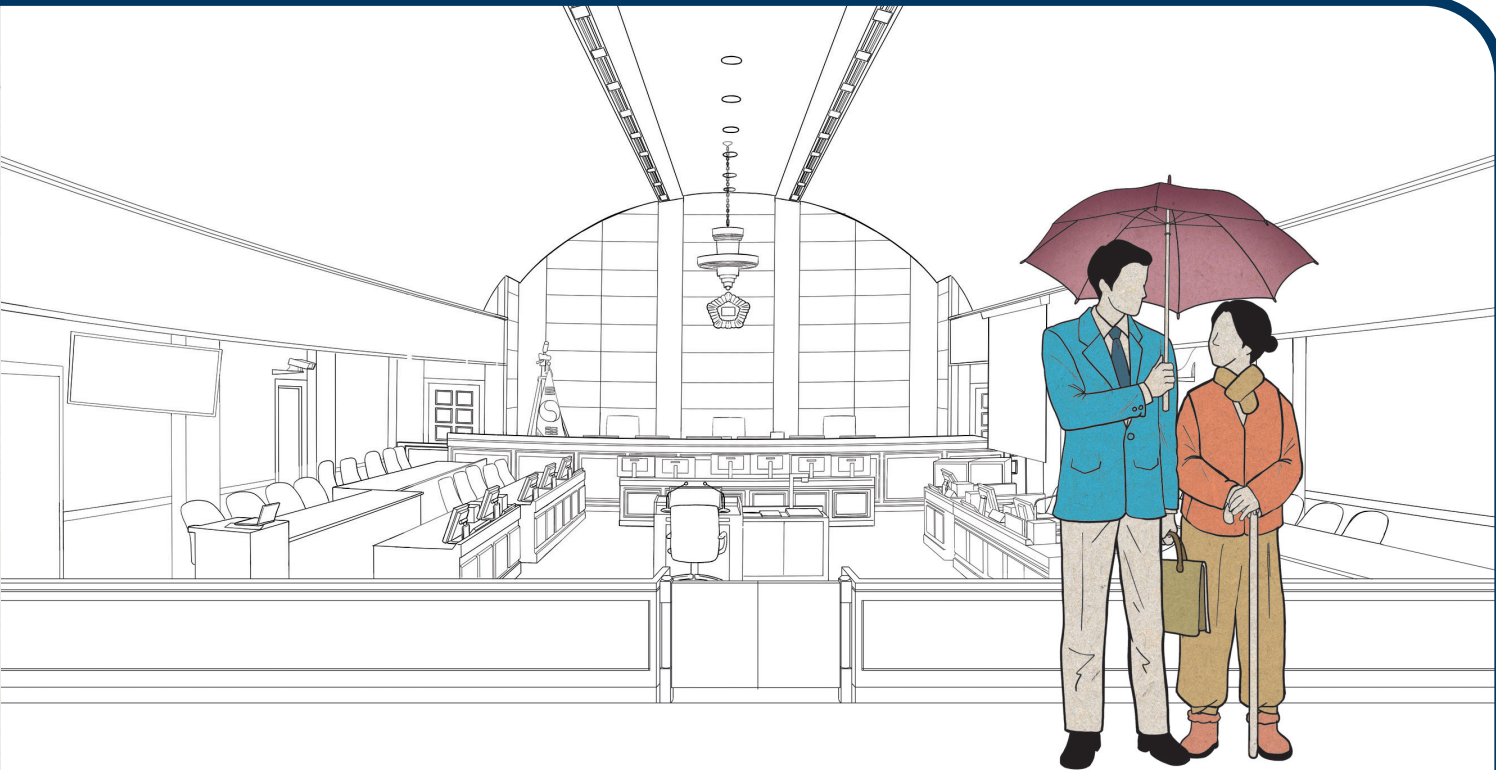
The appointment of a IPTAB-appointed agent is to provide an agent for the socially and economically disadvantaged who are without agents. Where a party files a request, the Commissioner of the IPTAB appoints an agent from prospective IPTAB-appointed agents by field selected by the IPTAB. An agent is appointed without charge. Where a party requests the same after the completion of a trial and appeal, the fee for trial, such as a fee for the request for trial, a fee for the request for correction, etc., shall be refunded.

In the past, a period within which a request for a IPTAB-appointed agent could be filed was limited. However, someone requiring support who intends to have an agent appointed by the IPTAB may file a request for the IPTAB-appointed agent at any time before the hearing of the relevant trial is completed. Also, the scope of those requiring support was expanded from a recipient of medical benefits under the National Basic Living Security Act to all benefit recipients.

The procedures for request of a IPTAB-appointed agent were also simplified. In the future, where someone requiring support files a request for a IPTAB-appointed agent and consents to the joint use of administrative information, the submission of the following documents that are verifiable through the joint use of administrative information may be omitted: certificate of recipient of national basic living security; certificate of person with disabilities; certificate of people of national merit (the bereaved); certificate of person of distinguished service to the May 18 democratization movement (the bereaved); certificate of business registration; certificate of small and medium-sized business, etc.

### Major amendment

Existing	Amended
<div><div>· (Period of request) Within 1 month from the date of request for trial, in the case of a petitioner for trial. Within a period to file a reply according to a service in part of request for trial, in the case of a respondent for trial.</div><div>· (Target for support) <b>Recipients of medical benefits</b> among recipients of national basic living security</div><div>· (Evidentiary document) To be submitted together with a request for appointment</div></div>	<div><div>· (Period of request) <b>At any time</b> until the hearing of trial is completed</div><div>· (Target for support) <b>The entirety of the recipients of national basic living security</b></div><div>· (Evidentiary document) A document that can be confirmed through the joint use of administrative information need not be submitted.</div></div>



- Young founder (aged 39 years or younger)

· Small business

· Business in dispute with large business in relation to industrial property rights

· **Recipient of benefits under the National Basic Living Security Act**

· Person of national merit, or their bereaved or family

· Person of distinguished service to the May 18 democratization movement, or their bereaved or family

· Patients suffering from actual aftereffects of defoliants, patients suffering from potential aftereffects of defoliants, and second-generation patients suffering from actual aftereffects of defoliants
- Person who performed special military missions and their bereaved or family

· Person of distinguished service and their bereaved or family

· Registered war veterans

· Registered person with disabilities

· Elementary, high school, and middle school students and students of special, foreigner, and alternative schools

· Person aged 6 years or older but 19 or younger

· Person in military service (soldier, military alternative social worker, military converted service worker)

### Target for support of IPTAB- appointed agent

## Continuation of protection of the socially and economically disadvantaged

The Commissioner of the IPTAB stated in relation to the enforcement of the amendment that “a party to a trial shall not fail to properly respond to a trial because of the inability to appoint an agent for economic reasons” and added that “the IPTAB will further endeavor to expand the support to protect the intellectual property rights of the socially and economically disadvantaged.”

As to matters regarding IPTAB-appointed agents, please contact the Trial Policy Division (042-481-5484, pandayoo@korea.kr) of the IPTAB.





## Seeking international cooperation on patent trials in 5 developed countries

On June 10, 2021, WIPO and heads of patent trial organization in 5 countries, i.e., Korea, the US, China, the EU, and Japan, which lead the IP field, met together. Participants in the video “IP5 Heads Meeting,” who sought cooperation among organizations according to a change of the patent dispute environment, promised to continue to closely communicate in the future.

### Video conference among WIPO and IP5 heads

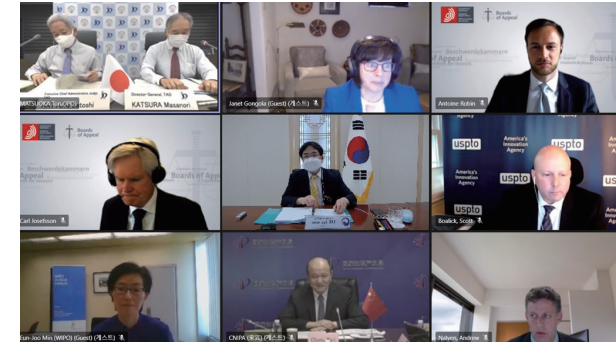
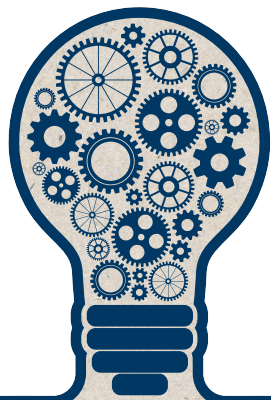
The “IP5 Heads Meeting” of 5 developed countries in the IP field was held in accordance with a suggestion made by the IPTAB in the International Symposium in Commemoration of the 20th Anniversary of the IPTAB.

The following participated in this first meeting as a representative of each organization: Katsura Masanori, a head of the patent trial division in Japan; Karl Josephson, the Commissioner of the EU Board of Appeal; Lee Jaewoo, the Commissioner of the IPTAB; Chen Wei, a head of the Patent Reexamination Board and invalidation trial division under the CNIPA; and Scott R. Boalick, the Chief Judge for the Patent Trial and Appeal Board. Min Eunjoo, a director of the Judicial Institute of WIPO and Christine Bonvallet, a director of the international cooperation division under the PCT, participated in the meeting as observers representing WIPO.

### Discussion over the sharing of trials in each country and provision of decisions in English

IP5 heads and the WIPO met in an official conference for the first time, and participants therein presented on trials in each country and shared information on recent institutional improvements. WIPO introduced the “WIPO LEX-judgments,” a database platform of global IP-related decisions, and stated that it expects to expand its service to not only decisions but also trial rulings.

In the conference, the following issues were also discussed: the development of a working-level communication channel for trials; jointly holding IP5 user seminars; holding the next high-level meeting; etc. In particular, the head of the patent trial division in Japan suggested the “provision of trial rulings in English,” “exchange of statistical data,” etc. as future cooperative activities. Accordingly, the heads from each country supported such suggestions.



In the “IP5 Heads Meeting” held as a video conference at night on June 10, all heads shared information of patent trials in their countries and the latest improvements thereof, discussing the following: plans to cooperate in the patent trial field; planning for the holding of the next high-level meeting; and planning for the provision of trial rulings in English.



### Continuation of close communication over global IP disputes

Even as IP disputes continue to become enlarged and globalized, it has been very difficult to understand the trial systems in each country. The participants understood that it is important for countries to cooperate in patent trials and promised to closely communicate through working-level groups, etc.

It is expected that the relevant organizations in 5 developed countries would cooperate with one another in earnest with this meeting. Also, it is expected that it would become possible to conduct a working-level discussion and international research to respond to patent disputes involving multiple countries. In the “2<sup>nd</sup> IP5 Heads Meeting” to be held by the EU Board of Appeal in June 2022, it seems that an in-depth discussion could be made as to this matter.

### Timely provision of global trial trends by the IPTAB

In relation to the IP5 Heads Meeting, the Commissioner of the IPTAB stated that “a business that considers foreign investments shall examine a local direction for protection of IP right or a dispute environment. However, it is difficult to understand them on its own” and added that “the IPTAB will endeavor to continue to provide useful information, such as global trial trend, etc. through close cooperation with the IP5 in the future.”







## Attend oral hearings from your home or office

It is now possible to appear in an oral hearing not in person but through the Internet. People can use the contactless video oral hearings introduced on August 16, 2021. It seems that this will act as a countermeasure against concerns over COVID-19 and contribute to the resolution of disputes in a fast and correct way.

### Expansion of contactless oral hearings

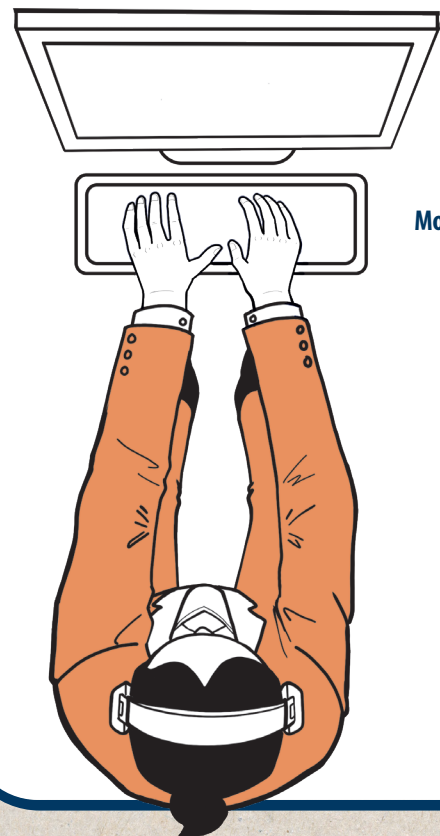
Since 2014, the IPTAB has operated contactless oral hearings by opening a video tribunal between Seoul and Daejeon. The demand therefor has continued to increase. However, this system is available only when parties appear in tribunals in Seoul or Daejeon. Thus, the IPTAB developed the relevant system, such as to amend the "Rules for Handling of Trial Affairs," to establish the detailed operational procedures, etc. so that parties could appear in oral hearings through the Internet in their home or office rather than at the tribunals in Seoul or Daejeon.

### More correct and faster under the changing IT environment

The Internet oral hearing is conducted through the On-nara PC Video Conference website (<http://vc.on-nara.go.kr>). Thus, parties can participate therein from everywhere across the country only with a PC or laptop with which the Internet could be used, a web camera, and a headset.

In a situation where there is no freedom of movement due to COVID-19, such as social distancing, etc., it seems that the oral hearing through the Internet would help parties participate in the trial proceedings more actively.

The IPTAB has led the resolution of disputes in a fast and correct way, such as to understand an issue in an early stage through a "three-party encounter," to expand oral hearings that support intensive evidence examination, etc. Also, the IPTAB will continue to endeavor to provide the people with more convenient digital trial services by responding to the ever-changing IT technology environment.



### Advance preparation

**System preparation** PC/laptop connected to the Internet, web camera and headset shall be provided. Also, their security shall be guaranteed (Hangul Windows 10, the latest antivirus program, etc.)  
\* Since the system is up and running only in Hangul Windows 10, it is accessible only in Korea and does not support mobile access.

### Cautions for use of headset and speaker phone

- ※ To prevent echo (hearing of one's own voice again with one's own ears) and howling (sounding of a sound simultaneously from multiple PCs in a space)
  - 1) Use of headset (ear-set) of USB type (no built-in laptop microphone)
  - 2) Use sound equipment that supports the removal of echo (howling)

### ※ Recommended specifications for web camera and headset

**Web camera** Still image with 5 megapixels or more (2,582 × 1,944 pixels) / Video with pixels of 300 thousand or more (640 × 480 pixels) / USB 2.0 supported  
**Headset** Speaker of 20–20,000 Hz / Microphone of 100–10,000 Hz / Volume adjustable / USB 2.0 supported

### Preparation on the day

**Presentation materials** The "screen sharing" function shall be used, where only a PDF file can be uploaded in a video conference room, but files such as PPT, HWP, etc. shall be used.

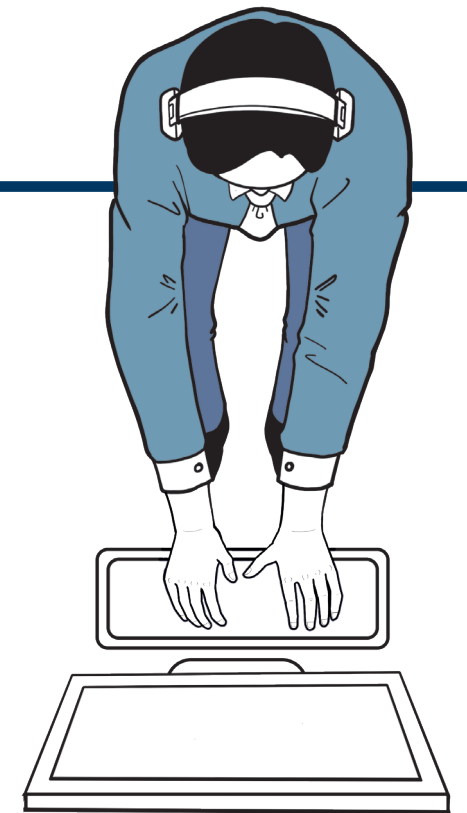
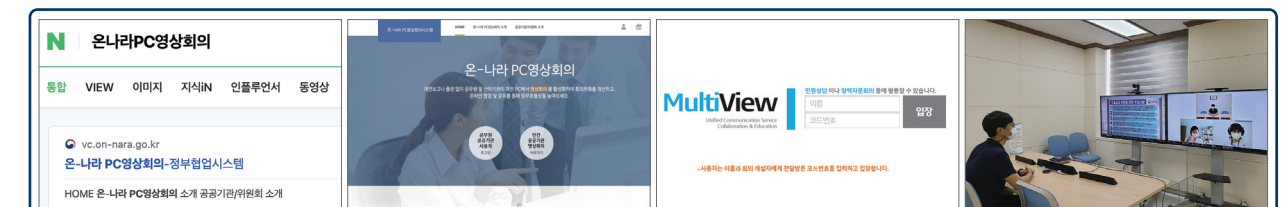
**ID** An official ID with picture and resident registration number shall be brought.

- An ID shall be held next to a face and his/her department, name, and date of birth shall be stated upon request by a trial officer.
- The procedures for identification are recorded and video-taped. Where it is failed to be identified, the statement may not be reflected in the hearing.

### How to access conference room

**Connect to <http://vc.on-nara.go.kr> → Click shortcut to video conference of private and public organizations**

→ Enter video conference room after entering his/her own name/code received with mobile phone (8 digits in combination of English and numbers) and clicking Enter button.







## Korea–EU, discussion of dispute over online platform trademarks

On September 16, 2021, the IPTAB held the trademark trial cooperation conference together with the EUIPO. Major issues and policy direction for trademark trial were discussed to respond to the fast-changing market structure, such as the activation of online platforms, etc.

### Intensive discussion of how to process online evidence, disputes, etc.

In the “Korea–EU trademark trial cooperation conference” that has been held annually since 2019, the two institutions shared major systems, trial rulings, statistics, etc. and discussed a plan for cooperation on pending issues. In this conference, held as a contactless video conference, heads of the two institutions intensively discussed the following: how to process online evidence in trademark trials; how to use the trademark recognition survey; how to resolve a dispute over a trademark which was filed for unfair purposes, etc.

### Preliminary inquiries of Korean businesses and replies of the EUIPO

The conference was conducted with the presentation and discussion with focus on the relevant system and major cases. In the first session, the scope, requirement, etc. of recognition in the online use of trademarks, which continues to increase due to e-commerce, online marketing, etc. Also, it was confirmed again that it is necessary to continue to discuss and cooperate mutually to respond to a changes of the market in the future.

In particular, businesses in Korea are interested in the global e-commerce market based on advancement of K-brands, contactless consumption trends triggered by COVID-19, etc. Thus, the preliminary inquiries from businesses were delivered to the EUIPO, and then the EUIPO replied to these inquiries. Thereafter, in the discussion over a trademark recognition survey, the two institutions discussed how to use the recognition survey, etc. Lastly, the system, recent trial rulings, etc. for the handling of disputes over the “trademark with unfair purposes” were shared between the two institutions. You can find the materials related to the conference from the “Trial Research Materials” in the IPTAB website.



## In-depth discussion over patent trials in 3 countries in Northeast Asia

On November 18, 2021, the IPTAB participated in the “8th KIPO–CNIPA–JPO Trial and Appeal Experts Meeting” held by the CNIPA. This meeting was conducted with a focus on 4 agendas, such as the legal effect of invalidation trials, provision of trial rulings in English, online video oral hearings, criteria for determination of scope of petition, etc.

### Participation in video conference by 27 experts from Korea, China, and Japan

In light of the COVID-19 pandemic, this conference was held as a video conference, and administrative patent judges and the following participated in the meeting as trial experts of each country: Yoon Byoungsoo, a director of trial policy division of the IPTAB; Katsura Masanori, a head of patent trial division in Japan; and Chen Wei, a head of invalidation trial division under the CNIPA. Li Jinzi, a head of invalidation trial division and hearing adjustment department under the CNIPA presided over the meeting as a chairperson.



### Promise to continue to discuss 4 agendas, such as comparative research on legal effect of invalidation trial, etc.

As to the “comparative research on legal effect of invalidation trial,” which was the first agenda, KIPO, the CNIPA, and the JPO presented the legal effect of invalidation trials in each country and conducted a Q&A based on the comparative table exchanged in advance. Also, the institutions agreed to continue to cooperate to publish a comparative research paper and report the final outcome in the conference of KIPO, the CNIPA, and the JPO to be held in 2022.

As to the “provision of trial rulings in English,” which was the second agenda, an in-depth discussion was conducted for the following matters agreed in the IPS Heads Meeting: the number of “provision of English translation of selected trial rulings”; cases to be selected; how to provide the same, etc. Also, each institution presented its own online video oral hearing, shared the relevant situation and information, and conducted comparative research on the construction of claims. KIPO will host the next meeting.





## Promise for the IPTAB to be more transparent and fairer

On January 28, 2021, the IPTAB held an online integrity proclamation ceremony where all administrative patent judges promised to comply with the code of ethics. All administrative patent judges re-established their resolve to meet the needs of the people with trials and appeals in a more transparent and fairer manner.



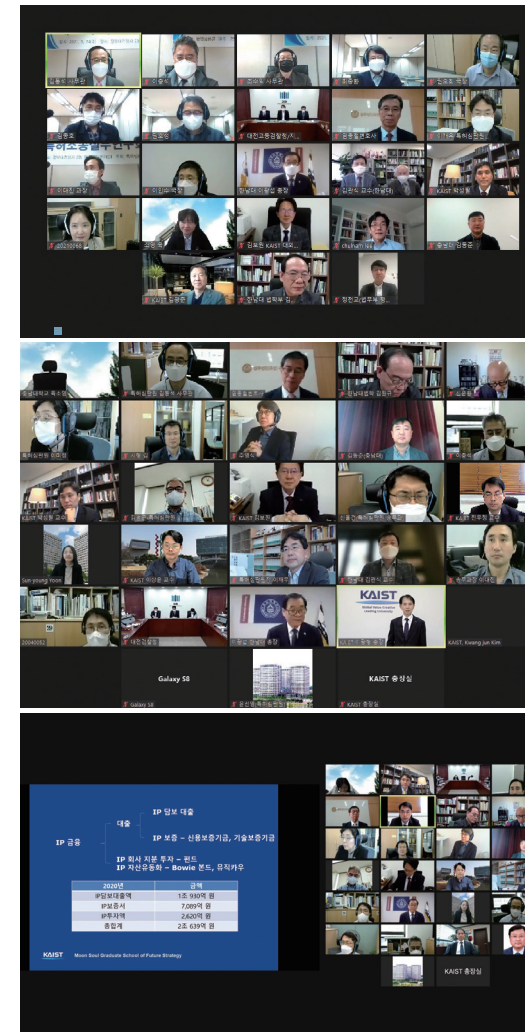
Lee Jaewoo, the former Commissioner of the IPTAB, takes an oath together with senior administrative patent judges participating in the online proclamation ceremony on the 28<sup>th</sup>.

### Recitation of code of ethics and taking of oath by administrative patent judges

In an online integrity proclamation ceremony, the Commissioner of the IPTAB and a senior presiding judge recited the code of ethics. Then, all administrative patent judges took an oath to conduct hearings in a fair and transparent way. The code of ethics stated that “an administrative patent judge shall perform his/her duties in a fair and impartial way, shall not discriminate based on academic background, region, workplace, etc., shall not contact parties to a case for purposes other than his/her duties, and shall not advise or recommend a specific agent or office in relation to a case.”

### More accurate and fairer with the people

In addition to institutional support, the integrity of each administrative patent judge is very important to the improvement of the fairness and transparency of the IPTAB. The IPTAB has endeavored to operate hearings in a fair and transparent way by improving the relevant system so that a patent trial could perform its role as means for the protection of intellectual property rights that are at the forefront of an era of conversion into a digital world. In this proclamation ceremony, administrative patent judges renewed their resolve to conduct hearings in a more accurate and fairer way so that the people could trust the IPTAB.



### Holding of Patent Trial Practice Society

The IPTAB holds the “Patent Trial Practice Society” four times a year together with the Daejeon District Public Prosecutor’s Office, High Prosecutor’s Office, Hannam University, and Chungnam University and KAIST. The Patent Trial Practice Society discusses and researches together with academic circles the legal and technical issues related to IP crimes to improve the quality of trials and appeals. In light of COVID-19, the Patent Trial Practice Society was conducted as a video conference this year.

The following participated in the 53<sup>rd</sup> meeting held on March 24: Gang Nam-il, a chief prosecutor in Daejeon High Prosecutor’s Office; Lee Du-bong, a chief prosecutor in Daejeon District Public Prosecutor’s Office; Lee Gwang-seop, a president of Hannam University; Kim Bo-won, a vice president of KAIST; Yook So-yeong, a dean of the School of Law of Chungnam University. In this meeting, Jo Soo-ik who is a deputy director of the next energy examination department of KIPO presented the “Issues on Dispute over Battery between LG and SK” and analyzed and organized issues through Q&A.

In the 54<sup>th</sup> meeting held on May 26, Lee Cheol-nam who is a professor at the School of Law of Chungnam University presented the “Legal Issues on Android Platform.” In the 55<sup>th</sup> and 56<sup>th</sup> meetings held on July 21 and October 13 respectively, Jo Ah-ra, a prosecutor of the patent crime investigation department of the Daejeon District Prosecutor’s Office, and Jeon Woo-jeong, a professor at the KAIST IP Graduate College, presented on the “Concentration of Jurisdiction in IP criminal cases” and the “Current State and Prospect for IP Finances”, respectively.



### Conference between the IPTAB and business

The IPTAB holds business conferences where the IPTAB listens to difficulties and recommendations of the industry and introduces innovations to patent trials and appeals.

On June 18, the IPTAB visited a plant of Boryung Pharmaceutical in Yeosan, from which various disputes are generated in relation to patents, and listened to various questions and replied in relation





# Intellectual Property Trial and Appeal Board

## Introduction

to patents, such as the date of trial ruling, time of notification, determination of inventive step in the field of pharmacy, trade secrets that shall not be disclosed in the progress of trial, etc. On September 2, the IPTAB visited TECHBI Co., Ltd., which is an IP-based technology foundation, listened to difficulties and recommendations in relation to patent trials, and introduced how to innovate for patent trials.



### Holding of seminar on state-of-the-art technology customized for administrative patent judges

As every environment, such as technology, industry, commerce, etc., changes fast in an era of rapid conversion to a digital era and the relevant expert knowledge by technical field becomes complex and advanced, the IPTAB held the "Seminar on the State-of-Art Technology Customized for Administrative Patent Judges" to learn the specialized knowledge by technical field.

The seminar was conducted online three times, on November 10, 15, and 26. On the November 10, Han Sang-yeop, a senior manager of KARI, and Gang Seong, a senior vice president of Kakao Enterprise, presented on the "Technical Trend of Korea's Projectile for Nuri" and "ABC (AI, Big Data, and Cloud)," respectively. On November 15, Park In-gyu, a professor at the Medical School of Chonnam National University, Kim Myoeng-hwan, a doctor at Katech, and Park Sang-ho, a professor at the EE Materials Department of Dongshin University, presented on "mRNA drug

delivery," "Technical development trends for materials/components of hydrogen fuel cells," and "Technical development trends for the next-generation secondary battery," respectively.

On November 26, Choi Woong-cheol, a professor at the Vehicle Convergence School of Kookmin University, Baek Yong-beom, a CEO of Jastec M Co., Ltd., and Wang Han-ho, a professor at Sangmyung University, presented on the "Technical trends for EV," the "Trends for IoT communication technology for vehicle and service technology," and the "Technology for mobile communication and 5G IoT," respectively.



### Conference with Korea University Sejong Industry University Cooperation Group

On December 1, the IPTAB held a conference with the Korea University Sejong Industry University Cooperation Group to understand trends of academic and research circles and listen to opinions in the field. In the Conference, the Korea University Sejong Industry University Cooperation Group presented difficulties and recommendations in relation to patent examination and trials. The IPTAB also replied to inquiries and introduced innovations in patent trials and appeals.



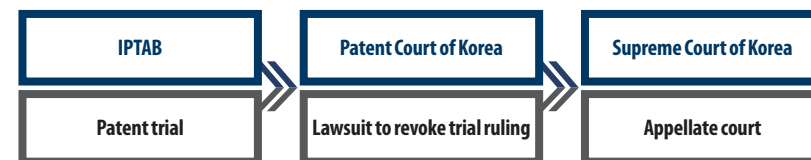
### What is a patent trial?

A patent trial refers to a special administrative trial to resolve a dispute over the creation, change, and extinction of industrial property rights, such as patent, utility model, design, trademark, etc., and a scope of right therein. A collegiate tribunal composed of 3 or 5 administrative patent judges who are independent in terms of their duties resolves patent disputes in a fair and fast manner pursuant to quasi-judicial procedures.

### The IPTAB: a special administrative trial institution to resolve disputes over industrial property rights

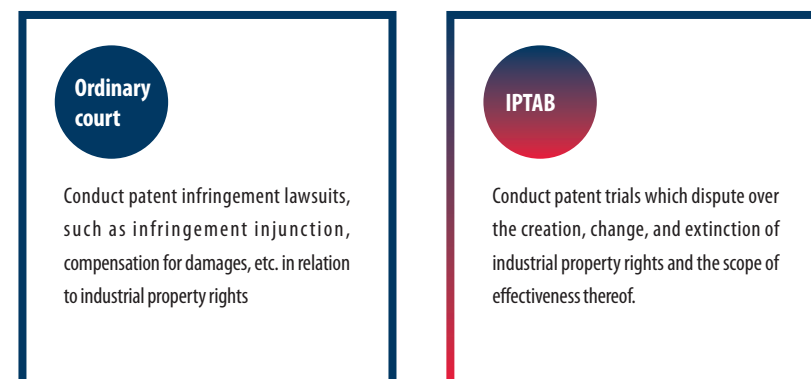
In the case of patent trials, such as appeal trials against rejection determination, invalidation trials, right scope confirmation trials, etc., the IPTAB conducts the trials with its specialized technical expertise and experience.

Where a party appeals a trial ruling (determination) of the IPTAB, the party may file a lawsuit with the Patent Court of Korea, which is a specialized high court, or even with the Supreme Court of Korea. Thus, the IPTAB performs its role as a first instance.



### Patent infringement lawsuit and patent trial

A patent infringement lawsuit conducted separately from a patent trial, such as infringement injunction petition, damages, credit recovery, etc., is conducted by ordinary courts (the first instance is 6 district courts, such as Seoul Central District Court, Daejeon District Court, Busan District Court, Gwangju District Court, and Suwon District Court: Provided, That a duplicate jurisdiction of the Seoul Central District Court is recognized).



### Type of patent trials

The patent trials are classified into ex parte trials and inter partes trials. The ex parte trial is a trial, only with a petitioner, to be petitioned in appealing against a disposition of an administrative patent judge, such as rejection decision against a patent application. The inter partes trial is a trial, with a petitioner and a respondent, over a dispute between the two parties in relation to a right already established.

Ex parte trial

A trial only with a petitioner without confrontation between two parties

**Trial opposing against disposition by patent administrative judge**

- Appeal trial against rejection decision
- Appeal trial against decision to reject extension of the term (patent, utility model)
- Appeal trial against decision to reject amendment (trademark, design)
- Appeal trial against decision to withdraw (utility model, design)

**Trial petitioned after registration of right**

- Trial for correction (patent, utility model)

(Where a trial invalidating a patent is pending before the IPTAB, it may not be petitioned → A petition for correction may be filed)

Inter partes trial

A trial with petitioner and respondent

- Invalidation trial
- Correction invalidation trial (patent, utility model)
- Invalidation trial of extension of term (patent, utility model)
- Invalidation trial after extension of term (trademark)
- Invalidation trial of registration of conversion of goods classification (trademark)
- Invalidation trial of registration of trademark (trademark)
- Invalidation trial of registration of exclusive license or non-exclusive licence (trademark)
- Trial to confirm a scope of rights
- Trial to grant non-exclusive license (patent, utility model, design)

Establishment and advancement of the IPTAB

The trial field in Korea has grown in earnest since the establishment of the IPTAB in 1998. The number of petitions for trial was only about 30 thousand cases from the “box” design case that was the first trial case in Korea in 1949 to 1997. Since the establishment of the IPTAB in 1998, the number of petitions for trial has increased to about 270 thousand cases until the last year.

Change in court structure of the IPTAB

Until the end of February in 1998, a tribunal of KIPO was the first instance (trial) and an appellate tribunal of KIPO was the second instance (appeal trial), and the Supreme Court of Korea was the highest court (appellate court). Since January 1992, as a motion for violation of the Constitution has continued to be filed with the Constitutional Court, the Supreme Court of Korea and KIPO agreed to significantly improve the procedures for constitutional litigation in combination with judiciary reform. In 1998, the IPTAB was established by integrating the tribunals and appellate tribunals of KIPO. Also, the Judiciary installed the Patent Court of Korea as a high court. Accordingly, under the court structure of patent trials, the IPTAB became the first instance (trial) and the Patent Court of Korea was the second instance (appeal trial). The Supreme Court of Korea became the highest court (appellate court). In other words, a two-level trial was reduced to a one-level trial in administration, and the independence and expertise of patent trials were secured. On the other hand, the IPTAB and the Patent Court of Korea would hear the factual relations, and the Supreme Court of Korea could hear the legal relations.

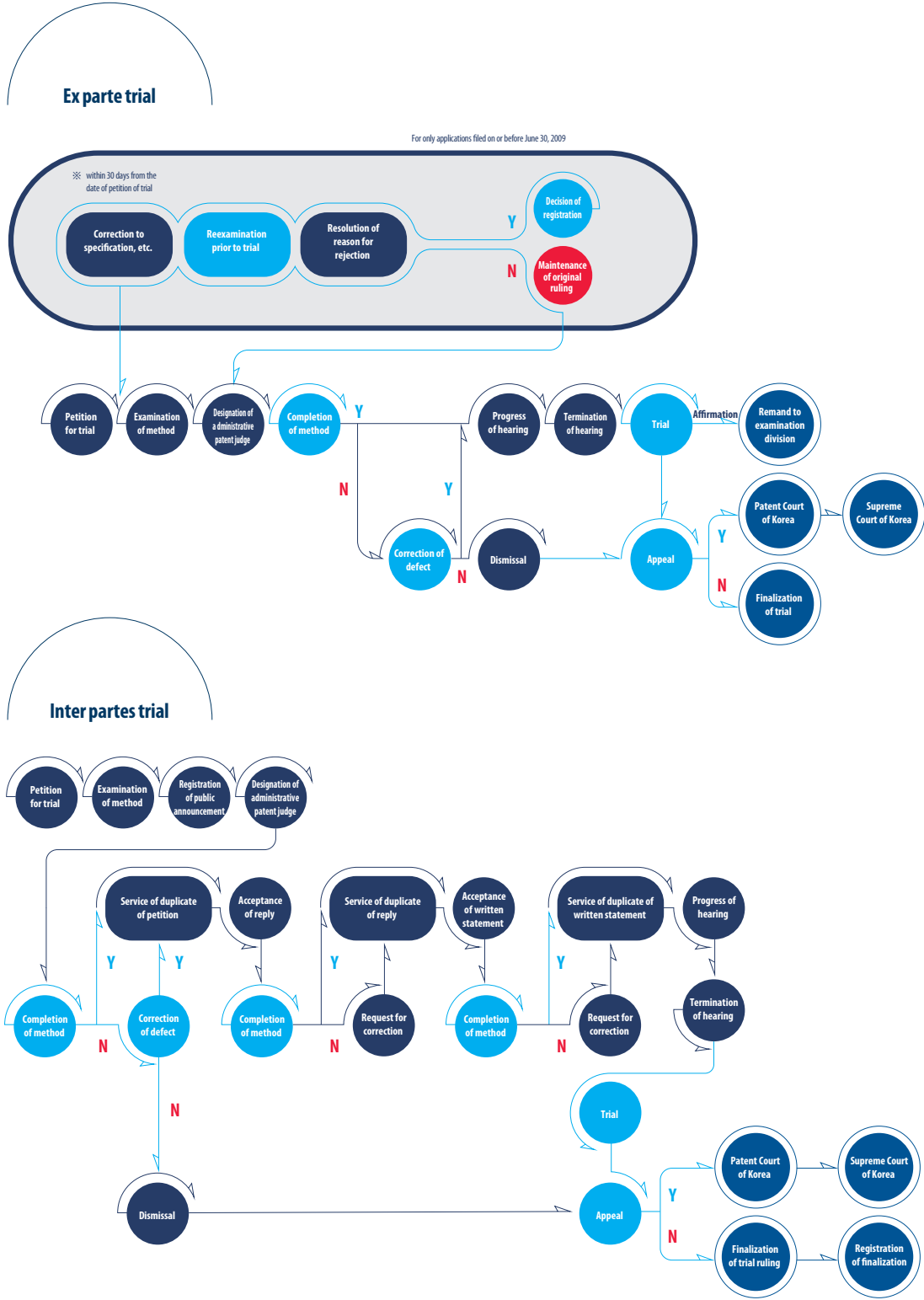
Organization and function of the IPTAB

The IPTAB is composed of 36 judgment divisions (107 presiding judges and administrative patent judges), trial policy division, and litigation division. The judgment division is composed of a collegiate tribunal (3 or 5 judges) of presiding judges and administrative patent judges and takes charge of patent, utility model, trademark, and design trials. The trial policy division takes charge of personnel, organization, budget, establishment of plan for handling of trials, improvement of legal system in relation to trials, support for trial method and oral hearing, trial research, etc. The litigation division takes charge of the progress of ex parte trials with the Commissioner of KIPO as the defendant.

Improvement of faithfulness and fairness of trial by expanding judgment divisions

In July 2020, the IPTAB expanded the existing 11 judgment divisions into 36 judgment divisions. When the IPTAB opened in 1998, it was composed of 13 presiding judges and 26 administrative patent judges. The ratio of presiding judges to administrative patent judges was 1:2. However, as the number of trial cases increased, the number of administrative patent judges also increased. However, it was difficult to increase the number of presiding judges. Thus, the ratio of those two reached to 1:8.7 right before the reorganization. Thus,

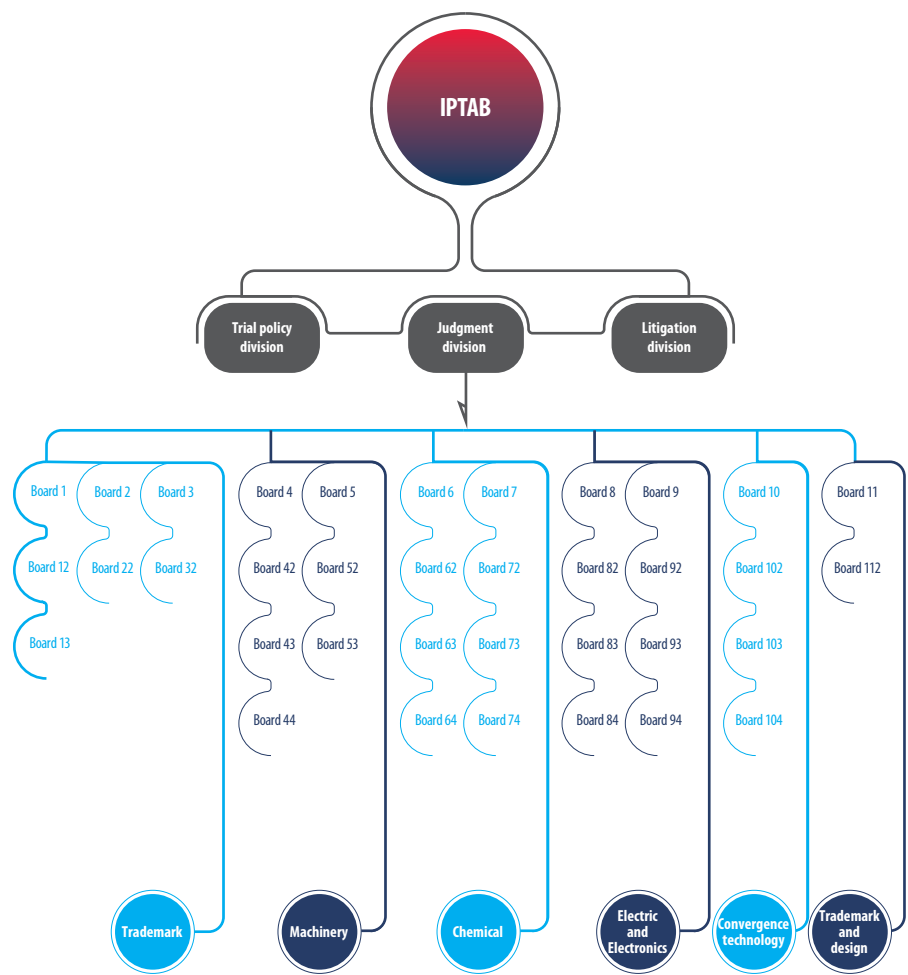
Flow chart by type of patent trial





the IPTAB streamlined the trial system by expanding the qualifications of presiding judges to that of a manager with experience in examination, trial, and litigation through the introduction of a presiding judge as a manager and by increasing the number of independent judgment divisions.

As the number of administrative patent judges led by a presiding judge was adjusted to 2, a trial became to be heard in depth. In particular, a foundation was laid to allow the expansion of oral hearings for inter partes trials.



Oath of administrative patent judge of the IPTAB

I, as an administrative patent judge of the IPTAB, solemnly swear the following:

not to commit an action to be suspected of the fairness and integrity in performing duties;

not to be biased or discriminate based on gender, religion, blood relation, school relation, economic capability, social status, etc.;

to perform my duties fairly and not to be affected by any pressure or temptation;

to respect interested parties, such as a petitioner, respondent, agent, etc., and not to use my task or position for the interest of myself or others; and

to strictly keep secrets that came to be known while performing duties and not to use them for unfair purposes.

**I, as a citizen of Korea, swear not to forget the mission of an administrative patent judge to realize the justice and protect the rights and interests of the people and perform my duties in a correct and fair way.**

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**KIPO**  
**Intellectual Property Trial**  
**and Appeal Board**