

Enhancing IPR Protection



Dolmen
This dolmen made in the Bronze Age is the most famous northern style dolmen in Korea. The weight of the cover stone is as much as 50 tons. Korea is called the "Kingdom of Dolmen". About 40% of the world's dolmens are found in Korea.

IP Protection in Korea

01 Improvements to IPR Protection Laws and Systems

Both the *Patent Act* and the *Unfair Competition Prevention and Trade Secret Protection Act* were amended in December 2018 (to be effective July 2019) to better protect IPRs. The amendments introduced punitive damages for patent and trade secret infringement, an amount which can total up to three times the damages. Also included in the amendments are provisions to mitigate the burden of proof on the rights holder. The law requires suspected infringers to present their own technology to refute infringement claims.

In particular for trade secrets, amendment to the *Unfair Competition Prevention and Trade Secret Protection Act* also included provisions to amplify protection. The requirement to maintain secrecy has been changed from “maintained as a secret by reasonable effort” to simply “managed as secret”. Four additional types of trade secret infringements subject to criminal punishment have been included, such as non-compliance with the request of return or deletion of trade secrets.

Furthermore, the punishment for trade secret infringement has become more severe. For instance, a domestic leak of trade secrets was previously “punishable by imprisonment up to 5 years or fines up to 50 million KRW” and an overseas leak was “imprisonment up to 10 years or fines up to 100 million KRW”. Rather, the possible sentencing is now “imprisonment up to 10 years or fines up to 500 million KRW” for a domestic leak and “imprisonment up to 15 years or fines up 1.5 billion KRW” for a leak overseas.

To establish a sound market order, additions have been

made to the list of unfair competition practices, such as the illegal use of technical and business ideas provided in the course of proposals, bidding, consultations, and business transactions, as well as the imitation of trade dress (the overall visual characteristics) of the business. Moreover, KIPO has been mandated the authority to directly investigate these practices and make corrective recommendations in order to quickly remedy the damage of SMEs that lack sufficient capacity for litigation.

In 2018, the scope of the Special Judicial Police (SJP) was expanded to include patent, design and violation of business secrets with the revision of relevant laws. Employing experts from KIPO, cases of patent and technology infringement can be actively investigated early on to protect the IPR of right holders. Meanwhile, damages from excessive complaints and false accusations can be minimized.

02 Enhancing IPR Protection Against Counterfeits

As a way of enhancing law enforcement on counterfeits, a Special Judicial Police (SJP) was formed at KIPO in September 2010 to investigate activity and seize goods infringing against trademarks. With the headquarters in Daejeon, branch offices were established in the cities of Seoul and Busan for enforcement operations. In 2018, the SJP criminally charged a total of 361 suspects who were found producing and/or selling counterfeit goods and seized 542,505 items in counterfeit goods.

Recently, the transactions of counterfeit goods online have been rapidly increasing due to the boom in e-commerce.

Results from law enforcement

Category		2010~2013	2014	2015	2016	2017	2018	Subtotal
Criminal arrests	Number of individuals	862	430	340	351	362	361	2,706
	Number of seized goods	1,011,177	1,114,192	1,192,988	584,094	691,630	542,505	5,136,586

In order to efficiently tackle this issue, we also established an online law enforcement task force equipped with digital forensic equipment to firmly regulate online transactions of counterfeits.

We are actively reinforcing investigations into counterfeit goods that have greater impact on people’s lives, such as the illegal manufacturing and distribution of counterfeits concerning to health and safety.

03 Establishment of Fair Trade Order Through Investigation of Unfair Competition

Under the recent amendments to the *Unfair Competition Prevention and Trade Secret Protection Act*, KIPO has been given the authority to conduct investigations into suspected activities of unfair competition, such as the counterfeit of products and the theft of ideas. KIPO can make corrective recommendations with the results of the investigation to the individuals or businesses found guilty of

unfair competition practices. Through these investigations and corrective recommendations, we aim to establish a healthy market order by stamping out the unauthorized use of another’s achievements and/or free riding on their competitive edge without just compensation.

A SME or start up may spend several months or years to develop a product. However, many times, the shape of a good is counterfeited soon after it is launched into market. In 2018, KIPO investigated 41 counterfeit complaints and actively made corrective recommendations to rectify the act of imitating a product’s shape for market sales.

Additionally in July 2018, the “theft of ideas” was newly introduced into the scope of violation of the law. In just six months since then, we received 29 complaints on the theft of ideas. In one instance, a SME had filed a complaint against a large company which was also their business partner. The company was investigated for suspected illegal use of a microbiological agent and test results provided by the SME. We concluded that it was an act of unfair competition practice and recommended corrective measures in December 2018. The recommendation was the first of its kind.

Results of Investigations

Suspected Actions of Unfair Competition	Outcome						Sub-total
	Correction Recommendation	Self Correction	Acquittal	Complaint Withdrawn	Insufficient Conditions	Other	
Confusion of goods producers (a)	-	-	1	1	-	-	2
Confusion of business entities (b)	1	1	2	2	1	1	8
Damage to reputation of widely known trademark (c)	-	-	-	-	-	-	-
Confusion about place of origin (d)	-	-	-	-	-	-	-
Confusion of place of production (e)	-	-	-	-	1	-	1
Domain name cyber squatting (h)	-	-	-	-	1	-	1
Imitation of product form (i)	4	19	5	9	3	1	41
Theft of ideas (j)	1	-	1	3	1	-	6
Performance theft (k)	-	-	-	-	2	-	2
Prohibition of national flag and national emblem	1	2	-	-	-	-	3
Total	7	22	9	15	9	2	64

We plan to continue investigating cases of suspected unfair competition practices and substantive violations of the law, promptly recommend remedial action for affected individuals and companies, and ultimately, establish a fair market order. For this purpose, KIPO will hold round table meetings with businesses and host regional information sessions to publicize KIPO's investigation system to industries where unfair competition activities are frequently found.

04 Increasing the Public's Awareness on IP Protection

To enhance IPR protection and consumer awareness of the illegality of counterfeit goods, KIPO conducts several public



awareness activities. Collaborating with local governments of regions with high counterfeit distribution, education sessions and street campaigns were organized to inform the public on about the illegality of counterfeit goods.

We also intensified advocacy on online platforms such as websites, blogs and SNS to increase public opinion and establish a culture that respects IP. In 2018, a nationwide competition was held to promote against the theft of ideas and technology as well as to prevent purchases of counterfeits and goods with false indication. We received 103 submissions, and among them, 26 were selected to be adapted into public service advertisements.

Beyond street and media campaigns, an experiential learning program was administered for 700 middle school student focusing on the present state of IPR infringement and the importance of protecting of IPRs.

05 Trade Secret Protection Projects

The Trade Secret Protection Center (<http://www.tradesecret.or.kr>) was established to support small and medium-sized enterprises protect their trade secrets. Various projects such as consultations, education, seminars and counseling are organized to provide assistance.

Regional seminars are conducted in areas concentrated with businesses to improve understanding about policies and systems that help protect trade secrets. Online and offline education materials were published to demonstrate the seriousness of leaking trade secrets and methods of better trade secret protection.

Moreover, we developed a trade secret management system to help companies proficiently manage trade secrets with low financial and labor costs. Experts are sent to SMEs to provide consultations on trade secret protection. In 2018, we modified the consultation services to provide assistance that is more accommodating to the scale of each company. For example, start up companies with limited resources are provided consultation involving only the most minimum and essential requirements to manage trade secrets.

Meanwhile, the Trade Secret Certification Service began operating in 2010 to authenticate trade secret ownership for infringement litigations. This system uses time stamps generated by combining unique codes to create authorized time values on trade secret e-documents. Time stamps are then registered with the Korea Intellectual Property Protection Agency to indicate initial dates of possession and prove the existence of original copies of trade secrets. The number of cases involving the Trade Secret Certification Service has steadily grown. In fact, this system has been used in a total of 127,039 cases, as of 2018



Overseas IP Protection

01 IP-DESK

KIPO manages IP-DESKs all around the world as centers to support Korean business and to protect their IPRs as they enter the foreign markets.

Beginning in 2016, expansion of the IP-DESKs targeted regions where Korean companies experienced frequent IPR disputes. Recent centers were established in China, India and Indonesia. As of December 2018, we have a total of 14 IP-DESKs operating in 8 countries.

Korean companies which are currently active in or are preparing to enter foreign markets can receive support from the IP-DESKs regarding IPR registration, infringement



inquiry and even IPR dispute consultations. Additionally, publications, conferences and various educational sessions are implemented to prevent IPR disputes.

We are making effort to develop cooperative channels with foreign IPR-related organizations in order to protect the IPRs of Korean companies operating overseas. Invitation program and seminars were held for IPR-related government officials from various countries to enhance their understanding on Korea brands and methodology of enforcement against IPR infringements.

02 Establishing Methods for K-Brand Protection

KIPO has been implementing comprehensive measures to protect Korean brands, secure the reliability of the Korean brands and prevent damage to the national image in overseas markets where infringement of Korean brands is occurring.

In 2018, we monitored the infringement activities of several trademark trolls in one foreign country. The information was shared with Korean companies being affected in order to help them determine appropriate counter measures.

Moreover, working in cooperation with an overseas e-commerce conglomerate, KIPO was able to uncover multiple counterfeit goods of Korean brands on their platform and blocked the related sites.

Korean IP-DESKs around the world

