



## EXCO MEETING, CAPE TOWN 13 & 18 APRIL 2015

COUNTRY REPORT	
TITLE:	Country report for <b>Korea</b>
DRAWN UP BY:	<b>Insil LEE</b>
TABLED TO:	FICPI delegates
PURPOSE:	For information and consideration
SNIPPET:	News from and activities of the FICPI national group in <b>Korea</b> since the Barcelona ExCo in November 2014.

### SECTION A: ACTIVITIES OF FICPI ASSOCIATION/SECTION

The information supplied in Section A will remain confidential on FICPI's website after the ExCo (will require a password).

### SECTION B: CHANGES IN LAW

Information supplied under Sections B and C will be published on FICPI's website after the ExCo and will be available to the public.

#### B1. LEGISLATION

- Please provide details of any changes to IP legislation (patent, trade mark, design and other) in your country implemented or due to be implemented since you reported last in October 2014.  
**Revised Unfair Competition Prevention and Trade Secret Protection Act has been enforced as of January 28, 2015. Following changes are noticeable:**
  - Loosening the requirements for admitting 'Trade Secret'  
**Requirement for 'considerable effort' to maintain secrecy has been eased to 'reasonable effort'.**
  - Granting presumptive effect for Certificate of original document of Trade Secret  
**It is presumed that a person with Certificate of original document of Trade Secret owns the Trade Secret as indicated on the certificate.**

#### B2. MAJOR CASES

- Please provide brief details of any new case law in the field of patents, trademarks, design or other IP of general interest.
  - The Supreme Court ruled that the three-dimensional trademark for 'Morphun' Blocks is lack of distinctiveness on its decision of October 15, 2014.**  
 The court denied its distinctiveness on the basis that if the three-dimensional trademark is considered only as ornament or design of goods, it is lack of distinctiveness, and to obtain the acquired distinctiveness, it is required to perform function as an origin of goods apart from the word mark.
  - The Supreme Court ruled that the license fee for ex post invalid patent is not object of restitution of unjust enrichment on its decision of November 13, 2014.**  
 Even though a patent which is object of license contract is confirmed invalid, the contract becomes impossible to perform only after the confirmation of invalid. Thus, the license fee



which has been paid in the valid period is not object of restitution of unjust enrichment.

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### B3. OFFICIAL PRACTICE

3. Please provide details of any changes in official patent and trade mark office practice which would be of general interest to other members.

**The Korean Intellectual Property Office has enforced revised Trademark examination guidelines since January 1, 2015 which prevent the registration of mark similar to title of TV programs or name of celebrity.**

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### B4. PROPOSALS FOR CHANGES

4. Please provide details of any proposed changes in IP laws or practice and indicate if your National Association/Section is involved in providing comments to such changes.

Would it be of assistance to have input from the CET on any proposed changes?

**- Broadening the range of the documents required to prove the use of trademark**

Since the requirements to obtain acquired distinctiveness has been loosened, 'consumer awareness investigation' will be allowed as documents proving the use of trademark.

**- Broadening the range of preferential examination for trademark application**

When a person received cease and desist letter from a trademark applicant files an application, it can be filed as preferential examination.

**- Issuing Certificate of Trademark and Design in English**

English certificate of trademark and design will be issued by request of applicant.

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## SECTION C: OTHER INFORMATION

Please provide details of any other information pertaining to your country or region that would be of general interest to FICPI members and other IP practitioners browsing FICPI's website.

### C1. QUALIFICATION AND THE RIGHT TO REPRESENT CLIENTS BEFORE A COURT

- 1.1 Please describe the qualification process for becoming a patent attorney in your country/region.

**There are two tracks to become a patent attorney in Korea**

**1) Pass the patent attorney examination**

**Receive one-year practical training**

**Register as patent attorney before the Intellectual Property Office**

**2) Qualified attorney can register as patent attorney before the Intellectual Property Office.**

- 1.2 Has the patent attorney qualification process changed in any way in the past 5 years?

**None**

- 1.3 Does qualification as a patent attorney permit you any right of representation before any Court in your country?

**Yes**

- 1.4 If so are there any special requirements or restrictions?

**A patent attorney does not have representation before court for IP infringement cases.**

- 1.5 Are qualified lawyers in your country permitted to work in the patent field without any further qualification?



**Qualified lawyers can work in the patent field with registration as patent attorney before the Intellectual Property Office.**

If so are there any restrictions on what they may do?

**None**

If so, please describe those restrictions.

- 1.6 Please describe what privilege attaches to patent attorney communications including any restrictions.  
**Patent attorney has privilege in application and invalidity cases, but restriction on representation of infringement cases is critical.**
- 1.7 Please describe the qualification process for becoming a trade mark attorney in your country/region.  
**It is same with patent attorney. There is no division of patent attorney and trademark attorney in Korea.**
- 1.8 Has the trade mark attorney qualification process changed in any way in the past 5 years?  
**None**
- 1.9 Does qualification as a trade mark attorney permit you any right of representation before any Court in your country?  
**Yes**  
If so are there any special requirements or restrictions?  
**A trademark attorney does not have representation before court for IP infringement cases.**
- 1.10 Are qualified lawyers in your country permitted to work in the trade mark field without any further qualification?  
**Qualified lawyers can work in the trademark field with registration as patent attorney before the Intellectual Property Office.**  
If so are there any restrictions on what they may do?  
**None**  
If so, please describe those restrictions.
- 1.11 Please describe what privilege attaches to trade mark attorney client communications including any restrictions.  
**Trademark attorney has privilege in application and invalidity cases, but restriction on representation of infringement cases is critical.**

## C.2 CET AND PEC SPEAKERS

- 2.1 Would your National Section/Association be interested in obtaining assistance from FICPI, through either the CET Work and Study Group or the Professional Excellence Commission (PEC), in providing speakers for seminars organized by your national group in your country?  
**None**
- 2.2 If your group does, or in the future might, require such assistance, please identify topics that might be of interest to your members, with a view to raising FICPI's profile and providing added value from membership of FICPI in your country.

## C.3 TOPICS OF INTEREST

- 3.1 Please list three IP topics that are of particular interest to you and/or your national section members.

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