Long-Term Policy Goals and Directions for Realization of a Creative Economy Based on Intellectual Property:

Intellectual Property Framework Act in Korea

Myung-Shin KIM
Chairman
IP Protection Committee
Under the Presidential IP Council

Managing Partner (Patent Attorney)
MYUNG-SHIN & PARTNERS
Seoul, Korea

On July 20, 2011, the Intellectual Property Framework Act (IPFA) became effective in Korea, focusing government support for the creation, protection, utilization and infrastructure of intellectual property in relation to technology and industry development. This is currently one of the top economic policy agendas of the Korean government.

It was my good fortune to have been deeply involved in the enactment and implementation of the IPFA, and since July 2011, to have worked as a member of the Presidential IP Council (PIPC), a highest level government organization that discusses IP issues and policies, and as Chairman of the IP Protection Committee under the PIPC.

It is from this perspective and knowledge base that I would like to introduce the core of the Korean IP Framework Act, starting by briefly setting the stage.

1. A Painful Experience in Intellectual Property

Korea's story is one of rapid economic development. Currently Korea is 7th in the world in terms of overseas trade volume, and is a member of the OECD. In 2012, Korea exported US$547.9 billion (including exports from semi-conductors, cellular phones and automobiles), imported US$519.6 billion and personal GNP was USD$23,000. In 1964, Korea exported US$100 million and personal GNP was just US$100. Much has changed in a relatively short period of time.

With respect to intellectual property, a turning point came in 1986 in the form of a case involving Texas Instruments and Samsung. Texas Instruments ended up being awarded compensation of USD85 million. This came as a shock to Korean manufacturers and drew attention to the importance of IP. Shortly after, the Korean government led a nationwide campaign emphasizing IP across the entire spectrum of industry, art and culture.

Many business owners in Korea now believe IP is quite important because they see it can be used as an asset and a strategic tool.

Copyright 2014. Myung-Shin Kim

2. Inefficient IP Policy Administration by Korean Government

With respect to business and policy making related to IP in Korea, like in many other countries, responsibility is divided between various Ministries and Agencies, as follows:

IP-Related Matters	Ministries / Agencies
Invention, Utility Model, Design, Trademark	Korean Intellectual Property Office
Medicine, Drug, Pharmaceuticals	Ministry of Health and Welfare
Science, Technology	National Science and Technology Council
Computer program	Korean Communications Commission
Semi-Conductor Chip	Ministry of Trade, Industry and Energy
New Varieties of Plant, Geographical Indication of Agricultural Product	Ministry of Agriculture, Food and Rural Affairs.

Each Ministry or Agency follows its own IP policy and strategy. Not surprisingly, sometimes there are conflicts between policies and strategies of these bodies. Particularly, when there is a conflict, it is very difficult for a company to know, which policy has priority in an enforcement situation.

3. History of Enactment of IP Framework Act

On August 30, 2005, about 400 people, including many nationwide leaders in various areas gathered and had the inaugural meeting of the Intellectual Property Forum (IPF) with the goal of increasing awareness of the importance of IP, and improving the IP system of the time in several areas.

The following organizations and associations were represented:

- Korean Federation of Science and Technology Societies
- Federation of Korean Industries
- Korean International Trade Association
- Korea Federation of Small and Medium Industries
- Korean Institute of Science and Technology
- Korea Invention Promotion Association
- Ministry of Culture and Tourism (past Minister)
- Korean Bar Association (past President)
- Federation of Artistic & Cultural Organizations
- Korea Chamber of Commerce & Industry
- Ministry of Science and Technology (past Minister)

All members shared the views that IP is a national competitiveness issue, a key aspect of intellectual property lies in the combination and harmonization of culture, art, science and technology, and an important way for Korea to grow is through IP.

I participated in this forum as a founding member of the Intellectual Property Forum.

(1) Parliamentary Bill

Under this belief, the IPF started by hosting seminars, symposiums and meetings in order to rally public support for the IPFA. In due course, the IPFA was presented to the Korean National Assembly, as a Parliamentary Bill. It was necessary to present the Bill twice, once on July 7, 2006 and again on November 4, 2009. The second time around, the Bill received the signatures of 102 Congressmen of 298, which was the most support a bill has received in the history of the Korean National Assembly.

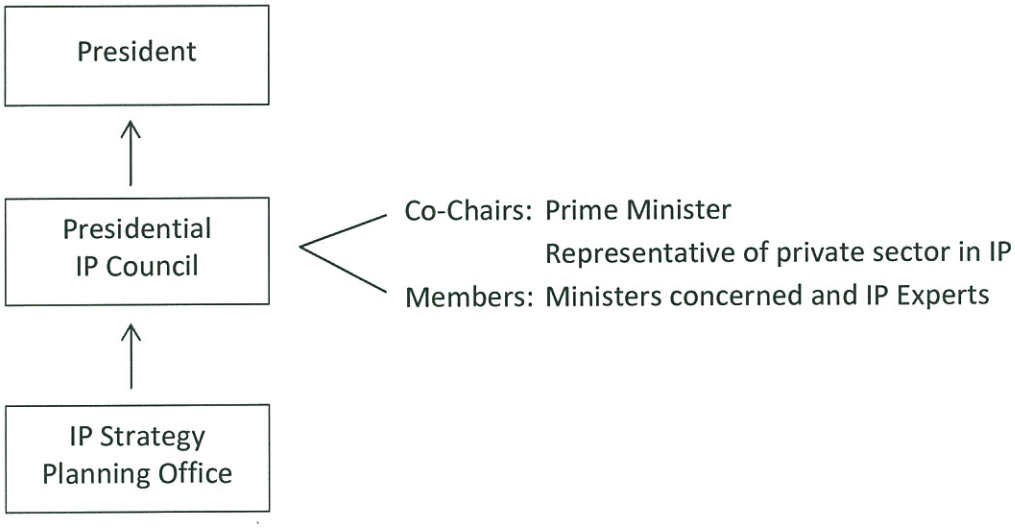
(2) Governmental Bill

On December 1, 2009, the IPF appealed the necessity of the IPFA to the Office of the President. The President ordered the preparation of an IPFA bill after having a joint meeting of 13 Administrative Ministries and Agencies. On April 16, 2010, the Prime Minister opened the governmental bill and thereafter the President presented it to the National Assembly.

On April 29, 2011, the National Assembly discussed and reconciled the two bills, and finally passed the resulting bill.

4. Main structure of IPFA

- **Organization of the presidential IP Council**



- **Position of the Council**

The PIPC is the highest governmental body dealing with IP policy and strategy in Korea.

- **Function of the Council**

  - To establish mid- and long term policy goals and directions for facilitating the creation, protection, utilization and enhancing the base of IP
  - To adjust IP policies of each administrative Ministry and Agency
  - To screen the bills to be enacted or to amend related IP laws and regulations
  - To establish a system for evaluation of IP
  - To approve the budget for governmental R&D and in connection with IP policies of Ministries and Agencies
  - To approve the appointment of IP policy officers of Central and Local Government

5. Implementation of IPFA (effects and aims)

- **Set up of IP Basic Development Plan**

  On November 22, 2011, the Korean Government set up a basic IP development plan for 2012 to 2016.

- **Increase in R&D budget**

  The National Assembly approved a governmental R&D budget for 2013 of US$14.4 million.

- **Change of Jurisdiction for Patent Infringement Cases**

  One main purpose of the IPFA is to focus government effort on simplifying litigation procedures such that IP disputes can be resolved more quickly and fairly, considering the needs of IP owners.

  In Korea, there is presently a two-track system for IP litigation: one for patent invalidation cases and one for patent infringement cases. Patent invalidation cases are brought before the Intellectual Property Tribunal (first instance) organized under the Korean Intellectual Property Office, and then before the Patent Court, the High Court level (second instance), and finally before the Supreme Court. On the other hand, patent infringement cases are brought before the District Court, then the High Court, and finally the Supreme Court. The judges on one side monitor the decisions and judgments of the judges on the other side. This makes the process time consuming to say the least. For example, it took 11 years and 8 months for a diaper patent case to sign a compromised agreement in 2006. The rights of the IP owner are not being well protected when they must wait for almost twelve years for satisfaction.

  On November 13, 2013, the PIPC made a recommendation to change the jurisdiction for patent infringement cases. Specifically, they recommended that a patent infringement case be handled first by the Seoul Central District Court or Daejon District Court, then by the Patent Court, and finally by the Supreme Court. And, that at the District Court level, the parties have the option of

bringing an unfair competition case, business secret case, or copyright or computer program case before the Seoul Central District Court or Daejeon District Court other than usual District Court.

The major merits of this change would be that IP owners could then have access to more capable judges having a wider and deeper knowledge of IP and that the process would be more streamlined since at the high court level both patent and invalidation cases would be handled by the same high level court – the Patent Court. The Ministry of Justice and the Korean Intellectual Property Office will discuss this issue in due course.

- **Change of Patent Attorney System**

An attorney-at-law is authorized to prosecute all kinds of IP infringement cases, including patent cases, before the District Court, High Court and the Supreme Court, whereas a patent attorney is only authorized to prosecute Invalidation Trial or Cancellation Trial cases related to industrial property before the Intellectual Property Tribunal, Patent Court (High Court Level) and the Supreme Court.

On November 13, 2013, the PIPC recommended that the Patent Attorney System be modified, as business related conflicts are occurring between attorneys-at-law and patent attorneys in Korea.

- **Review of Difficulty of Evidence Securement**

Korea agreed through the Free Trade Agreement with the U.S.A. that the legal power of judges shall be strengthened, especially for a patentee, because Korea does not currently adopt the discovery system.

6. Future Plan

The following issues will be discussed:

- Cooperation between IP related organizations
- Counter-plan against the unwarranted attempts to invalidate patents
- Reasonable compensation for damages
- Delay of litigation and abuse of patent rights
- Fair protection of patents for small and medium size companies
- IP evaluation system
- Financing based on IP

- Fair transaction of IP

- Reasonable compensation for employee inventions

7. Conclusion

To recap, the IPFA is the highest IP-related law in Korea and is applied to all other IP-related laws, including the Patent Act, Utility Model Act, Design Act, Trademark Act, Copyright Act, Computer Program Protection Act, Unfair Competition Prevention & Trade Secret Protection Act, Seed Industry Act, Internet Address Resources Act, Agricultural and Marine Products Quality Control Act and Semi-Conductor Integrated Circuit Layout-Design Act.

It is expected that relatively soon the Court Organization Act will be changed with respect to which courts have jurisdiction in patent infringement cases, and that the Presidential IP Council will focus on the hot issues, such as, compensation for damages, IP evaluation, financing based on IP and compensation for employee inventions.

In closing, I would like to say that I feel privileged to have been able to participate as a member of the PIPC and as Chairman of the IP Protection Committee in the establishment of a nationwide legal and administrative system, which has made it possible for me to share certain knowledge with the IP community. With respect to IP, it is my hope that the information in this article at least gives the reader a sense of what is transpiring in Korea and the positive effects it will have for IP owners.

MYUNG-SHIN & PARTNERS
Intellectual Property Law Firm Since 1972
Website: www.mspat.co.kr
E-mail: mspat@mspat.co.kr