

Invalidation Trial of Patent (Republic of Korea)

The trial system related to Intellectual Property Rights is a three instance procedure which consists of the Intellectual Property Tribunal (IPT), the Patent Court and the Supreme Court. Its purpose is to promote and strengthen the protection of IPR while guaranteeing fair and prompt settlements of IPR-related disputes.

Invalidation Trial of Patent (Korean Patent Act Article 133)

Due to a mistake of an examiner or appeal examiners, some patents which should not have been granted may exist. In such cases, an interested party or an examiner may demand a trial to invalidate the patent, and for a patent containing two or more claims a demand for an invalidation trial may be made for each claim. The reasons for invalidation of the patent are generally the same as reasons for the rejection of a patent application.

A trial for invalidation of a patent may be demanded even after the expiration of the patent right. Where a trial decision invalidating a patent has become final and conclusive, the patent right shall be deemed never to have existed; however, where a patent is invalidated by any reason that has arisen after the grant of a patent, the patent right is deemed not to have existed from the time when such reason originated.

Invalidation rate(number of invalidation / number of invalidation trial) of Invalidation Trial

	2005	2006	2007	2008	2009	2010
Patent	50.5%	50.2%	57.6%	58.5%	60.1%	53.1%
	221/438	228/454	359/623	360/615	318/529	336/633
Utility model	50.1%	59.4%	53.7%	56.8%	62.9%	62.5%
	202/403	148/249	160/298	134/236	110/175	85/136
Patent + Utility model	51.5%	55.6%	47.0%	63.3%	38.2%	57.9%