# 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

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.

## Korean Patent Act Article 133 (Invalidation Trial of Patent)

(1) In any of the following cases, an interested party or an examiner may request a trial to invalidate a patent. In such cases, that patent contains two or more claims, a request for the invalidation trial may be made for each claim : if three months have not passed since the date of registration publication of the patent right after registration of its establishment, any person may make a request for the invalidation trial on the grounds that the patent falls under any of the following subparagraphs (excluding subparagraph 2):

1. Where a person has violated Article 25, 29, 32, 36(1) through (3), or 42(3) or (4);
2. Where the patent has been granted to a person not entitled to obtain the patent under the main sentence of Article 33(1), or in violation of Article 44;
3. Where a person is unable to obtain the patent under the proviso to Article 33(1);
4. After the grant of the patent, where the patentee is no longer capable of enjoying the patent right under Article 25, or the patent comes to be contrary to a treaty;
5. Where a person is unable to obtain the patent for violating a treaty;
6. Where the application is amended beyond the scope under Article 47(2);
7. Where the application is a divisional application filed beyond the scope under Article 52(1);

8. Where the application is a converted application beyond the scope under Article 53(1).

(2) A trial under paragraph (1) may be requested even after the extinguishment of a patent right.

(3) Where a trial decision invalidating a patent has become final and conclusive, the patent right shall be deemed never to have existed: Provided, That where a patent falls under paragraph (1) 4 and a trial decision invalidating the patent has become final and conclusive, the patent right shall be deemed not to have existed at the time when the patent first became subject to the said subparagraph.

(4) Where a trial under paragraph (1) has been requested, the presiding administrative patent judge shall notify the exclusive licensee of the patent right and any other person having registered rights relating to such patent of the purport of such request.

## Number of invalidation / Number of invalidation trial (Invalidation rate)

| | 2005 | 2006 | 2007 | 2008 | 2009 | 2010 |
|---|---|---|---|---|---|---|
| **Patent** | 221/438 | 228/454 | 359/623 | 360/615 | 318/529 | 336/633 |
| | 50.5% | 50.2% | 57.6% | 58.5% | 60.1% | 53.1% |
| **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 |