

## KOREA

### **Recent changes to the Patent Act of Korea**

#### **Post-grant opposition**

1. Korea has provided a mechanism for challenging granted patents through a trial for invalidation system. To complement the system, Korea is going to run 'the post-grant cancellation system', to be in effect from March 2017. The revised system is aimed at reviewing a patent registered in the early stage; guaranteeing the stability of patent rights by preventing erroneous patents from the beginning; and expanding opportunities for the public to participate in reviewing of patentability.

2. Under the system, if any person provides reasons to cancel grant of patent, such as lack of novelty or inventive step and violation of the first-to-file rule, until 6 months after publication of registration, trial examiners integrate all the reasons for filing an cancellation to a patent grant and then review whether the patent is defective or not.

3. Pursuant to the revision, it is expected that the person entitled to the grant of a patent would be provided with patent rights as early as possible by putting an end to post-grant proceeding as soon as possible(not allowing to oppose the decision of the Intellectual Property Tribunal), and if a patent registered does not meet the patentability requirements, it would be cancelled in the early stage so as to minimize market confusion, and as requesting an appeal against the decision of the Intellectual Property Tribunal, KIPO would take part in ex parte proceedings in the judicial procedure.

4. Detailed guidelines or subsequent procedures will be sent in due course.

\* Related rule: Article 132 of Patent Act

#### **Ex-officio re-examination**

1. Under the current system, erroneous patents could be registered as the examiner could not re-examine the patent even if obvious reasons for rejection are found after a patent is granted. To complement the system, 'ex-officio re-examination' shall come into effect from March 2017 where the examiner shall re-examine the patent *ex-officio* if obvious reasons for rejection are found after the patent is granted.

2. Under the system, where reasons for rejection are found to be obvious, such as lack of novelty after a patent is granted, the patent will be cancelled, and then the patent shall be re-examined. However, *ex-officio* re-examination is allowed only before the registration of establishment of a patent right (within 3 months after a patent is granted) in order to guarantee the stability of patent right.

3. It is expected that quality of patent would be improved by preventing erroneous patents from being registered through ex-officio re-examination.

4. Detailed guidelines or subsequent procedures will be sent in due course.

\* Related rule: Article 66(3) and Article 63 of Patent Act

#### **Regarding client-attorney privilege in Korea**

There isn't any provision that governs or provides for client-attorney privilege in Korea. On the other hand, confidentiality obligations between clients and attorneys are defined in the Patent Attorney Act, the Attorneys-at-Law Act, the Civil Proceedings Act etc.