Inputs from Member States and Regional Patent Offices to the Thirty-Eighth Session of the Standing Committee on the Law of Patents

Respondent Information

First Name:

[redacted]

Last Name:

[redacted]

Country:

Republic of Korea

IP Office

MOIP

Job title

Deputy Director

Email address:

[redacted]

Email address confirmation:

[redacted]

Disclaimer:

The information provided in response to this questionnaire is understood to be submitted on behalf of the Member State or regional organization concerned, through its competent authority and in accordance with its applicable official internal procedures.
It is assumed that the person completing and submitting the questionnaire is duly authorized to do so and that the information reflects the official position or practice of the Member State or organization, to the extent possible.

I confirm that I have read and understood the statement above and that I agree with its contents.

i) Study on the determination of inventorship and conditions of foreign filing, with a view to identifying potential challenges for innovators in the cross-border collaborative environment

1. Which of the following does the applicable legal framework in your jurisdiction require before a patent application can be filed in another country or at a regional patent organization?

Foreign filing license
Any other mandatory authorization (Please specify): As a general rule, the Republic of Korea does not impose foreign filing conditionality (e.g., foreign filing licenses (FFL), security clearance, or first domestic filing requirement (FDFR)) prior to filing a patent application in a foreign country or region. However, exceptions apply where national defense considerations are involved. This also applies to the responses to questions 2?17 below. O Relevant Legal Provisions Article 41(1), the Korean Patent Act: The government may prohibit filing a patent application with a foreign patent office or may order an inventor, applicant, or agent to keep confidential an invention for which a patent application has been filed, if necessary for national defense: Provided, That a patent application may be filed in a foreign country with prior permission from the government therefor. Article 41(2), the Korean Patent Act: The government may refuse to grant a patent, if an invention for which a patent application has been filed is necessary for national defense and may expropriate the entitlement to a patent for national defense during a war, an incident, or any similar emergency.

2. With which specific authority or government body must a request for a foreign filing license be filed?

Authorization from the Minister of the Ministry of Intellectual Property (MOIP) is required.

3. Prior to taking which specific actions must a request for a foreign filing license be filed?

It must be done prior to filing a patent application abroad if national defense considerations are involved.

4. Please list the statutes or guidance documents that patent applicants in your country can consult to inform themselves of the foreign filing requirements and the procedure to follow.

Korean Patent Act, https://elaw.klri.re.kr/kor_service/lawView.do?hseq=68595&lang=KOR,
Enforcement Decree of the Patent Act, https://elaw.klri.re.kr/kor_service/lawView.do?hseq=51417&lang=KOR,
Enforcement Rule of the Patent Act, https://www.law.go.kr/LSW/lsInfoP.do?lsiSeq=279095&ancYd=&ancNo=&efYd=20251001&nwJoYnInfo=Y&ancYnChk=0&efGubun=Y&vSct=*#0000,
Regulations on Expropriation and Exploitation of Patent Rights, https://www.law.go.kr/LSW/lsInfoP.do?lsiSeq=273835&ancYd=&ancNo=&efYd=20251002&nwJoYnInfo=Y&ancYnChk=0&efGubun=Y&vSct=*#0000

5. Please list the most important case law on foreign filing conditionality requirements, if any, with a brief summary of the main findings.

N/A

Do you have a digital copy of the case law that you could upload?

No

Please provide below the exact citation of the case law, or provide an online link to the case law.

N/A

6. What specific criteria will trigger the Foreign Filing Conditionality?

Impact on the country's national security or national defense;

Please provide any further details on the scope of the specific criteria applicable in your jurisdiction.

Substantive determination as to whether an invention is necessary for national defense is made by the Defense Acquisition Program Administration (DAPA).

7. Does your law allow for a deemed license or automatic approval, if the Office does not act or respond within a specific time period?

No

8. What specific forms or documents must an applicant submit to request a foreign filing license?

Form No. 21 (Application for Authorization to File Abroad) (Article 35, the Enforcement Rule of the Patent Act)

9. What are the legal consequences if an applicant files a patent application abroad without obtaining a required foreign filing license?

- If a person violates an order prohibiting filing a patent application in a foreign country or keeping a patent application confidential under paragraph (1), the person shall be deemed to relinquish his or her entitlement to a patent on the relevant invention. (Article 41(5), the Korean Patent Act)
- If a person violates an order prohibiting filing a patent application in a foreign country or keeping a patent application as confidential under paragraph (1), the person shall be deemed to relinquish his or her entitlement to claim for compensation for losses incurred due to prohibition against filing the patent application in a foreign country, or classification of the patent application as confidential. (Article 41(6), the Korean Patent Act)
- If a person violates an order prohibiting filing a patent application in a foreign country or keeping a patent application as confidential under Article 41(1), the person shall be punished by imprisonment with labor for not more than five years or by a fine not exceeding 50 million won. (Articles 229-3, the Korean Patent Act)

In cases where two or more countries' foreign filing requirements appear to apply, how is the conflict handled?

There are no exception provisions in cases of conflict with foreign laws or systems.
Compliance with MOIP regulations is mandatory.

10. Does your legislation provide a mechanism for obtaining a retroactive foreign filing license?

No

11. Does the foreign filing license requirement prevent the transfer of technical data, experimental results, or invention disclosures that convey the substance of the invention to foreign entities (such as foreign patent agents) prior to obtaining the license?

Yes

12. If a foreign filing license is denied, does this decision also impose a prohibition on the export of the underlying technical information or know-how (cross-border technology transfer)?

Yes

Please refer to the relevant legislation, regulation, or practice and procedure.

Where the government orders that an invention be treated as secret pursuant to Article 41 of the KPA, disclosure of the relevant data or cross-border transfer of know-how become restricted.

13. Are there instances of denial of foreign filing licenses in your jurisdiction ?

No

14. If a foreign filing license is denied, what legal consequences follow for the invention and/or any related domestic patent application?

The government provides reasonable compensation.
O Relevant Legal Provisions
- The government shall pay reasonable compensation for losses incurred due to prohibition against filing a patent application in a foreign country, or classification of a patent application as confidential under paragraph (1). (Article 41(3), the Korean Patent Act)
- The government shall pay reasonable compensation if it refuses to grant a patent or expropriates the entitlement to a patent under paragraph (2). (Article 41(4), the Korean Patent Act)
- Procedures for prohibiting filing a patent application in a foreign country, or for classifying a patent application as confidential under paragraph (1), procedures for expropriation and the payment of compensation therefor under paragraphs (2) through (4), and other necessary matters shall be prescribed by Presidential Decree. (Article 41(7), the Korean Patent Act)

15. Is there any mechanism in place under the applicable legal framework in your jurisdiction to compensate for the loss of opportunity of obtaining a patent if a foreign filing license is denied?

Yes

What is the procedure to obtain compensation and what are the factors that are taken into account when determining the nature and extent of compensation?

The amount of compensation is determined based on the applicant's loss.
O Relevant Legal Provisions
- A patent applicant may request to the Commissioner of the Defense Acquisition Program Administration for a compensation for losses arising from the prohibition of a patent application from being filed in a foreign country or by being treated as confidential (hereinafter referred to as "compensation") under Article 41 (3) of the Act. (Article 14(1), the Enforcement Decree of the Patent Act)
- If a patent applicant requests a compensation under paragraph (1), he or she shall submit a written request for compensation and documentary evidence proving the losses. (Article 14(2), the Enforcement Decree of the Patent Act)

16. Does your jurisdiction’s patent law provide for the imposition of a “Secrecy Order” (or other similar national security restrictions) that prohibits or restricts an applicant from filing for patent protection in other jurisdictions?

Yes

What is the nature/impact of this restriction regarding foreign filing?

Where it is deemed necessary for national defense, the government may order the inventor, applicant, or agent to keep the invention of the patent application secret. A patent application may be filed in a foreign country only with the authorization of the Minister of the Ministry of Intellectual Property.
O Relevant Legal Provision
Article 15 (Prohibition of Patent Application from Being Filed in Foreign Country and Permission Thereof) under the Enforcement Decree of the Patent Act
① If an invention for which a patent application is filed by a person having the domicile or business office in the Republic of Korea, is demanded by the Minister of the Ministry of Intellectual Property to be maintained as confidential under Article 12(2), or is ordered to be classified and treated as confidential under paragraph (4) of the same Article, such person may file a patent application in any foreign country only when it is permitted by the Minister of the Ministry of Intellectual Property.

17. Please cite, if available, any official studies, policy documents, or reports which highlight the working of the foreign filing requirements in your jurisdiction.

N/A

Final review before submission

Confirmation of submission

I am aware that by clicking "Submit" below, my responses will be sent to the SCP Secretariat.