Administrative Revocation and Invalidation Mechanisms

Republic of Korea

The Republic of Korea provides for a quasi-judicial invalidation trial. The administrative review system is a part of the three-instance procedure, consisting of the Intellectual Property Trial and Appeal Board (IPTAB) under the Ministry of Intellectual Property (MOIP), composed of a President and administrative patent judges, the IP High Court and the Supreme Court. This system aims to promote and strengthen the protection of patents while guaranteeing fair and prompt settlements of patent-related disputes.

Under Article 133 of the Patent Act, an interested party or an examiner may request a review to invalidate the patent. The grounds for patent invalidation generally correspond to the grounds for refusal of a patent application, and in particular include those related to the substantive requirements for patentability. If the patent contains two or more claims, a request for the invalidation trial may be made for each claim.

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.

Under Article 146 of the Patent Act, a trial shall be conducted by a panel of three or five administrative patent judges, and deliberations are not open to the public. The petitioner's submissions are served on the respondent, and the respondent's answer is served on the petitioner by the presiding administrative judge. The examiner who allowed the patent at issue is excluded from participating in the trial proceedings.

Proceedings may be conducted either orally or in writing, with oral hearings generally open to the public. Evidence may be taken upon request of a party or ex officio. Decisions, other than those dismissing the case, shall have erga omnes effect. Furthermore, where trial proceedings are pending, any related civil litigation shall be stayed.

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