

Korean Intellectual Property Office

IPTAB

INTELLECTUAL PROPERTY TRIAL AND APPEAL BOARD



IPTAB

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Intellectual Property Trial and Appeal Board



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1. About Intellectual Property Trial and Appeal Board (IPTAB)

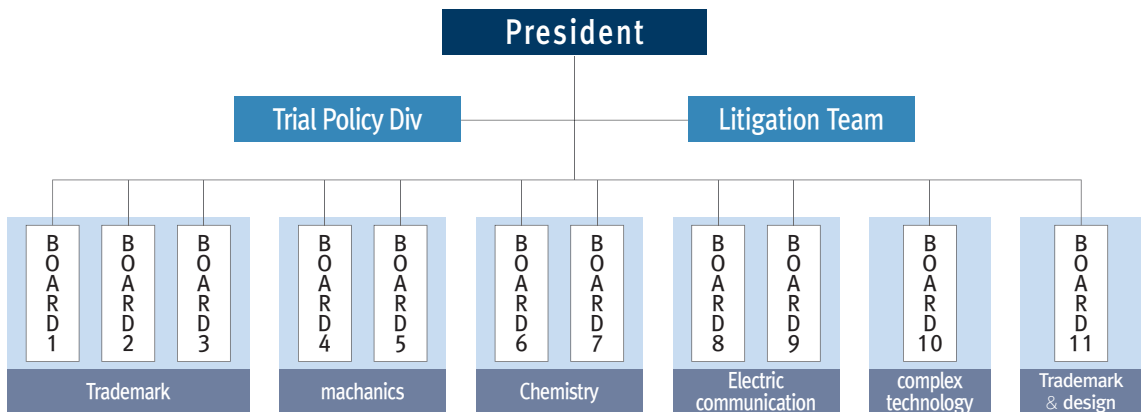


Establishment

Intellectual Property Trial and Appeal Board (IPTAB) is a quasi-judicial body of Korean Intellectual Property Office (KIPO), established following the merger of the previous Trial Board and the Appellate Trial Board. In concurrence with the establishment of the Patent Court, the Board commenced its operations from March 1998.

Organization

In its early days, the IPTAB had Trial Policy Division along with thirteen Boards consisting of thirteen presiding administrative patent judges and twenty-six administrative patent judges. After years of constant efforts to increase the skilled workforce and restructure the organization, the IPTAB now has eleven Boards with eleven presiding administrative patent judges and ninety-six administrative patent judges, Trial Policy Division and Litigation Team.



Functions

The President of the IPTAB oversees and directs management plans and affairs and also supervises and leads the Board's officials and employees. He also may act as the presiding administrative judge for cases acknowledged as being very important.

Each board hears trials and appeals to address the issues at stake in disputes such as the rejection and allowance of applications, invalidation, cancellation, correction, and confirmation of the scope of a granted industrial property right (i.e. patents, utility models, designs and trademarks) which require highly technical judgment and expertise.

Trial Policy Division conducts formality examination and trial quality evaluation, and is also responsible for trial and appeal policies. Litigation Team deals with the litigation cases under the jurisdiction of the Patent Court, in which the Commissioner of KIPO is the defendant.

2-1. Video Conference Oral Hearing Trial Service and Three-track Trial Service

Video Conference Oral Hearing Trial Service

As part of the efforts to make the IPTAB's services more convenient and accessible, a video conferencing system was set up for oral hearings in April 2014. Video conferences allow trial parties to take part in an oral hearing remotely at KIPO's Seoul branch office without having to make a trip to KIPO headquarters in Daejeon.

Since 2016, video conferences have been expanded for technology presentations and interviews with the judges. Moreover, a video conferencing system was additionally set up in the "Grand Hearing Room," which opened in November 2016 and only operates for cases requiring a panel of five administrative patent judges, expecting to more activate oral hearings using video conferencing systems.

Video Conference Oral Hearing Room



Daejeon Hearing Room



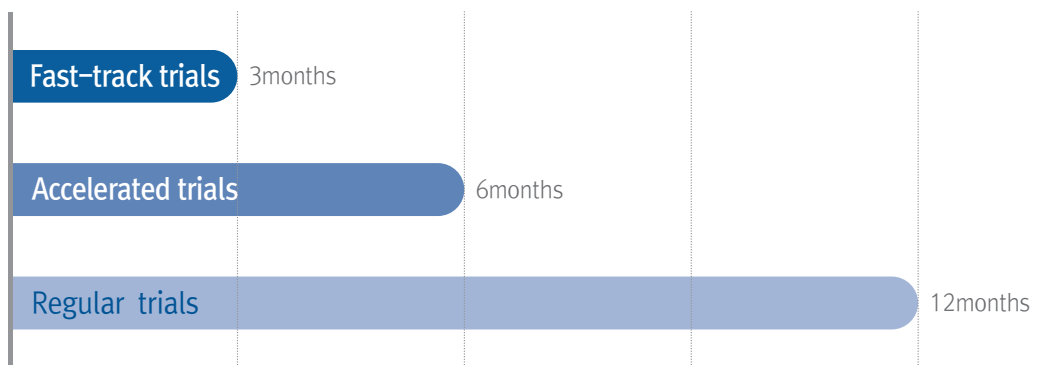
Seoul Hearing Room

Three-track Trial Service

The IPTAB runs a three-track trial system – fast-track, accelerated, and regular – for the purpose of more efficient management of trials. Such system enables the IPTAB to hear trials that require expedited proceedings first, while ensuring that the parties of regular trials have enough time to make a full argument over the course of the trials.

Unlike the regular trial system under which a trial is conducted in the order of date a request for trial is filed, the accelerated trial system allows cases to advance regardless of the existing order. The cases eligible for the accelerated trial system include ones where a trial decision made by the IPTAB was appealed to, and revoked by, the Patent Court.

The fast-track trials are for cases which require a faster conclusion than those for the accelerated trials. Normally, an oral hearing is held within one month from the expiry date of a written opinion submission and a trial decision is made within two weeks after the oral hearing. Thus, petitioners/defendants on this track are able to receive their trial decision within three months. It is the fastest trial option, but only certain cases are eligible for this trial system.



Fast-track trials

- Trials with pending infringement lawsuits
- Trials agreed to be treated as accelerated trials by both parties
- Trials with a (one-person) start-up as a party
- Trials requested by an SME in a dispute between SME vs. large company

Accelerated trials

- Re-Trials after the revocation of trial decision of trial decision from the Patent Court
- Trials with notice of infringement as measures to prevent patent disputes, etc.

2-2. Innovation of Trials and Appeals in the IPTAB



Proclamation of Code of Judicial Ethics

In the Code of Judicial Ethics Proclamation Ceremony held on November 2017, all administrative patent judges from the IPTAB pledged to abide by the Code of Judicial Ethics in conducting their duties in trials. The IPTAB has adopted the Code of Judicial Ethics in an effort to meet the public demand for greater transparency and equity in patent trials. The Code prohibits judges from meeting with any of the interested parties involved in ongoing trial cases or their legal representatives at a place other than designated places, in order to forestall any misunderstanding or bias.



Ju-Seop Kim

Presiding Administrative Patent Judge



Ji-Myeong Choi

Administrative Patent Judge



Ji-woo Jeong

Administrative Trademark Judge

Appointment of Outside Experts as a Presiding Administrative Judge and Administrative Judges

Three experts from the private sector were appointed as a presiding administrative judge and administrative judges in 2017. Presiding Administrative Patent Judge Ju-Seop Kim said in an interview, "We will bring our private-sector expertise in patents and international business to ensure that intellectual properties are properly valued, promote efficiency and fairness in trials, and improve working practices at the IPTAB so that the IPTAB can become a more respected and trusted government institution. the IPTAB can become a more respected and trusted government institution.



Appointment of Members of the Trial Quality Evaluation Committee

The Trial Quality Evaluation Committee of the IPTAB held a first meeting at Daejeon Government Complex on December 2017, to appoint its inaugural advisory members. With this appointment, private citizens now make up more than half of the Committee members for the first time. The Committee will continue to bring in more outside advisors whose expertise is in the fields of Industry 4.0 technologies, such as Artificial Intelligence (AI), Internet of Things (IoT) and big data, and develop it into a trial expert group.

2-3. Domestic Cooperation



Meeting with the Korea Patent Attorneys Association (KPAA)

The IPTAB visited the KPAA in November 2017 to discuss ways to improve the current trial system and strengthen cooperation between the IPTAB and the KPAA.



Meeting with the Korea Intellectual Property Association (KINPA)

The IPTAB held an exchange meeting with the KINPA in June 2017 in order to share information regarding intellectual property rights disputes with major companies that are active participants in trials, and to seek ways to enhance mutual growth and improvement.



Patent Litigation in Practice Research Society

The Patent Litigation in Practice Research Society is held six times every year by the IPTAB, Daejeon District Public Prosecutor's Office and Daejeon High Public Prosecutor's Office, and Hannam University. The Society aims to improve the quality of trial litigation and discuss and study legal and technical issues related to IPR crimes with academia.



Contest for Treatise on Patent and Trademark Precedents

The Contest for Treatise on Patent and Trademark Precedents, which is hosted by the IPTAB and sponsored by the KPAA, was held to help improve the quality of examinations and trials through the study of the precedents for industrial property rights, and also to utilize studies in both establishing examination and trial standards in patent and trademark fields and formulating policies on industrial property rights.



Law School Students Observing Oral Hearing Service

Almost all oral hearings at the IPTAB are open to public, and anyone can attend it upon request. Law school students, trainee patent attorneys, and individuals who are interested in trial cases attend the oral hearings every year. The schedule for oral hearings can be found on the IPTAB website.



Volunteering

The IPTAB has shown the true spirit of giving and love in cold winter by providing a free meal to people less fortunate. Every year, the employees from the IPTAB volunteer to help those in need, the homeless, and homebound seniors living alone, by serving a meal, washing dishes or cleaning up the house.

2-4. International Cooperation



KIPO-SIPO Cooperation on Trials

The IPTAB of KIPO and State Intellectual Property Office (SIPO) held the periodic “KIPO-SIPO High-level Meeting on Patent Trials” in Beijing, China in June 2017. During the meeting the two sides exchanged information on patent trials, made presentations on, and discussed, comparative studies on claim interpretation. Along with the meeting, the “KIPO-SIPO User Seminar” was also held, introducing to the users of SIPO’s trial system both the improvements in the respective trial systems of the two offices and the results of comparative studies. The Seminar was successful and well received by the SIPO policy consumers.



KIPO-JPO Cooperation on Trials

The IPTAB of KIPO and Japan Patent Office (JPO) held the periodic “KIPO-JPO Trial Experts Group Meeting” in Tokyo, Japan in July 2017 to exchange the latest trial statistics and compare the trial systems of the two offices, such as trademark trials and oral hearing. Coupled with the meeting, the “KIPO-SIPO-JPO User Seminar” was also held, presenting the comparative study done in 2016 on the invalidation trial systems of the three offices.



KIPO-SIPO-JPO Cooperation on Trials

KIPO, SIPO and JPO held the “KIPO-SIPO-JPO Trial Experts Group Meeting” together with the “Judge Exchange Meeting” in Daejeon, Korea in September 2017. In this meeting, the three offices had an opportunity to better understand trial systems of each country by comparing the different trial systems for resolving patent disputes (KIPO: trial to confirm the scope of a right; SIPO: trial of disputes involving patent infringement; JPO: hantei (advisory opinion)), and discussing the trial cases that were litigated in all three countries.



KIPO-USPTO Cooperation on Trials

Jun-ho Goh, the President of the IPTAB, who held office since October 2017, visited the Patent and Trial Appeal Board (PTAB) of the United States Patent and Trademark Office (USPTO) in November 2017 to establish new cooperation links with the PTAB. He had a meeting with PTAB Chief Judge David P. Ruschke to discuss cooperation between the two institutions. President Goh also visited the Trademark Trial and Appeal Board (TTAB) and met with Chief Judge Gerard Rogers to discuss cooperation between the two institutions. The two offices agreed on the need for building a bilateral cooperation in patent and trademark trials and agreed to specify cooperation activities starting 2018.



Inviting Overseas Institutions to the IPTAB

The IPTAB invites overseas institutions for the purposes of introducing visitor to the KIPO's trial systems and oral hearing trial systems, as well as expanding its international cooperation network. As the first visitor of this invitation program, officials from Central Intellectual Property and International Trade Court of Thailand (CIPITC) visited the IPTAB in April 2018.



3-1. Overview of Trials and Appeals in the IPTAB

Types of Trial

There are two types of trial: an ex parte and an inter partes case. An ex parte case is an appeal against an examiner's decision and involves only the petitioner. In inter partes cases, a petitioner and a defendant make their own arguments over a granted right to settle the dispute. From March 2017, the IPTAB started hearing "patent opposition" challenges in conformity with the ex parte trial procedure.

Types of Trial

Ex Parte Trial

- Appeal against a decision to reject application
- Trial for correction (patent, utility model)
- Appeal against a decision to reject amendment (design, trademark)

* Patent opposition (patent, utility model)

Inter Partes Trial

- Invalidation trial
- Trial to confirm the scope of a right
- Trial for trademark registration cancellation

Appeal against a decision to reject application : When an applicant receives a decision of rejection from an examiner, he or she may pursue an appeal within 30 days of the date of receipt of the certified copy of the decision.

Trial for correction : A patent holder may pursue a petition for the correction of a granted patent or utility model for the reasons of narrowing a claim, correcting a clerical error, and/or clarifying an ambiguous description.

Appeal against a decision to reject amendment : When an applicant makes an amendment before the delivery of the copy of publication (trademark) or during examination (design, patent), and an examiner makes a decision to reject the amendment based on the presumption that the amendment has changed the subject matter, the applicant may pursue an appeal within 30 days from the date of receipt of the certified copy of the decision.

Invalidation trial : An interested party may seek a trial to retroactively invalidate the granted patent (design, trademark) right based on statutory invalidation grounds.

Trial to confirm the scope of a right : An interested party may seek a trial to confirm whether a technology or trademark that is being practiced or will be practiced by a third party falls within the scope of a granted patent, design or registered trademark.

Trial for trademark registration cancellation : A party may seek to remove the existing registration of a trademark from the register, based on a ground raised after registration. (For the petitions filed from September 2016, if determined to be cancelled, the registration of a trademark will be invalidated with retroactive effect from the date of filing the petition.)

Patent opposition : Any person may request a patent opposition, within 6 months of publication of the grant of the patent, claiming that the patent in question be revoked based on the prior art

Panels for Trial

A panel of three or five administrative judges hears a trial and makes an agreement by majority vote before rendering a final decision. One of the panel members can be appointed by the IPTAB president as a presiding administrative judge to manage a specific case.

Trial Proceedings

Trial hearings may be held orally or in writing. The latter is normally more prevalent, and the former is held when a party makes a request for it or the presiding administrative judge admits the necessity of having an oral hearing. An examination of evidence is conducted pursuant to the Civil Procedure Act.

Revocation Actions of a Trial Decision

A party may file a petition to appeal a decision of the IPTAB to the Patent Court, which is an IP specialized high court in Korea. An appeal against a decision of the Patent Court shall then be made to the Supreme Court. It therefore can be construed that, in practice, the IPTAB acts as the court of first instance for IP cases.

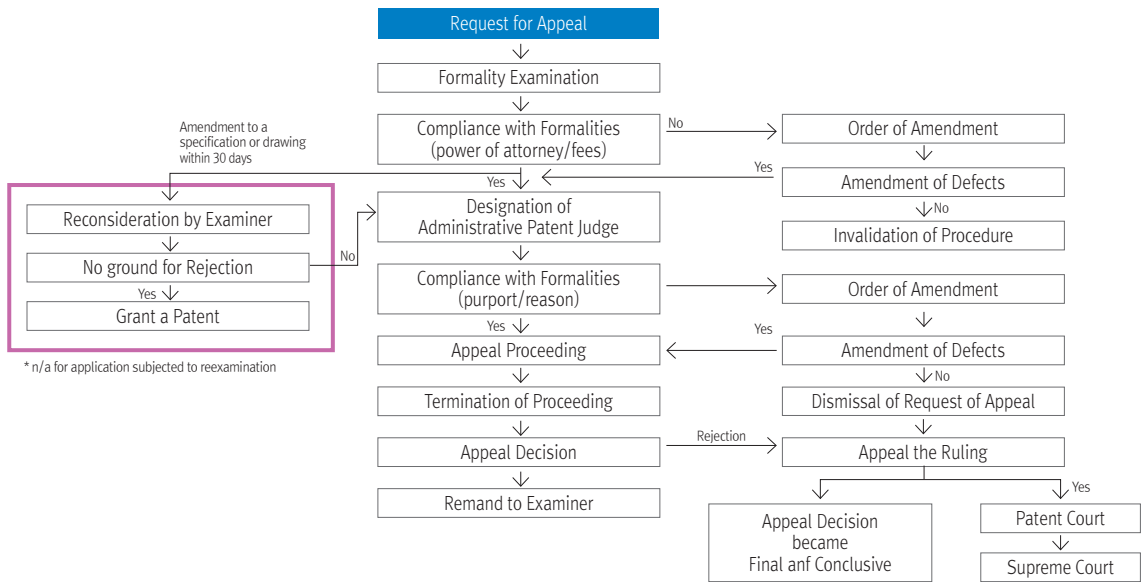
Intellectual
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Appeal Board

<http://www.kipo.go.kr/ipt/>

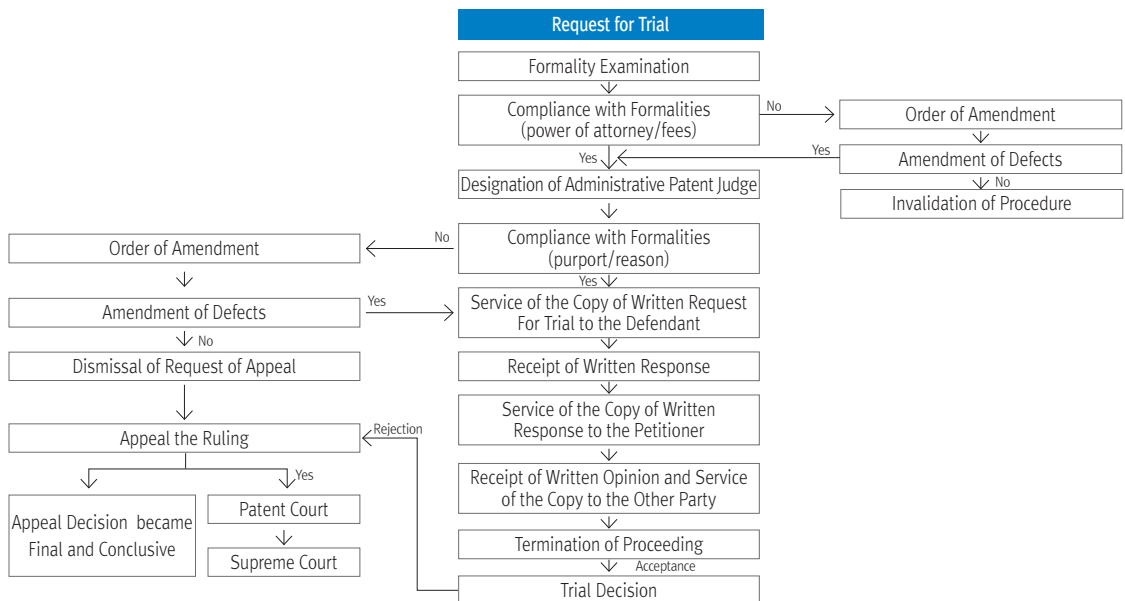
Trial and Appeal General Information

3-2. Procedural Flow of Trials and Appeals in the IPTAB

Ex Parte Cases



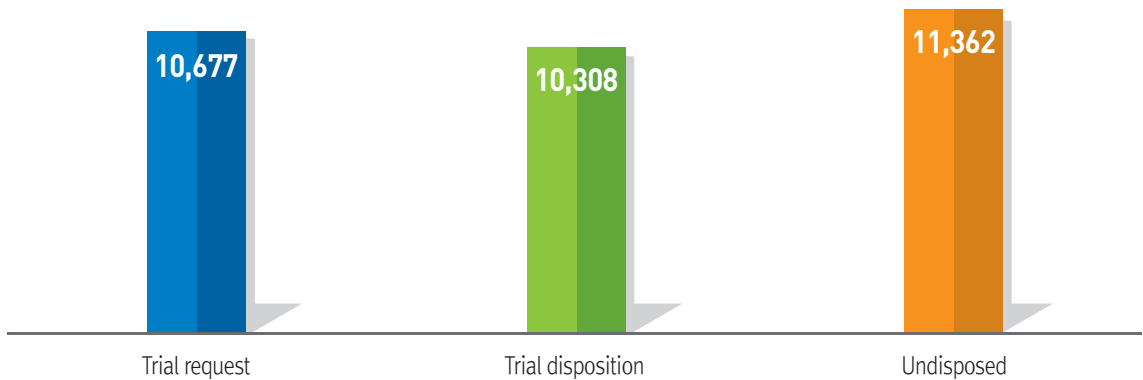
Inter Partes Cases



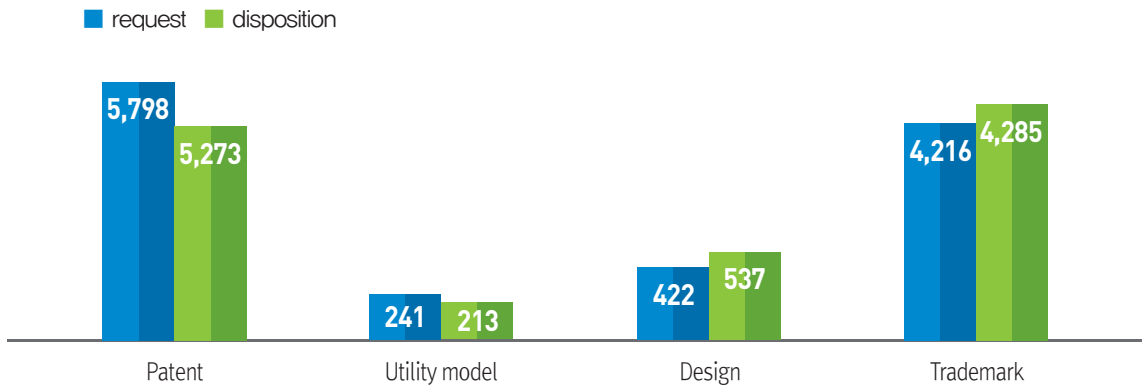
Trial and Appeal General Information

3-3. Recent Trial and Appeal Trends in the IPTAB

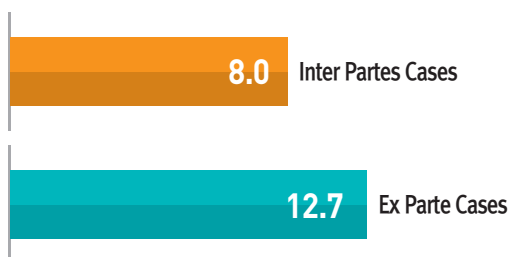
Number of Trial Requests, Dispositions and Decisions (unit: case)



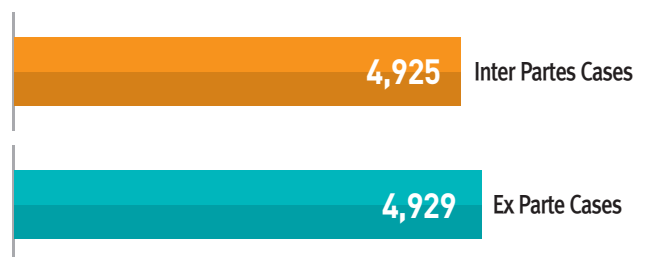
The number of trial disposition (i.e. proceedings being terminated) includes the trial decisions such as petitions allowed, denied, dismissed, or withdrawn, the dispositions invalidating the trial procedure itself, and the cases being sent back to an examiner to be granted after reconsideration.



Trial Pendency Period (unit: month)



Number of Trial decision in 2017 (unit: case)



Location

Government Complex 2, 189, Cheongsa-ro, Seo-gu,
Daejeon, 35208, Republic of Korea



Contacts and Websites



KIPO : <http://www.kipo.go.kr/>

IPTAB : <http://www.kipo.go.kr/ipt/>

Electronic Patent Service : <http://www.patent.go.kr/>
(electronic filing of patent applications and requests for trial and appeal)

Mailing Addresses



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