



# IPR Litigation System & Recent Case in Korea

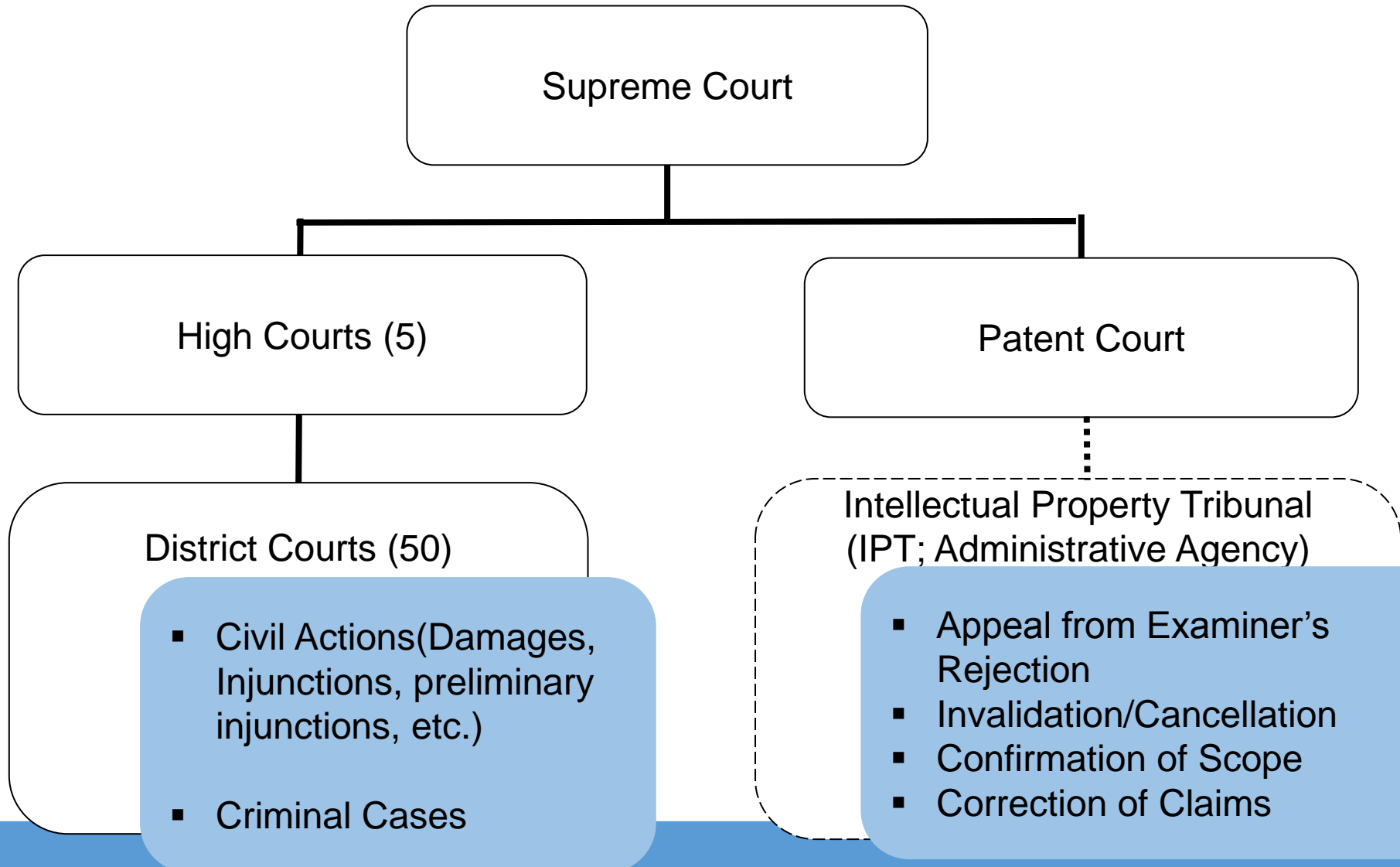
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Judge of Daejeon District Court, KOREA

April 22, 2015



# The IPR Litigation System





# The Patent Court in Korea

- Established on March 1, 1998
- Located in Daejeon city
- 1 chief judge, 4 presiding judges, 8 judges
- 17 technical advisors
- 1 secretariat
- 4 Trial Divisions
  - Each division consists of 3 judge panels





# Characteristics of Proceedings in Patent Court (1)

- **The pleading process and hearings** are held as in civil proceedings.
- A patent case is **a kind of administrative case**.
- On the principle of **separation of powers**, the patent Court can only revoke the IPT's decisions.



# Characteristics of Proceedings in Patent Court (2)

## • Technical Advisors

- *In patent and utility model cases, upon request by the court, technical advisors provide consultation at any time throughout the trial.*
- *If the court determines it is necessary, technical advisors may participate in pre-trial and trial hearings, and may examine the parties as well as witnesses on technical matters with the permission of a presiding judge.*
- *The Technical Advisor may provide his/her opinions on technical aspects of a case during the court's deliberation process.*

## • Representation

- *In patent and Utility model cases, patent attorneys are permitted to represent the parties in the Patent Court proceedings as well as attorneys-at-law.*
- *But, not permitted in courts other than the Patent Court even in other kinds of IP cases*



# Civil Actions in District Court

- No special Court
- But Special Divisions in Major Districts/ High Courts
  - 5 Divisions in Seoul Central District Court (including preliminary actions)
  - 2 Divisions in Seoul High Court



# Types and Contents of Civil Actions

- Claim for permanent injunctions
- Claim for damages
- Claim for restoration of reputation, etc.
- Preliminary Injunctions
  - Highly cautious, but in a speedy manner
  - Requirements
    - Right to be preserved
    - Necessity for preservation



# Determination of the Amount of Damages(1)

- Damages pursuant to Article 128 of the Patent Act

## 1) Lost Profits

*Number of products  
Sold by the infringer*

**X**

*Patentee's Profit that would have been earned  
but for the infringement per unit*

*Damages ≤ {(Number of products that the patentee could have produced – Number of products actually sold – (If exists, number of products that the patentee was unable to sell for reasons other than infringement))} X (Estimated profit per unit)*

## 2) Infringer's Earned Profit

*Where lost profits are difficult to prove, **the patentee's lost profits** may be presumed to be **the infringer's earned profits***

## 3) Reasonable Royalty

- ✓ No treble damages for willful infringement





# Determination of the Amount of Damages(2)

- Supreme Court Decision (2003Da15006)
  - Consideration on determining reasonable royalty
    - 1) The objective **technical value**
    - 2) The **terms of a license contract with a third party**
    - 3) The term of a past license contract with **the infringing person**
    - 4) The **license fee of the same kind** of patented invention
    - 5) The **remaining protection period** for the patented invention
    - 6) The **form of using the patented invention** by the patent holder
    - 7) Whether there exists an **alternative technology**
    - 8) Any **profit of the infringing person** through the infringement

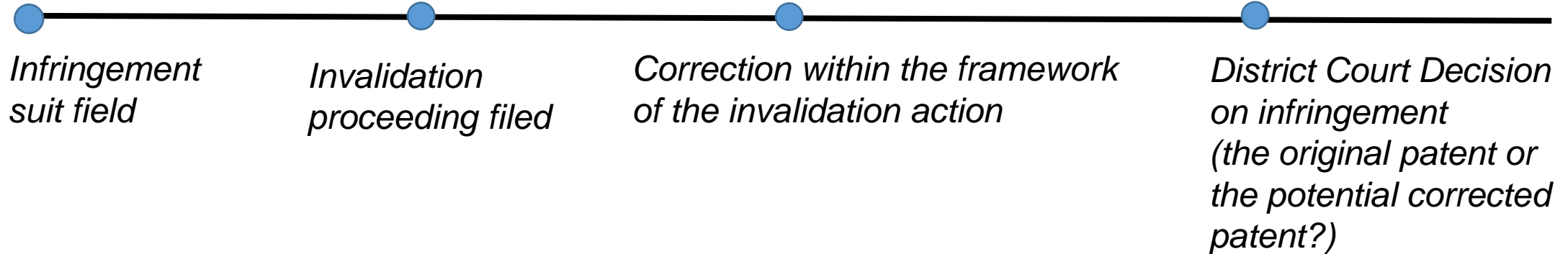


# Interplay between Infringement Actions & Invalidity Proceedings (1)

- **Bifurcated Patent System**
  - *Infringement → Civil Court*
  - *Validity → IPT*
- **Supreme Court *en banc* Decision** (Case No. 2010Da95390, Jan. 19, 2012)
  - *“If it is **obvious** that the patent **will be invalidated** in an invalidation action, the injunctions or damages claims based on that patent may constitute an abuse of rights.”*



# Interplay between Infringement Actions & Invalidity Proceedings (2)

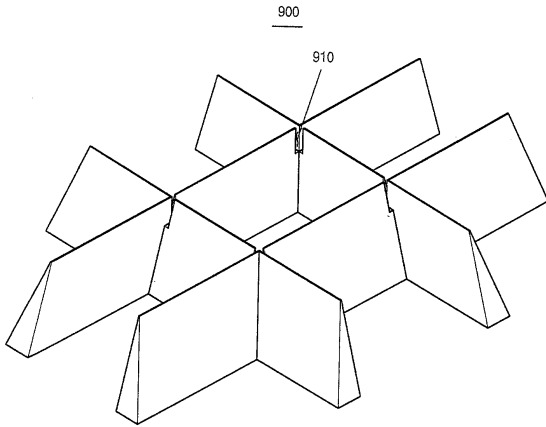


- Seoul Central District Court Decision (Case No. 2011Gahap138404, etc.)  
“An otherwise **invalid patent remains enforceable if the grounds for invalidation can be overcome by a legitimate correction** of the patent, even if a decision to grant correction has not yet become final and conclusive.”



# Recent Case : Doctrine of Equivalents (1)

- The Patented Invention



- The Alleged Infringing Product





## Recent Case : Doctrine of Equivalents (2)

- Supreme Court Decision (Case No. 2013Da14361; July 24, 2014)
- *“It is the ‘**essence or core of the technical idea**’ that should apply when determining whether or not an allegedly infringing product utilizes the same principle as the corresponding patented invention **in resolving a given problem.**”*
- *“The essence of the patented invention was **the incline of the grid patterned box** that allowed seaweed to be automatically stored after being cut.”*
- *“The change to the location of the cutting blades was both obvious and easily achieved, and the changes did **not** take the accused products **outside the scope of the patented invention.**”*



# Thank you!

## Contact Information

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