

## Centralized Jurisdiction over Intellectual Property Disputes

On November 12, 2015, the National Assembly voted for the proposed amendments to the Civil Procedure Act and the Court Organization Act ("Amendments") which seek to centralize jurisdiction over certain intellectual property disputes.

### Current Bifurcated System

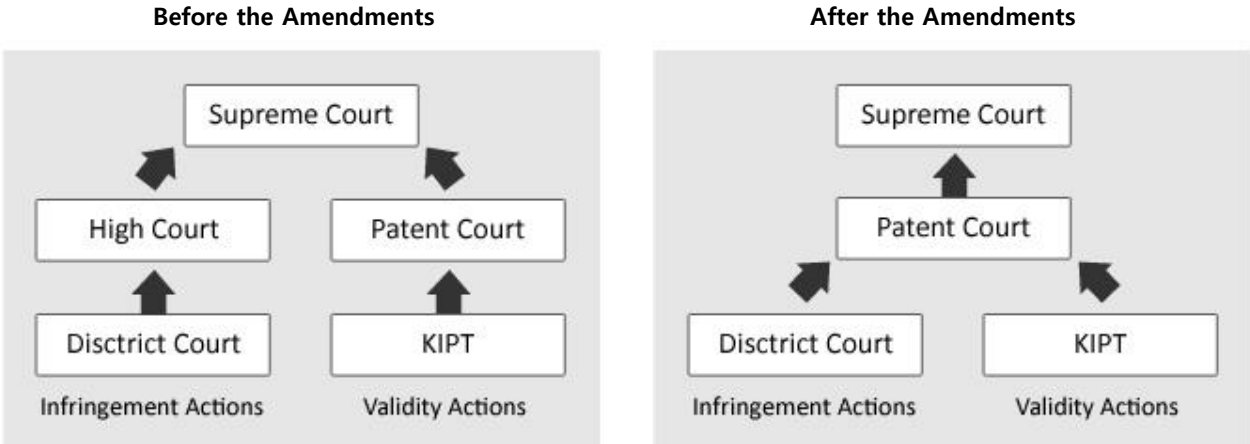
Under the current bifurcated intellectual property litigation system, jurisdiction over infringement actions is separated from jurisdiction over validity actions. Currently, an infringement action can be brought either to the district court having personal or subject matter jurisdiction over the dispute or to the district court sitting in the same city as the high court ("High Court") having appellate jurisdiction over the district court which has personal or subject matter jurisdiction over the dispute. Appeals from such district courts' decisions must be heard by the High Court. On the other hand, validity actions must be filed with the Korean Intellectual Property Tribunal ("KIPT"), an administrative tribunal within the Korean Intellectual Property Office, and appeals from the KIPT's decisions must be heard by the Patent Court.

### Key Aspects of the Amendments

Under the Amendments, however, only five district courts, i.e., Seoul Central District Court, Daejeon District Court, Daegu District Court, Gwangju District Court and Busan District Court, ("District Courts") sitting in the cities where five High Courts sit will have exclusive jurisdiction in the first instance over infringement disputes involving patents, trademarks, utility models, designs, and plant variety protections; provided that an infringement action filed with any of such District Courts may be transferred to the district court having personal or subject matter jurisdiction over the dispute under the current system if the transfer is necessary to avoid undue delay or significant harm. The Amendments also stipulate that the Seoul Central District Court may hear any infringement dispute of first instance, even if one of the other District Courts may have relevant jurisdiction over the dispute. Appeals from the District Courts' decisions will be heard by the Patent Court, not by the High Court. Accordingly, under the Amendments the Patent Court will have centralized appellate jurisdiction over validity and infringement actions involving those five types of intellectual property rights. These changes in jurisdiction under the Amendments will also apply to preliminary injunction actions.

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On the other hand, infringement disputes over intellectual property rights other than the five types of intellectual property rights will not be subject to the changes in jurisdiction under the Amendments. Accordingly, disputes involving copyrights or trade secrets will continue to be heard by the courts having jurisdiction under the current system.



**Outlook**

As the Patent Court will have centralized appellate jurisdiction over infringement and validity actions, it would become more likely that the Patent Court would hear both infringement and validity actions involving the same intellectual property right on the same day. Taking into account that the Patent Court tends to render its decisions after only one or two intensive hearings, the parties would need to gather sufficient evidence and be well prepared for the litigation from the early stage of the proceedings.

The changes in jurisdiction under the Amendments will start to apply to disputes filed on or after January 1, 2016. Even if the dispute has been filed before January 1, 2016, the changes in appellate jurisdiction will take effect if the decision of first instance is rendered on or after January 1, 2016. Accordingly, the parties who are currently litigating infringement disputes of first instance should revisit their litigation strategy and reconsider the overall pace of the proceedings in light of potential advantages or disadvantages that might be brought about by the changes in appellate jurisdiction under the Amendments.

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