

Appeals & Trials

The trial system for IPR-related disputes is a three instance procedure which consists of the Intellectual Property Trial and Appeal Board (IPTAB), the Patent Court, and the Supreme Court. The aim of these institutions is to promote and strengthen the protection of IPRs while guaranteeing fair and prompt settlements of IPR-related disputes. Specific explanations on the IPTAB and the trial system/procedure can be found below:

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▶ [Introduction to the IPTAB](#)

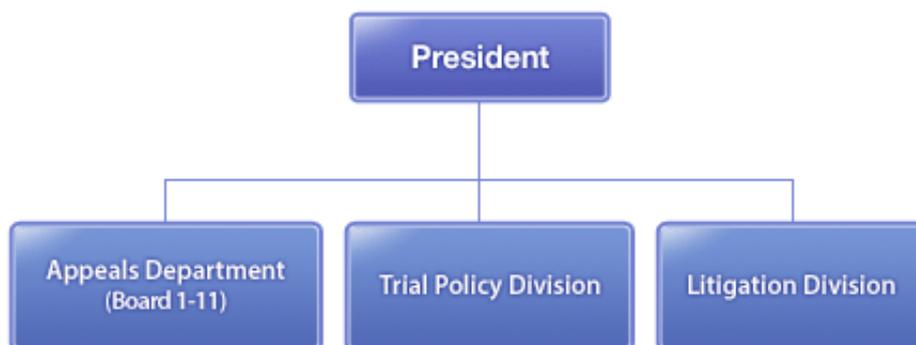
The IPTAB was established through an amalgamation of the former Trial Board and Appellate Trial Board. It was launched concurrently with the Patent Court on March 1, 1998. The IPTAB is the court of first instance for the settlement of intellectual property-related disputes and is independently operated within KIPO.

Since its inauguration, the IPTAB has increased the number of administrative patent judges, strengthened oral hearings, and focused on enhancing administrative patent judges' expertise, fairness, and efficiency.

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▶ [Organization of the IPTAB](#)

The IPTAB consists of 11 trial boards, a Trial Policy Division, and a Litigation Division. A trial board is composed of about 9 administrative patent judges who are in charge of conducting the trials. Meanwhile, the Trial Policy Division is responsible for receiving documents, formalities examination, etc., and the Litigation Division is responsible for litigation proceedings.



As mentioned above, the 11 trial boards consist of about 9 administrative judges including the chief

administrative patent judge. A trial board makes decisions based on a majority vote out of three administrative patent judges. For matters of grave concern, the board may expand the vote to five judges including the President of the Intellectual Property Trial and Appeal Board.

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▶ Patent Trial System

Significance of a Patent Trial

A 'Patent Trial' refers to a procedure in which the Intellectual Property Trial and Appeal Board makes an administrative judgment for the settlement of an applicant/agent's patent-related dispute or dissatisfaction with the rejection of a patent application, etc. A Patent Trial functions as the first-instance trial in the Three-Instance Patent Litigation System. Only after receiving a ruling from the Intellectual Property Trial and Appeal Board can an applicant/agent appeal to the higher courts, that is, the Patent Court or the Supreme Court.

(Structure of the Patent-Related Disputes Trial System)

Types of Appeals and Trial Examinations

1. Ex Parte Cases

▶ Trial against Ruling of Refusal or Revocation (Patent Law Article 132, Clause 3)

- When an applicant has received a decision of rejection or revocation from an examiner, that person may demand an appeal within 30 days of the date of receipt of the certified copy of the examiner's decision. A provision for exception is established in cases where a person resides in an area that is remote or difficult to access. The President of the Intellectual Property Trial and Appeal Board may extend the time limit to 2 months for the benefit of a person in this situation.

With respect to a patent application filed on or after July 1, 2009, the applicant may make a request for reexamination or trial, selectively, following a decision of rejection; however, the applicant is not allowed to make a request for reexamination once a request for trial has been submitted (Article 67-2 of the Patent Act).

When a patent application has been reexamined at the request of the applicant and a decision of rejection is made by the examiner, the applicant may appeal against such decision of rejection by filing a request for trial.

- Under the reexamination before trial system, a patent application must be reexamined upon submission of amended specifications within 30 days after the filing of a request for trial. However, as a request for reexamination system has been introduced, even if there has not been a request for trial, a patent application with the attached amendments to specifications or drawings may be reexamined by the examiner upon request of the applicant.

▶ Trial against Decision to Reject Amendment

- When an applicant receives a decision of rejection on the basis of his/her amendments, he/she may demand an appeal within 30 days from the date of receipt of the certified copy of the decision.

- The 2001 Revised Patent Law provides that the then existing appeal against the examiner's decision to reject the amendment be repealed and only an appeal against a decision of rejection be allowed; this is in order to expedite the proceedings of examination and hearing (Article 51 of the Revised Patent Law, Clause 3, 2001, 7. 1).

▶ Trial for Correction (Patent Law Article 136)

- A patent holder may demand a trial for corrections to specifications or drawings for the following reasons only:

- ① to narrow a claim;
- ② to correct a clerical error; or
- ③ to clarify an ambiguous description.

- However, this provision shall not apply where an opposition to the patent is pending.
- This trial is intended to protect an invention by providing the opportunity for a patentee to make corrections on the condition that there are not any unexpected losses or damages incurred upon any third parties.
- When a trial decision stating that the corrected specifications or drawings of a patented invention become final and conclusive, the patent application, the laying-open of the decision and the registration of the establishment of the patent right shall be deemed to have been made on the basis of such corrected specifications or drawings.
- Under the present provision, a trial for invalidation can be requested independently of a trial for correction.
- When a decision that a correction of the specifications or drawings is to be invalidated becomes final and conclusive, the correction shall be deemed never to have been made.
- › Trial for Invalidation of Correction (Patent Law Article 137)
 - An interested party or examiner may demand a trial for the invalidation of a correction, where the specifications or drawings of a patented invention have been corrected in violation of Article 136.
 - When a decision that a correction of the specifications or drawings is to be invalidated becomes final and conclusive, the correction shall be deemed never to have been made.

2. Inter Parte Cases

› Invalidation Trial of a Patent (Patent Law Article 133)

- Due to a mistake of an examiner or appeal examiner, some patents which should not have been granted may exist. In such cases, an interested party or examiner may demand a trial to invalidate the patent. For a patent containing two or more claims, a demand for a trial of invalidation may be made for each claim.
- The reasons for invalidation of the patent are generally the same as reasons for the rejection of a patent application.
- 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 arose after the granting of a patent, the patent right is deemed not to have existed from the time when such a reason originated.

› Trial to Confirm the Scope of a Patent Right (Patent Law Article 135)

A patentee or an interested person may demand a trial to confirm the scope of a patent right. When a trial is demanded to confirm the scope of a patent right, the confirmation shall apply to each claim if the patent contains two or more claims.

› Invalidation Trial of Registration for Extension of Term of Patent Right (Patent Law Article 134)

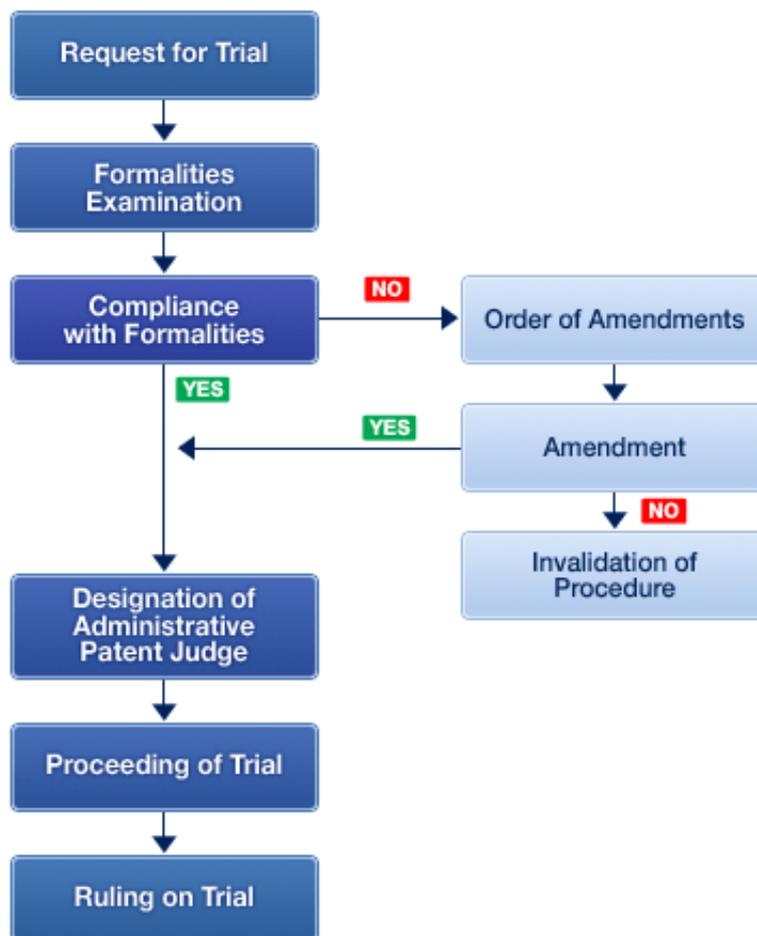
Refers to the quasi-judicial administrative procedure to invalidate the registration for extension of the term of a patent right due to any defect in the registration measure.

› Trial for Granting Non-Exclusive License (Patent Law Article 138)

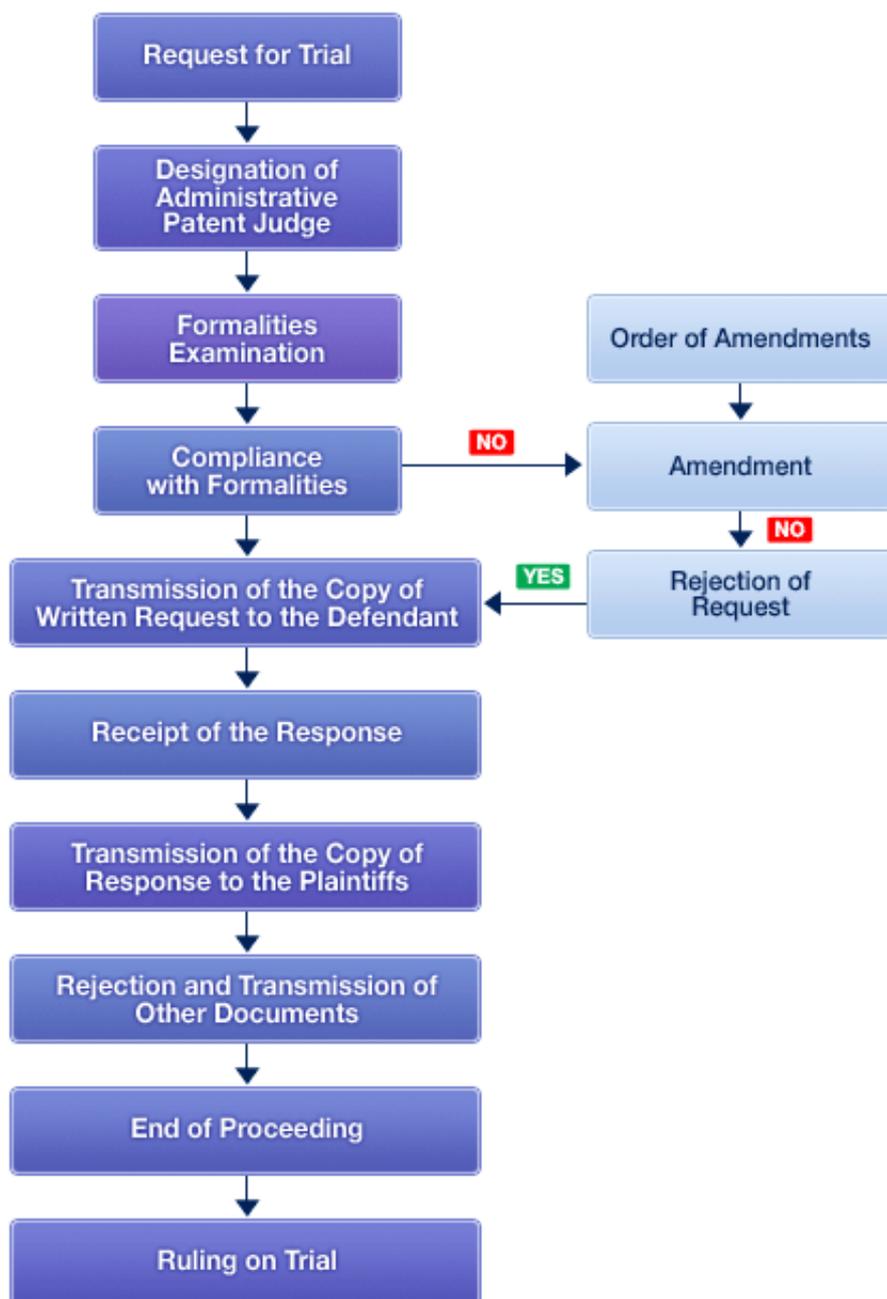
- When a patentee requires the use of the patent right of a prior patentee to operate his/her patented invention, or when the prior patentee refuses to grant permission to use the patent right without justifiable reasons, the later patentee may request a trial for the granting of a non-exclusive license. To make such a request, it is required that the patented invention of the later patentee should constitute a substantial technical advance in comparison with the patented invention or registered utility model of the prior patentee.

▶ Trial Procedure

Ex Parte Cases



Inter Parte Cases



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Reminder

A non-resident (a person who has neither an address nor a place of business in the Republic of Korea), in accordance with Article 5(4) of the Patent Act, may not initiate any patent-related procedure such as application, trial, etc., unless he/she is represented by a patent administrator (a patent agent who has an address or a place of business in the Republic of Korea). When a request for a trial is made against him/her, there may be problems receiving the copy of the written request for a trial and other documents without a patent administrator, and this often brings about difficulties such as the lapse of a right.

For more information about IPTAB, please refer to the following brochure. [download](#)

