

USE OF EXPERT KNOWLEDGE IN CIVIL LITIGATIONS

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Presiding Judge at the Patent Court of Korea

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1. Use of Expert Knowledge in litigations related to IP rights

(1) Judicial Research Officers and Technical Examiners

▷ Introduction: The Patent Court of Korea has technical examiners according to the Court Organization Act. The Patent Court and other courts that require specialized examination on intellectual property rights have judicial research officers.

▷ An overview

Step 1: When a new case is filed and assigned, technical examiners/judicial research officers are designated for a case.

Step 2: Once they are designated, they must submit a technical report explaining the technologies at issue or opinions on the technical issues prior to the trial date.

Step 3: The judicial panel, technical examiners/judicial research officers gather in a judge's chamber before the trial date or pretrial hearing date to have an internal discussion examining the technical issues based on the technical report.

The discussion typically lasts for about an hour.

Step 4: Technical examiners/judicial research officers submit their final opinions in writing on the overall case or a specific issue before the court renders the judgment.

1. Use of Expert Knowledge in litigations related to IP rights

(2) Technical advisors

- ▷ Introduction: A system designed for faithful hearing and prompt resolution of disputes by listening to the opinions or explanations based on professional knowledge and experiences of experts outside the court whose specialized knowledge is essential for cases related to intellectual property rights, architecture, medical care, environment, etc.

▷ An overview

1) 657 candidates are enrolled as technical advisors in the Patent Court, having expertise in patented technologies (such as machinery, electricity, electronics, telecommunications, construction, agriculture and forestry, chemistry, pharmaceuticals, etc.)

2) Technical advisors cannot take part in the in the deliberation process of the judicial panel.

3) In practice, the technical advisor system is occasionally utilized ex officio or upon the request of a party if there is no technical examiner or judicial research officer of the Patent Court who is well versed in a specific technical field, or if the technical content is particularly complex.

1. Use of Expert Knowledge in litigations related to IP rights

(3) Expert witness

▷ Introduction: . Expert testimony follows the usual expert selection and witness examination process according to the general principles of civil procedure. In practice, in infringement litigations over patent and other IP rights, a party often wants to produce expert testimony to analyze the level of a person having ordinary skill in the art at the time of filing, contents of prior arts, composition analysis and comparison of an infringing product, calculation of damages, and reasonable royalties.

1. Use of Expert Knowledge in litigations related to IP rights

(4) The parties' active engagement in technical explanatory session

▷ Introduction: Technical explanatory session is a procedure in which the parties or their counsels are allowed to give an in-depth explanation of the technologies at issue on the date of trial or pretrial hearing using a computer or a visual printer. It is recommended that materials for oral arguments for technical explanation be submitted to the court before the date of trial, and by adding the materials to the court record, they are classified as litigation materials. On the date of the technical explanatory session, judges can understand the technology more clearly compared to written explanations about the technology because the parties bring the products related to the case and try to explain or demonstrate the products.

2. Other Civil litigations

(1) Introduction of “The Standing Members of Technical Advisor Committee”

▷ Background: In March 2017, “The Standing Members of Technical Advisor Committee” system was established to solve the hassle of selecting professional technical advisors for civil suits, and to improve efficiency in terms of accessibility and time for technical advisors.

▷ Overview: The Standing Members of Technical Advisor Committee are appointed by the Minister of National Court Administration and stationed at the courts that they belong to, and are paid a stable monthly wage. They cannot engage in any business aiming at profit-making without permission from the Minister of National Court Administration.

Thank you!

