

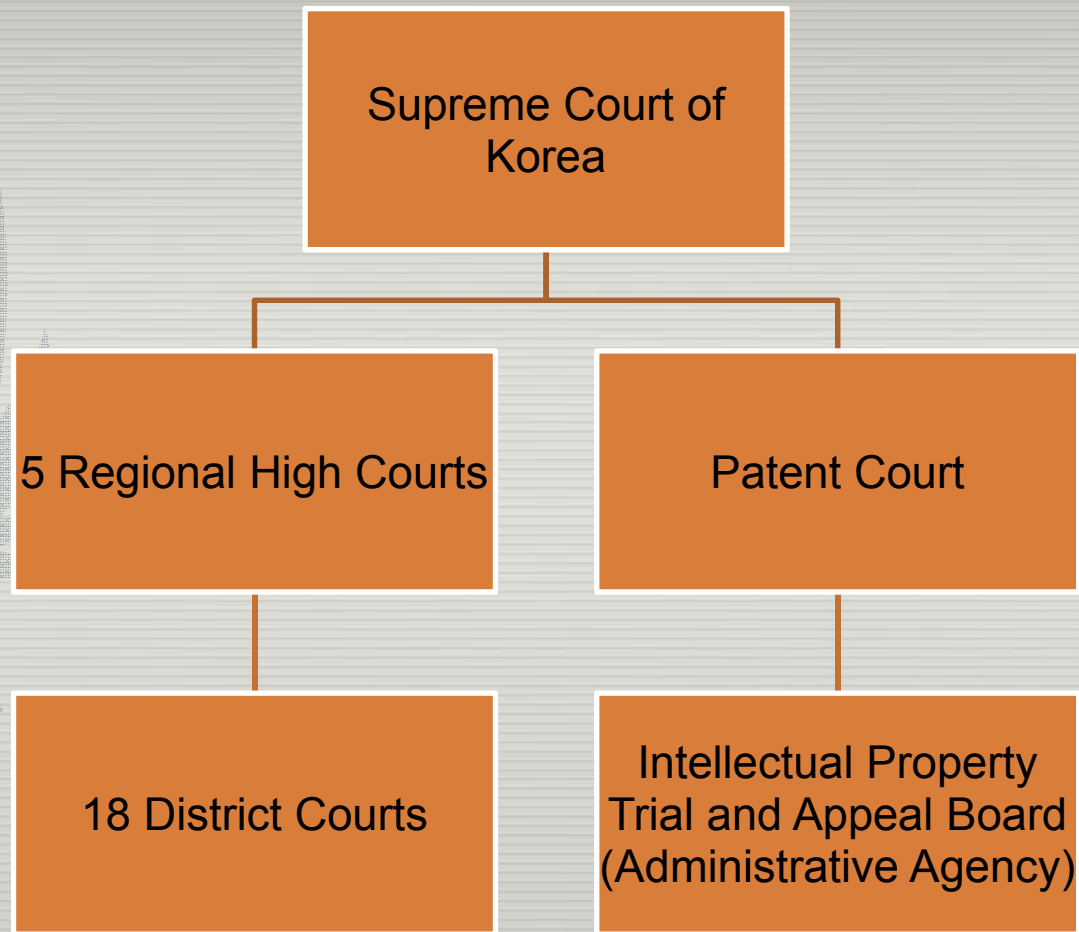


# IP LITIGATION OF KOREA



**Judge Park, Taeil**

# Court Structure



# The History of the Patent Court

## Opening of the Patent Court(1998) - First Patent Court in Asia



## Transfer of the Patent Court(2000)



## New Courthouse in the city of Daejeon(2003)



## Concentration of Jurisdiction(2016)



# Establishment of the Patent Court

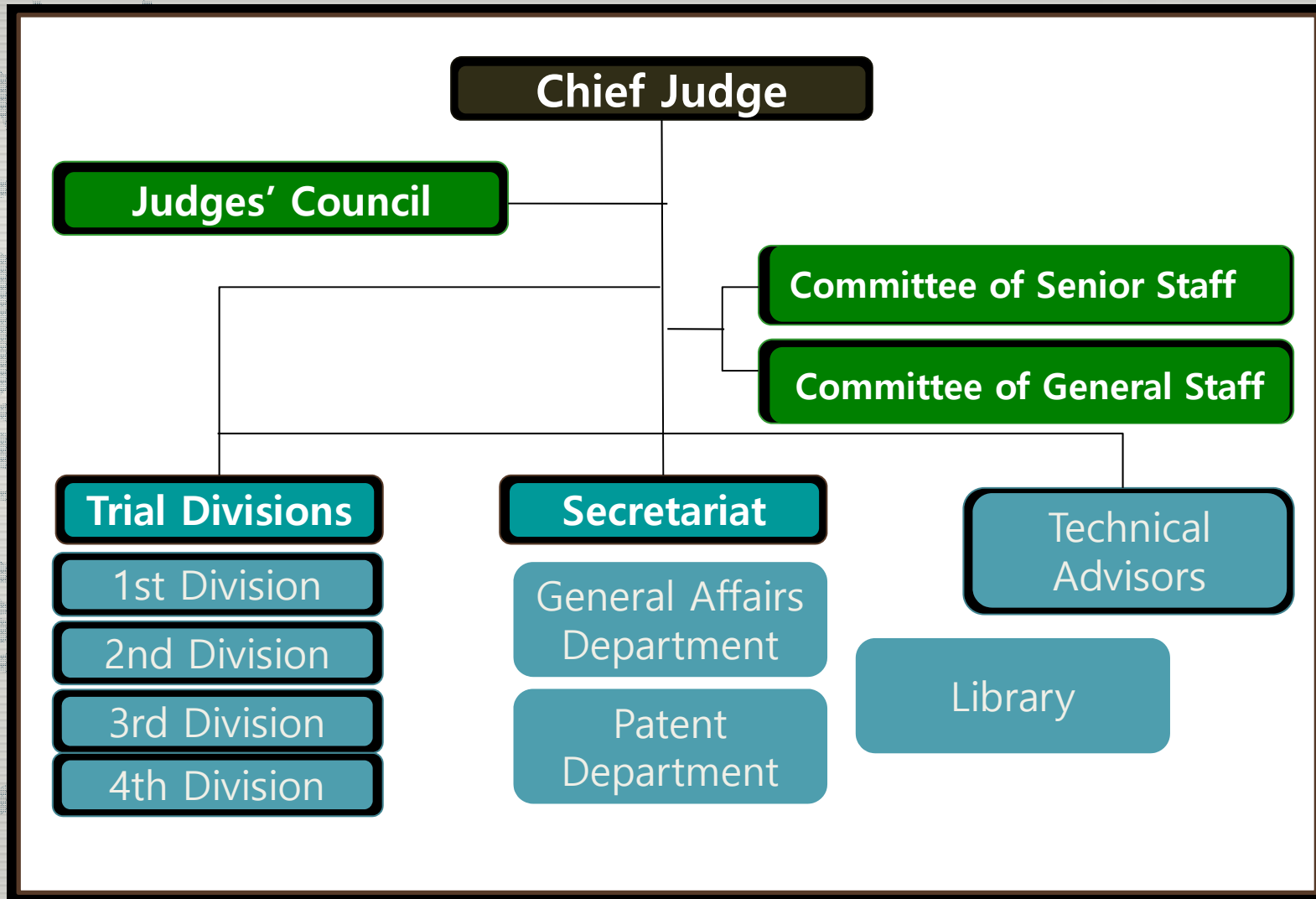
- Established on March 1, 1998  
under Article 3(2) of the Court Organization Act
- Purpose: To set up an independent legal process to more effectively accommodate the ever-increasing science and technology related disputes.

# Mission of the Patent Court

## WHERE CREATIVE TECHNOLOGY MEETS FAIR LAWS

- The Patent Court of Korea provides substantial protection of intellectual property rights through fair trials presided over by judges.
- Creative technology is substantively protected when fair laws are declared.
- It is the mission of Patent Court.

# Organization of Patent Court



# Organization of Patent Court

## ▪ **Chief Judge**

The chief judge oversees the judicial administrative affairs of the Patent Court and provides directions to public officials under supervision.

## ▪ **The member of divisions**

There are four trial divisions in the Patent Court, where each trial division consists of one presiding judge and two associate judges.

➤ Additionally, four or five technical advisors, a court clerk, an associated court clerk, and a court reporters are assigned to each division.



# Organization of Patent Court

## ■ Technical Advisors

Currently, 17 technical advisors assist the judges. The technical advisors have expert knowledge in machines, communication, electricity, electronics, chemistry, pharmacy, agriculture, and architecture.

## ■ Secretariat

The head of Secretariat oversees the administrative affairs of the Patent Court, and supervises court employees according to the orders of the chief judge.



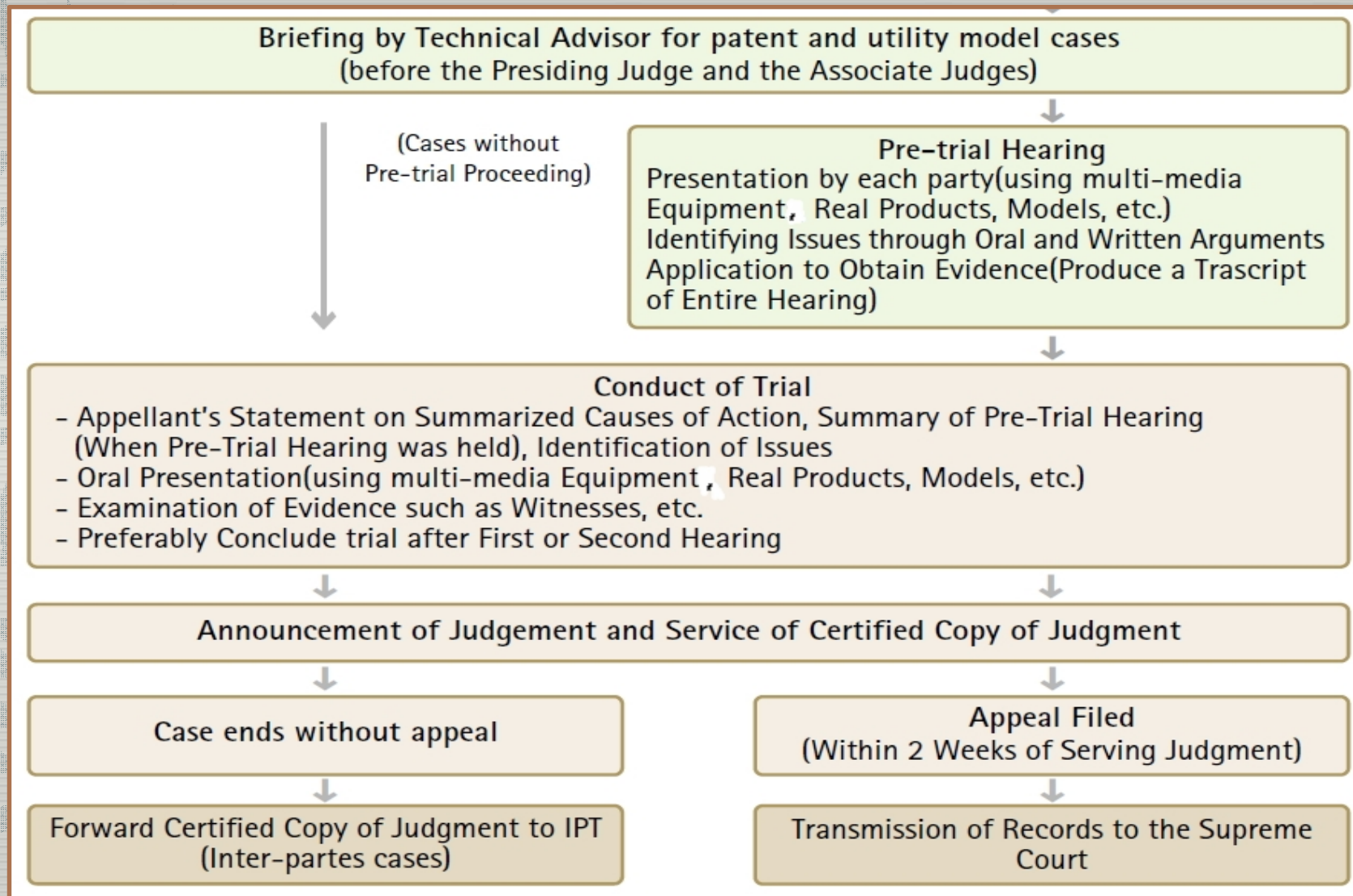
# Jurisdiction of Patent Court

- Jurisdiction over Territory
- Court of first Instance
- An appellate-level court but also a trial court: e.g. assertion of new grounds of invalidity and submission of new evidence
- Two instance system - beginning in the Patent Court - leading to the Supreme Court

# Survey of Patent case Process

- Intellectual Property Trial and Appeal Board(IPTAB) of KIPO
  - First instance jurisdiction over Patent case
- Patent Court
  - Exercises exclusive jurisdiction to review Patent case decisions of IPTAB.
- The final appeal for Patent Court decision is brought to the Supreme court.

# The life of an appeal in the Patent Court





# The Entity of Patent Case in Korea

- Bifurcated IP litigation : Double track system of 'Patent case' and 'Infringement case'
- Scope of 'Patent case'  
Patent, Utility Model, Trademark, Design, Plant Variety
- Subject matter of jurisdiction in 'Patent case'
  - (1) Invalidation of Patents
  - (2) Confirmation of the Scope of the Claimed rights
  - (3) Appeal to the rejection of patent application in KIPO(Korean Intellectual Property Office)

# Bifurcated IP Litigation Structure

## ■ Civil Infringement & Criminal Case

- District Court → High Court → Supreme Court
- Special Divisions in Major District/High Courts
  - 4 Divisions in Seoul Central District Court
  - 2 Divisions in Seoul High Court

## ■ Establishment, Invalidation, Confirmation of the Scope of Rights Cases

- IPTAB → Patent Court → Supreme Court
- Patent, Utility Model, Trademark, Design , Plant Variety

# Bifurcated IP Litigation Structure

- All Infringement litigations (including injunctions, Damage claims) should be brought to ordinary district civil courts.
- Patent Court only deals with 'Patent Case'.
- District court judges can independently decide the validity of registered patent as a prerequisite of damage claim or injunction when the invalidity is based on the absence of Utility or Novelty.
- When the 'Nonobviousness' is questioned, district court judges may stay infringement proceedings until Patent Court decides it, because it is Time/Effort consuming affairs for general courts to decide the 'Nonobviousness' of patent right.



# Confirmation of the Scope of right claims

- The suits that decide whether alleged infringer's work falls within the scope of patent claims ; whether it constitutes infringement.
- Patent court renders declaratory judgment on that issue, and then general courts respect it.
- In many infringement cases, 'Confirmation of the Scope of right claim' becomes the precedent procedure to seek for the remedy.

# Features of Patent Court

- **Divisions** 4 divisions with 3 judges (1 Presiding judge + 2 Associate judges), 4~5 technical advisors, a court and assistant clerk, a reporter
- **Technical Advisors** provide consultation (opinions on scientific aspects) throughout the trial on patent and utility model cases
- **Intensive Discovery through trials** Parties are required to submit claims & evidence / explain scientific aspects of the case in detail, using real objects or models if appropriate
- **Representation by Patent Attorneys** Patent attorneys are permitted to represent parties in Patent Court
- **Electronic Litigation**

## Expertise of the Patent court judges

- All the judges in Korea including Patent court judges have common career qualifications 🖐️ No regulation requires to be Patent court judges, so they do not need to have Scientific/Technological backgrounds.
- Patent court judges have expertise on IP laws and better qualified than general judges on technical issues because,
  - Mostly have joined Overseas training program by Supreme court and conducted study on IP law in other developed countries.
  - Participate in several learned societies specializing in IP laws.
  - Exempted from work rotation and stay at the same bench at least 3 years to accumulate experience 🖐️ General judges usually rotate their work every 2 years.
  - Discuss the matter of arts with residing technical advisors in regular base.



# Technical Advisors

- Patent court get assists on highly technical matters from residing Technical advisors.
- Currently 17 members;
- Fields of Mechanical engineering/ Electric engineering /Science of Agriculture/ Science of Architecture/ & Chemical engineering/ Bio-engineering/ Information technology / Pharmacy etc.
- They are required to have more than 10 years experience at KIPO as examiner or Master's degree plus more than 10 years experience in the relevant fields.
- Participate in the Hearings
- Submit opinion reports to judges after hearing is closed

# Representation by Patent Attorney

- By the law, Patent Attorneys are admitted only in KIPO and Patent court. They have no power of attorney in any infringement case court.
- General Attorneys are admitted in both Patent court and Infringement case court.

# Statistics (Number of Case)

## Patent Court

section  Year	Filing			Terminated			Reversal of the KIPO decision (rate)	Pending	Appeal (rate)
	Pending carried forward	New case	Total	Judgment	The others	Total			
2012	479	1,154	1,633	946	238	1,184	271 (28.6%)	449	413 (43.7%)
2013	449	1,040	1,489	795	229	1,024	214 (26.9%)	465	331 (41.6%)
2014	465	952	1,417	714	255	969	247 (34.5%)	448	296 (41.4%)



# Statistics

## (Rate of Each Type of Case)

Patent Court

Section  Year	Filing				Terminated			
	Patent	Utility Model	Design	Trade mark	Patent	Utility Model	Design	Trade mark
2012	902 (55.2%)	108 (6.6%)	102 (6.2%)	521 (31.9%)	647 (71.7%)	70 (64.8%)	74 (72.5%)	393 (75.4%)
2013	830 (55.7%)	100 (6.7%)	127 (8.5%)	432 (29.0%)	537 (64.7%)	75 (75.0%)	85 (66.9%)	327 (75.7%)
2014	800 (56.3%)	68 (4.8%)	121 (8.5%)	431 (30.4%)	531 (66.4%)	45 (66.2%)	90 (74.4%)	306 (71.0%)

# Advantages of Patent court as a Specialized court

- Just and predictable Decision
  - IP expert judges concentrate their accumulated capability on the repeating matter
  - Full time technical experts of various fields support judges
- Speedy and Less expensive Procedure
  - In general courts, well-experienced IP lawyers should fully explain and convince judge on technical issues; Time&Cost consuming
- Electronic Litigation
  - Litigants can submit and receive briefs and evidence electronically

**Judge's Office**



**Technical Advisor's Office**



**General Affairs**



**Patent Department**





**Small Courtroom  
Pre-trial Conference Room**



**Patent litigation  
proceeding in a  
modernized courtroom  
equipped with high-tech  
multimedia facilities**



# Concentration of Jurisdiction(2016)

## ■ Civil Infringement Case

- ❑ Patent, Utility Model, Trademark, Design , Plant Variety
- ❑ First instance: 5 District Courts
  - Seoul Central, Daejeon, Daegu, Pusan, Kwanju
  - Litigants can select the Seoul Central District Court.
- ❑ Trial on appeal: Patent Court
- ☞ 5 District Courts → Patent Court → Supreme Court



[http://patent.scourt.go.kr/patent\\_new/index\\_e.jsp](http://patent.scourt.go.kr/patent_new/index_e.jsp)

Thank you  
for listening

**Judge Park, Taeil**

