

# NewsLetter

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# GENERAL TOPIC

## GENERAL TOPIC

### • Improvements to Official Fee System of the KIPO

The Korean Intellectual Property Office (KIPO) announced that it will implement a revised regulation on collection of official fees, including a reduction on 7th to 9th year annual fees, as of July 29, 2016 in order to ease the burden on the official fees of IP rights holders.

The revised regulation expands the period for reduction on the annual fees for patents, utility models and designs of individuals, small and medium-sized enterprises (SMEs) and middle-range (up to 1,000 employees) enterprises from the 1st to 6th year to the 7th to 9th year.

It is expected that SMEs would save the 7th to 9th year annual fees by an average of KRW 100,000 per case, thereby reducing their cost-burden in maintaining their IP rights.

Payment Period	Subject to Reduction (Rate)
Issuance Fee (1st to 3rd year annual fees from the registration date)	Individuals and SMEs (70%), public research organizations (50%), and middle range enterprises (30%)
4th to 6th year annual fees	Individuals, SMEs, public research organizations and middle range enterprises (30%)
7th to 9th year annual fees	Individuals, SMEs, public research organizations and middle range enterprises (30%) [newly added by the revision]

In addition, the new regulations reduced the fees for converting a design application with partial substantive examination to a design application that requires substantive examination, as well as the fees for filing a duplicative request for correction.\* Furthermore, prior to the revision, if a request for fee reduction was not submitted upon the payment of official fees, the applicant was required to file a separate ex post request for fee reduction\*\* for each item. After the

revision, however, the KIPO will accept a single ex post request for fee reduction for multiple items.

\* Request for correction: A system to correct the specification or drawing(s) without substantive correction to a patent during the pendency of an invalidation action.

\*\*Ex post request for fee reduction: A system to allow an applicant to request a refund for

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reduced fee within five years where the fee reduction was not requested upon payment of official fees.

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### • Patent Applications for Mobile Radiation Measuring Technology Increase

The Korean Intellectual Property Office (KIPO) announced that the number of patent applications for radiation measuring technology, including mobile radiation measuring technology, has recently increased.

According to the KIPO, 48 patent applications directed to radiation measuring were filed in 2010, and 80 applications were filed in 2011, an increase of 66.7%. Those filed in 2012, 2013 and 2014 are 108, 124, and 143, respectively, which shows a gradual rise (see Table 1).

Among these applications, in 2010 only three were for mobile radiation measuring technology. The number went up to 11 in 2011, and down to 4 in 2012. But the number rose up to 9 in 2013 and to 10 in 2014, showing a steady increase (see Table 2).

In particular, the number of applications for mobile radiation measuring technology

significantly increased in 2011.

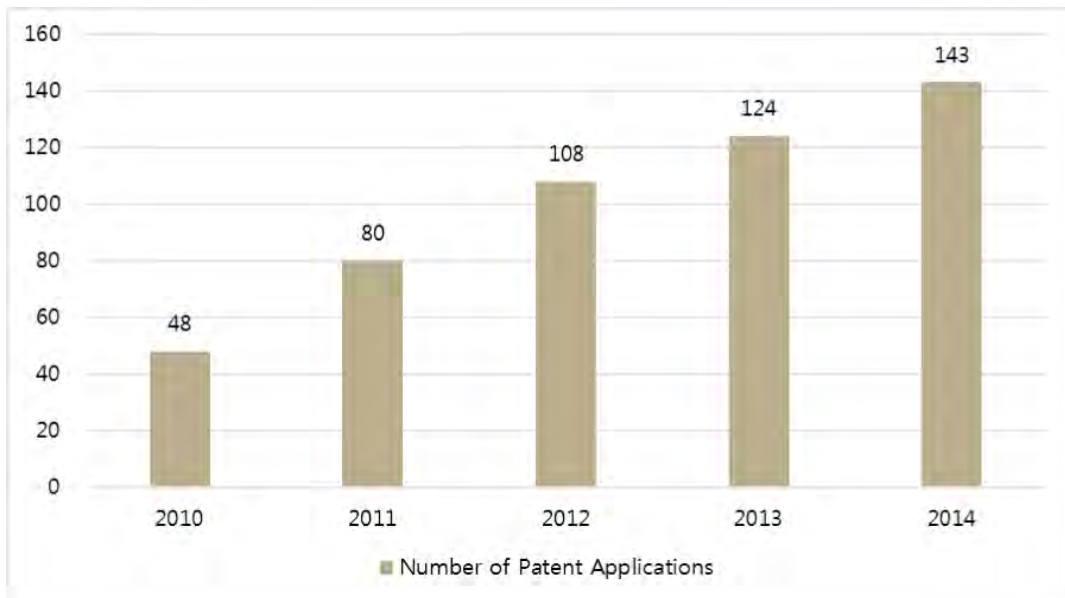
This reflected increased concerns over radiation contamination due to the accident in Fukushima nuclear plant of Japan in March, 2011 (see table 2).

In the past, the mobile radiation measuring technology focused on developing smaller and lighter devices to improve the devices' portability. Recently, however, due to the developed mobile communication technology, mobile terminals such as smartphones, and network technology utilizing wireless communication with central servers and databases are being adapted to the mobile radiation measuring technology to enable individuals to measure radiation levels with a mobile radiation measuring device and transmit the levels to a monitoring device in real-time, thereby sharing various data including radiation information by forming a network with plural mobile terminals.

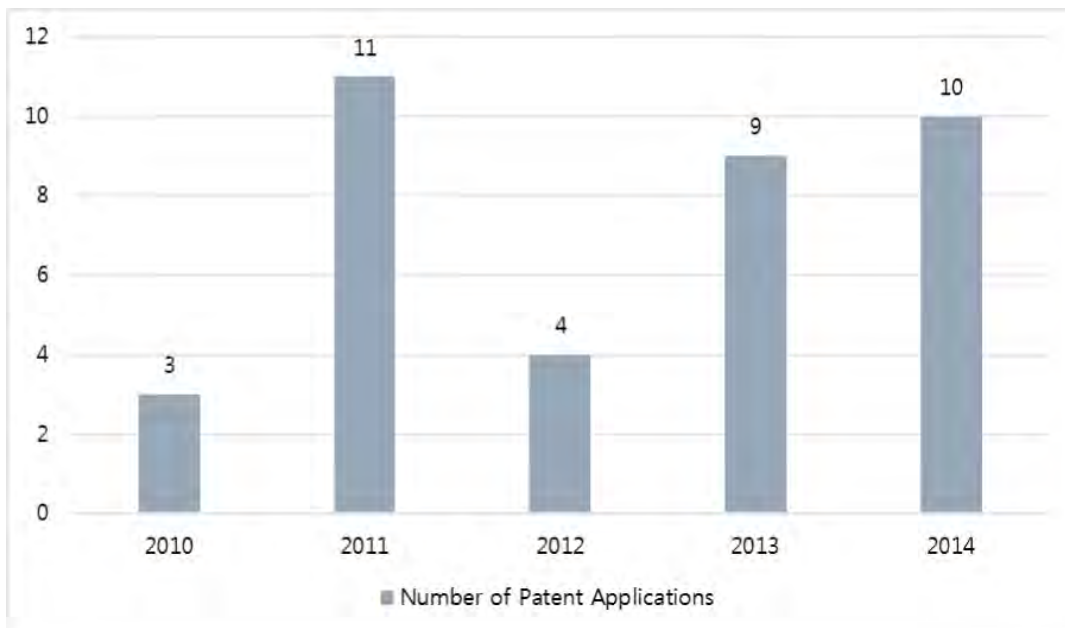
Among patent applications for mobile radiation measuring technology filed from 2010 to 2014, 22 applications were for a typical mobile radiation measuring device (the highest number among them), eight were for a measuring device using a smartphone, and there were two each for GPS and Bluetooth communication (see Table 3).

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**Table 1. Number of Patent Applications for Radiation Measuring Technology (2010 to 2014)**

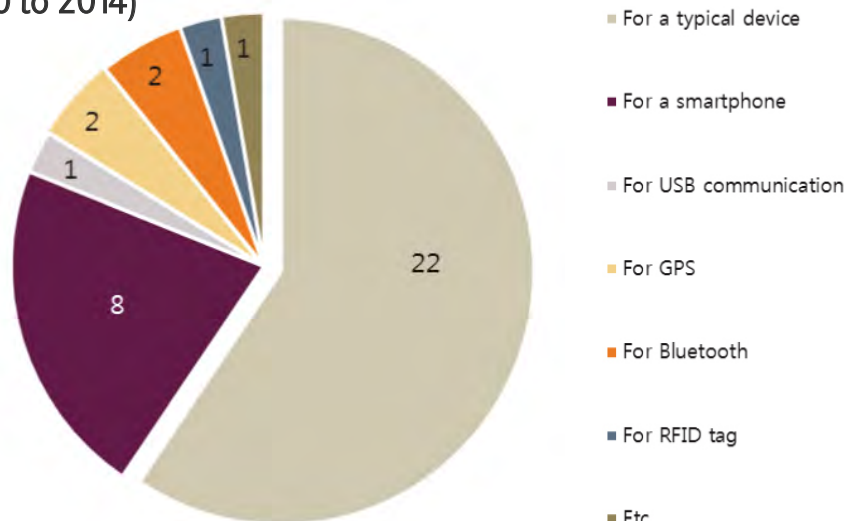


**Table 2. Number of Patent Applications for Mobile Radiation Measuring Technology (2010 to 2014)**



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**Table 3. Number of Patent Applications for Specific Mobile Radiation Measuring Technology (From 2010 to 2014)**



## • Industrial Technology Trends in Korea

### 1. Samsung Display and LG Display Expand OLED Production

Samsung Display and LG Display are planning to expand their organic light-emitting diode (OLED) production lines. The companies are turning their attention from existing liquid crystal display (LCD) production lines to the manufacturing of OLEDs while minimizing the costs and time for facility investments and maximizing overall production efficiency.

Samsung Display has been converting its 5G line for manufacturing small-and-medium-sized IT LCD panels into an oxide-based OLED production line. It appears that Samsung

Display is downsizing its business of LCD-based small-and-medium-sized IT LCD panels by converting the LCD production lines below 8G into manufacturing of OLEDs. Samsung Display is preparing to expand its OLED business portfolio into laptop computers, tablet PCs, monitors, automobiles, etc., where OLEDs have not yet been applied.

In the meantime, LG Display, prompted by the increased demand for OLED television in China, is also converting its LCD production lines into manufacturing of OLEDs. LG Display, in addition to its E3 line for manufacturing the existing 8G OLED panels, launched its E4 line, which was converted from LCD production into OLED production. LG Display is now capable of producing 34,000 sheets of OLED on a monthly basis.

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## 2. Samsung Electro-Mechanics Enters into Advanced Integrated Circuit Packaging Industry

Samsung Electro-Mechanics, an electronic parts affiliate of Samsung Group, is preparing to dive into the advanced integrated circuit packaging industry. The workforces of Samsung Electronics' System LSI – the division in charge of producing non-memory chips – and Samsung Electro-Mechanics will cooperate to develop a fan-out wafer level package (FoWLP) technology that enables a chip packaging without employing a printed circuit board. This is the first time that Samsung Electro-Mechanics has tapped into the semiconductor chip-packing business. The company is planning to complete a capability verification test for mass production by the end of 2016. Following a series of tests, the IC packaging factories will go into full operation in the first half of 2017.

Fan-out technology allows an enlargement of I/O within a package unit by pulling I/O (Input/Output) socket wiring out of a semiconductor chip (die) before the actual packaging. This technology does not require PCBs for packaging. Accordingly, the production costs can be remarkably reduced together with the reduction in package size. Samsung Electro-Mechanics decided to enter the chip packaging business to respond flexibly to the changes in the market. There

has been a decrease in demands in PCBs for packaging. The FoWLP will be implemented based on the panel level package (PLP) method. Samsung Electro-Mechanics is expecting to reutilize the existing liquid crystal display production facilities of Samsung Display for the PLP-based FoWLP fabrication process. The company aims to lower the packaging production costs to be more competitive than its competitor TSMC by the active introduction of a large-area process.

## 3. Samsung Electronics to Introduce EUV Equipment Mass-Production Line

Samsung Electronics plans to introduce extreme ultraviolet radiation (EUV) exposure equipment into its mass-production lines by 2017. Currently, the exposure equipment used by most of the advanced semiconductor plants is immersion equipment, which physically draws minimum micro-patterns down to 38-nm chips. In order to draw finer patterns, it has been required to use a multi-patterning technology that draws circuit patterns in two or three touches. EUV is an electromagnetic wave that is in the middle of UV and X-line and its short wavelength allows to draw short circuit patterns less than 10 nanometers in one touch. However, Samsung will utilize the EUV exposure equipment only when drawing a few important patterns, because their processing speed

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is slower than that of current immersion equipment. An industry source said that Samsung Electronics will emphasize that an introduction of EUV equipment leads to a cost reduction as well as providing mass-production of perfect 7-nano chips to clients.

#### 4. Samsung Electronics Mass-produces 10-nm Class DRAM

Samsung Electronics has succeeded in starting the mass-production of 18 nano class DRAM for the first time in the world, thereby widening the technical gap with its competitors. In the semiconductor industry, the production of 10-nm class DRAM has been considered the limit in the semiconductor micro process. Samsung Electronics announced that it has been mass-producing 18 nano class DRAM since February 2016 indicating that it is the smallest in the world and shows an increase in productivity of about 30% than that of current 20 nano class DRAM.

#### 5. Samsung Electronics to Expand 3D NAND Flash Facilities

Samsung Electronics plans to invest KRW 2.5 trillion to expand its facilities in Hwaseong City for the production of 3D NAND flash, which will produce approximately 40,000 3D NAND flash based on wafer injection. Samsung Electronics' decision to beef up its

3D NAND flash production appears to be due to the buoyant NAND flash market as well as Apple's new iPhone launch. JP Morgan recently reported that Samsung's NAND memory chip is said to be installed in the 256GB iPhone 7 model.

#### 6. Samsung Electronics' Semiconductor Narrows Revenue Gap with World No. 1 Intel; SK Hynix Ranked in Third Place

Samsung Electronics is closing the gap with Intel in the semiconductor industry. According to the market research firm HIS on April 11, 2016, Intel posted sales of USD 51.42 billion, accounting for 14.8% of market share in 2015, while Samsung Electronics had a 11.6% market share, reporting sales of USD 40.16 billion. The gap between the market shares of the two firms is 3.2%, which is smaller than ever. Samsung Electronics appears to be closing the gap with Intel by having superior technologies in 3D NAND flash and 10-nm class DRAM and continuously creating profits therefrom. Meanwhile, SK Hynix has beaten out Qualcomm with a market share of 4.8% and sales of USD 16.5 billion in 2015, and ranks in third place in the semiconductor industry.

#### 7. LG Display Ranks As World No. 1 UHD TV Panel Maker for Two Consecutive Quarters

LG Display has been ranked as the World

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No. 1 manufacturer of UHD TV panel for two consecutive quarters. Industry watchers said that the technical competitiveness of LG Display has been driven up by its unique M+ technology, which improves the brightness of display while reducing the power by additionally using the white sub-pixel in addition to the red, green and blue sub-pixels that have been used conventionally. An LG official indicated that LG Display is expected to lead the semiconductor market for a while as several international customers including Chinese customers are about to adopt LG's M+ technology for their premium products.

## • MOHW's Improvement Scheme on Drug Pricing System for Bio Drugs and Global Innovative New Drugs under National Health Insurance in 2016

On July 7, 2016, Korea's Ministry of Health and Welfare (MOHW) held a 10th Meeting of Promoting Trade and Investment and a meeting with the CEOs of so-called innovative pharmaceutical companies in Korea. During the CEO meeting, the MOHW awarded a certificate to the companies that were newly designated in 2016, and explained its proposals to improve drug pricing for bio drugs and innovative new global drugs under national health insurance and to reduce drug prices based on actual market price, which

it had presented during the 10th Meeting of Promoting Trade and Investment.

The key contents of the proposals are as follows:

### 1. Innovative New Global Drugs

If a drug improves clinical availability and contributes to improvement on the domestic health and medical care by, for example, an investment in clinical tests, R&D, etc. in Korea, the price of the drug will be increased and the period for registration for coverage under National Health Insurance will be shortened.

In terms of the price, 10% of the maximum price of a generic drug will be added to the price of a global innovative new drug. The price of similar drugs (adjusted minimum price) in seven advanced (A7) countries, which are the U.S., U.K., Germany, France, Switzerland, Italy and Japan, will be applied to an innovative new global drug in case of a free economic evaluation, such as anti-cancer drugs for which no generic drug exists.

The drug price determination period by the Health Insurance Review and Assessment Service will be reduced from 120 days to 100 days. The drug price negotiation period by the National Health Insurance Service will be reduced to 30 days, half of the current period.



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The requirements will be slightly relaxed to designate more global innovative new drugs

As of December 2016, the price reduction of innovative new global drugs will be delayed until the expiration of the relevant patents by means of refund, etc.

## 2. Bio Drugs

The price of a biosimilar that contributes to the improvement on the domestic health and medical care and the price of a biobetter, which is an improvement upon previously approved bio drugs, will be increased.

If a biosimilar is acknowledged to contribute to the domestic health and medical care by co-development by innovative pharmaceutical companies or performing clinical tests in Korea, etc., the price of the biosimilar will be modified from the current 70% to 80% of the price of the initially listed drug (original drug) by adding 10% to the price.

The price of biobetters will be increased to 100% to 120% of the price of the target drug (such as original drug, which is higher than the price of incrementally modified drugs (synthetic drugs) by 10%.

The price of high-content bio drugs will be increased from the current 1.75 times to 1.9 times the price of low-content bio drugs.

## 3. Drug Price Reduction based on Actual Market Price

The cycle of drug price reduction will be modified from one year to two years. The price reduction rate provided to an innovative pharmaceutical company that makes a large investment in R&D will be increased from 30% to 50%.

### • Pfizer Korea to Spin Off Expired-Patent Drugs Business

Pfizer Inc. is spinning off its expired-patent drugs business from its Korean subsidiary Pfizer Pharmaceuticals Korea Limited. The new company formed to hold the expired-patent drugs business is Pfizer Pharmaceuticals Korean Limited PFE. As a result, Pfizer has two Korean branches. Pfizer Pharmaceuticals Korea Limited will handle brand name drugs and over-the-counter (OTC) drugs, and after the patent of a brand name drug expires, the drug will be handed over to Pfizer Pharmaceuticals Korean Limited PFE.

According to industry sources, Pfizer plans to do this kind of spin-off only in Korea due to the high business value of its expired-patent drugs.

In the U.S., the price of generic drugs is

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relatively cheap, generally 20% of the price of brand name drug, and thus, the drug market is dominated by generic drugs once the patent of a brand name drug expires. In contrast, in Korea, even if the patent of a brand name drug expires, the price of the generic drug is still relatively expensive, 80% of the price of the brand name drug. Two years after the expiration of the patent of the brand name drug, the drug price is 54% of the brand name drug regardless of whether it is a generic or the original brand name drug. As a result, in Korea the price of the brand name drug is the same as the price of the generic drug, and thus the brand name drug still has high marketability even after the patent expires.

Pfizer officially registered Pfizer Pharmaceuticals Korea Limited PFE on August 10, 2016, and has regularized the change of marketing authorization holder. Pfizer Pharmaceuticals Korea Limited announced, “For products to be shipped from October, Pfizer Pharmaceuticals Korea Limited PFE will be used as the manufacturer. There will be no considerable change in the previous business management, because only the organization is changed and Pfizer Pharmaceuticals Korea Limited and Pfizer Pharmaceuticals Korea Limited PFE reside in the same building.”

## • Generic Exclusivity with No Exclusivity Effect – Poor Sales of Generics for Generic Exclusivity Period

The sales of generic drugs that have been granted with generic marketing exclusivity (“generic exclusivity”) in Korea has turned out to be lower than expected. An example of disappointing generic sales is Amosartan, for which generic exclusivity was given for the period from May 9, 2015 to April 1, 2016. In the first quarter of 2016, Huons, a local generic company, recorded only KRW 128 million in sales of Besylsartan, a generic version of Amosartan. Most of 13 other generic companies having generic exclusivity for the sales of Amosartan generics only gained comparable sales of around KRW 100 million. In contrast, the sales of brand-name drug ‘Amosartan’ of Hanmi Pharm decreased only by 2.9% in the first quarter of 2016 from sales of KRW 1.64 billion in the same quarter of last year.

The weak sales of generics despite the generic exclusivity were due to the existence of numerous ARB/CCB antihypertensive drugs that were already commercially available in the market and the resulting loss of product competitiveness. Moreover, as many as 45 generic versions of Amosartan that received generic exclusivity have to compete fiercely with each other in the

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market. Thus, although these companies were given generic exclusivity, it was not particularly exclusive.

Although Dong-A ST was the only generic manufacturer that obtained the generic exclusivity for the sales of Vasotrol, the generic version of Dilatrend, the sales of Vasotrol turned out to be lower than expected during the exclusivity period. Dong-A ST succeeded in challenging the patent of Dilatrend for treating congestive heart failure and, as a result, was granted generic exclusivity for the period from September 24, 2015 to February 7, 2016 (the expiry date of the patent), during which only Dong-A ST was exclusively allowed to market its generic drug for treating congestive heart failure.

Despite such exclusivity, Dong-A ST recorded sales of only KRW 524 million for the prescription of Vasotrol in the first quarter of 2016 representing a 4.4% reduction in the sales of its generic drug compared to the same quarter of the last year. It is difficult to expect a dramatic increase in future sales of Vasotrol since generic exclusivity was given only for five months and other Dilatrend generics started to enter the market after the expiry of the patent.

Such circumstances are quite different from those expected at the time of introducing the patent-approval linkage system in Korea.

In the U.S., for example, some generic manufacturers have grown into super-sized pharmaceutical companies with sales greater than those of brand-name drug companies by taking advantage of generic exclusivity. Teva is an example of such successful generic manufacturer. In Korea, however, the majority of pharmaceutical companies focus on the manufacture of generic drugs and, as a result, cannot actually enjoy a meaningful exclusivity effect even when granted generic exclusivity. Since news of patent challenges is widely shared by the pharmaceutical industry, it is difficult for a generic manufacturer to achieve meaningful exclusivity.

An industry expert in the industry said, “Generic exclusivity does not always guarantee the success in the market. If generic manufacturers bring patent litigations recklessly to win the exclusivity competition, they will likely gain less profits from the generic exclusivity than expected and have to bear more expenditures such as litigation costs.”

## TRADEMARKS

- **Samsung C&T Corporation (Samsung C&T) cannot register its “B-shape” mark**

The Supreme Court ruled against Samsung

# TRADEMARKS

C&T (formerly, Cheil Industries) ruling that the “B-shape” mark filed by Cheil Industries is confusingly similar to the prior-registered mark owned by Bally Schuhfabriken AG (Bally), and that there would be confusion as to the source of the parties’ respective goods. In August 2012, the then Cheil Industries filed an application to register its trademark: a black pentagon B-shape like a house with a roof in which two different-sized arches on their sides are placed vertically. However, in December 2013, the Korean Intellectual Property Office (KIPO) refused the registration of such mark indicating that it is confusingly similar to the Bally’s mark.

When the Intellectual Property Trial and Appeal Board (IPTAB) of the KIPO agreed

with the KIPO’s determination that the marks were similar in 2015, Samsung C&T filed a suit at the Patent Court of Korea.

The Patent Court ruled in favor of Cheil Industries stating that the compared marks are not confusingly similar. This is because, the B-shape mark filed by Cheil Industries has a pentagonal shape with a pointed upper side so that it suggests a roofed house, whereas the Bally’s mark is recognized as the letter “B”.

However, on July 14, 2016 the Supreme Court came to a different conclusion, stating that on the basis of intuitive cognition among ordinary consumers, the motif of the compared marks is identical, and that the overall composition and the dominant



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impression of the marks are similar. The Supreme Court also stated that although the compared marks are somewhat dissimilar, e.g., shapes of upper sides, the difference is so minor that the general consumers would not be able to recognize the difference with the different time and place. The Supreme Court remanded the case to the Patent Court.

## • Packaging Design Applications More Than Double Over Last 10 Years

The number of applications to register the designs of packages that contain everyday items such as food, cosmetics, confectionery, beverages, pharmaceuticals, etc., has been steadily increasing.

According to the Korean Intellectual Property Office (KIPO), the number of applications for package designs (such as bags, boxes, bottles, cups, etc.) and the number of applications for package labels placed on the outside of packages have more than doubled over the last 10 years. Specifically, the number of applications for package designs and the number of applications for the package labels amounted to 2,708 cases in 2006, 3,441 cases in 2008, 4,539 cases in 2012 and 5,698 cases in 2015, respectively. According to the analysis of the shape of package designs in the applications, box shape takes the largest portion (9,459 cases

- 23.2%), followed by bottle shape (9,037 cases - 22.1%), package labels placed on the package containers (6,382 cases - 15.6%) and bags (4,629 cases - 11.3%).

Such increase of the applications to register the package designs appears to have resulted from the fact that, since the packaging containers tend to stimulate consumers to purchase products, in addition to its original function to hold the products, companies are now in active in creating and filing package designs that reflect the characteristics and styles of their products.





According to recent trends, the companies tend to file design applications for cosmetic containers with fancy and colorful appearance which reflect the nature of beauty articles. Furthermore, the designs for confectioneries or beverages containers tend to reflect various structured or unstructured types, such as rectangular, hexagonal or unstructured forms.

In addition, package design has changed according to the changes in society. For example, as consumers prefer spicy and hot taste, design applications for food containers that imply or emphasize a spicy and hot taste have increased. Furthermore, design applications for food containers tend to reflect healthy and environment-friendly design to meet the requirements for an era that emphasizes well-being.





# TRADEMARKS

## Comparison of application trend in package designs

### I. Cosmetic containers

2006-2007		2014-2015
	<p>Fancy or transparent appearance</p> <p>→</p>	
		

### II. Confectionary containers

2006-2007		2014-2015
	<p>Unusual shapes, such as box or pouch</p> <p>→</p>	
		

# GENERAL LAW

## • Gold color of Haribo gummy bear is Registrable as Color mark

Lee International acted as counsel for the Haribo Group to secure the registration of a mark consisting only of a color, which was first granted registration in June 2016.

Pursuant to the Korean Trademark Act, as amended with effect on July 1, 2007, a mark that consists only a color or combination of colors can be registered. However, the KIPO examination guidelines provide that such mark can be registered only if it has acquired distinctiveness in Korea on the basis of prolonged use prior to the filing of the application. On this basis, the KIPO has refused registration of marks consisting only of a color or combination of colors.

Rigo Trading S.A., which is a representative of the Haribo Group, filed an application for the mark “” (“Haribo Mark”) in connection with the goods “confectionery.” The application was preliminarily refused by the KIPO on the basis that it lacks distinctiveness. In response to the refusal, Lee International argued that the Haribo Mark is well-known both within and outside of Korea as a source indicator of goods made by the Haribo Group, especially “Gold Bears” provided within the packaging .



We emphasized that if all the Gold Bears produced in a year were laid head to toe, they would circle the earth four times. Based on the foregoing, we argued that the Haribo Mark had acquired distinctiveness in Korea prior to the filing date of the application. In support of our argument, we submitted materials demonstrating the fame and recognition of the Haribo Mark to the KIPO. The argument was deemed persuasive by the KIPO, and the Haribo Mark was registered in June 2016. The fact that the Haribo Mark was deemed by the KIPO to be distinctive and granted registration can be a milestone in the registration of color marks in Korea. Thus, it may be worthwhile to seek registration of color marks in Korea.

## GENERAL LAW

### • Full implementation of the Act on Prohibition of Illegal Requests, etc. from September 28, 2016

The Korean Constitutional Court decided, on July 28, that the “Act on Prohibition of Illegal Requests and Giving and Receiving of Money, Valuables, etc. (the “Act”) is not in violation of the Constitution. Before the implementation of the Act, many journalists and faculty members of private schools requested adjudication on their constitutional complaint, in which they argued that the Act

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violates basic constitutional rights such as freedom of speech and education.

Some of the controversial provisions of the Act that were challenged in the complaint were: prescribing the limit of costs of meals, presents, family events or outside lectures to be considered legal, under the Enforcement Decree instead of the Act; obligating public officials and others to report if and when they find out that their wife or husband had received illegal money or other valuables related to the involved person's duty.

The Constitutional Court, however, viewed that such prohibitions and requirements of the Act do not violate the basic rights of journalists and faculty members of private schools.

The main idea of the Act on Prohibition of Illegal Requests, etc. is to prohibit illegal requests made to public officials and other specified persons, and to punish them if they are found to have accepted money or other valuables beyond a certain amount from the same person whether such acceptance is related to the concerned person's duty or not.

Following the Constitutional Court's decision, the Act came into force from September 28, 2016. If employees, etc. of corporations provide public officials, etc. with money or

other valuables that are subject to prohibition and related to the business of the corporation, the corporation will also be punished with a fine or penalty. Companies need to reorganize their internal compliance policies and make other necessary preparations to successfully adjust themselves to the newly enforced Act.

## • Substantive Owner of Samsung Total is a British Corporate Shareholder

The Supreme Court ruled in favor of Samsung Total Petrochemicals Co. Ltd. (currently named Hanwha Total Petrochemical Co., Ltd.; hereinafter referred to as "Samsung Total") in a dispute over corporate taxes raised between Korean tax authorities and Samsung Total. The Court viewed that the Total Group, the French energy and chemical company, did not commit fraud in order to pay less taxes than they were required to while receiving massive dividends from Samsung Total.

The Total Holdings Europe S.A. ("THE"), the ultimate parent company of the Total Group and duly established under the French law, had negotiated with Samsung General Chemicals Co. Ltd. ("Samsung General Chemicals") on a partnership agreement. The negotiation resulted in a partnership agreement between Total Holdings U.K. Limited, an intermediate holding company of the Total Group and duly



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established under the British law (“THUK”), and Samsung General Chemicals, organizing Samsung Total with a 50:50 investment by the foregoing companies respectively.

Thereafter, Samsung Total withheld tax on dividends at the rate of 5% in accordance with the tax treaties between Korea and the United Kingdom., and remitted the remainder to THUK as a dividend. However, the tax authorities imposed a 15% withholding tax deeming that Samsung Total’s substantive owner is THE and, therefore, such dividend should be subject to the tax treaty between Korea and France. In their view, the dividend of Samsung Total was vested in the French parent and not in the U.K. subsidiary, and therefore the 15% tax rate specified in the Korea-France treaty should apply.

Samsung Total requested the cancellation of such taxation, but the courts of first and second instances ruled in favor of the tax authorities. However, the Supreme Court reversed previous judgments and sent the case back to the court of second instance because it viewed that THUK was an independent entity with a business purpose as an intermediary holding company handling petrochemical business within the Total Group and that the dividend income is substantively vested in THUK, allowing THUK to be able to control and manage such income. The Supreme Court added

that just because THUK has conducted most of its business through employees of its subsidiary, instead of its own employees, it cannot be deemed that the dividend income is not substantively vested in THUK or that THUK is not a beneficiary owner of such dividend income.



# Lee International

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Lee International is a leader in patent prosecution, trademark prosecution, and IP disputes and litigation including patent litigation, trademark litigation, anti-counterfeiting matters, domain name disputes, copyright disputes and trade secret enforcement. Lee International counsels many Fortune 100 and other leading multinational companies on how to successfully maneuver not only through the complexities of Korean law, but also through the unique intricacies of doing business in Korea.

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