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Korean Applications for IP Rights Reach New High in 2015

According to the Korean Intellectual Property Office (KIPO), a total of 475,802 applications were filed for patents, utility models, designs and trademarks in 2015. This represents an average annual increase of 5.2% for the five years from 2011 to 2015, and a 7.0% increase as compared with the previous year. The numbers of patent, design and trademark applications filed in 2015 are 213,694, 67,954 and 185,443, respectively, an increase of 1.6%, 5.5% and 15.4% respectively, as compared with the previous year. The number of utility model applications filed in 2015 was 8,711, which is similar to that in 2014.

Specifically, the number of patent applications filed by large companies decreased by 9.2% as compared with the previous year (45,986 patent applications in 2014 and 41,744 patent applications in 2015), whereas the number of patent applications filed by small and medium sized companies exceeded that filed by large companies for the first time.

Samsung Electronics filed 6,721 applications, the Korea Advanced Institute of Science & Technology (KAIST) filed 947 applications, and the Korea Electronics and

Telecommunications Research Institute (ETRI) filed 2,280 applications.

These applicants ranked first with respect to the number of patent applications among domestic companies, universities and public sector entities, respectively.

According to KIPO's statistical data by industry fields, the most patent applications filed in 2015 relate to industry fields that have traditionally been strong such as the manufacture of general machinery other than office supplies (13,132 applications), computer programming and information service (12,708 applications), communication and broadcasting equipment (11,707 applications) and semiconductors (11,362 applications). Further, the aircraft industry showed the highest rate of increase in applications filed (40.7%, from 428 applications in 2014 to 602 applications in 2015), which appears to have resulted from lively research and development in the field of unmanned aerial vehicles (drones).

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• Recent Supreme Court Decision on Inventive Step in Medical Use Invention

A recent ruling of the Korean Supreme Court has expanded the scope of evidence that can be adduced to justify recognition of an

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inventive step to validate a patent.

The case involved Korean Patent No. 491282, “Isobutylgaba and Its Derivatives for the Treatment of Pain”, which claimed as a medical use invention the analgesic effect of pregabalin [S-type optical isomer of 3-(aminomethyl)-5-methyl-hexanoic acid].

In the first instance, the Intellectual Property Tribunal found no inventive step, based on references presented. On appeal, the Patent Court acknowledged an inventive step. The Supreme Court agreed with the decision of the Patent Court and dismissed the appeal, acknowledging the existence of an inventive step.

The patent was challenged based on a cited reference which was argued to refute the existence of an inventive step. The Supreme Court noted the existence of other references that rendered the cited reference unclear, such that an ordinary skilled artisan could not have easily conceived the claimed invention. The Supreme Court ruled that even if a cited reference contains some descriptions that could justify denial of an inventive step in a certain invention, the invention will still be acknowledged to have an inventive step if another cited reference is contrary to the descriptions or renders the descriptions unclear. Thus, this ruling is significant in that

it expands the scope of acknowledgment of an inventive step.

(Supreme Court Nos. 2013 Hu 2873 and 2013 Hu 2880 (consolidated) for patent invalidation (January 14, 2016)

• Recent Trends in OLED Equipment Investment and Electric Parts Business

According to a securities industry source, Samsung Display and LG Display, as well as Chinese and Japanese display manufacturers, are expected to invest almost KRW 35 trillion in equipment for production of Organic Light Emitting Diodes (OLED) in the course of 2016 and 2017. It is expected that these investments will reach record levels of KRW 13.1 trillion in 2016 and KRW 21.5 trillion in 2017.

New Chinese OLED manufacturers are expected to accelerate their investment this year. Eight Chinese manufacturers, including Chongqing BOE Optoelectronics Technology, Truly Semiconductors and Ever Display Optronics, plan to start their investment in 6th generation OLED. The total scale of their investment is expected to amount in the aggregate to KRW 14 trillion.

A display industry official said, “When estimated based on the current status of

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OLED equipment investment from Samsung Display and LG Display, it is the equivalent of building seven new OLED production lines in South Korea and China by next year, producing 50,000 products a month, and unless the market sees an increase in customer demand in the short term, such as early adoption of OLED for iPhones, display manufacturers may suffer from an excess of supply in the near future.”

Meanwhile, Samsung Electro-Mechanics and LG Innotek, affiliates of the electric parts business of Samsung Group and LG Group, respectively, are vying with each other for dominance. LG Innotek increased its sales in auto parts by 25% in 2015, and Samsung Electro-Mechanics also plans to produce tangible results in auto parts from 2017 through a new business team dedicated to the electric parts business that was set up in 2015.

LG Innotek further increased its global market share in the field of communication modules for automobiles to 29.5% at the end of the third quarter in 2015. In addition, LG Innotek is providing camera modules, battery management systems, DC-DC converters, and motors for dual clutch transmission (DCT) for automobiles to both vehicle manufacturers and automobile parts makers. Having entered the electric parts

business in 2012 Samsung Electro-Mechanics has produced and supplied products for automobiles such as camera modules, multi-layer ceramic condensers (MLCC) and modules for wirelessly charging mobile phones to several vehicle manufacturers including BMW. Further, Samsung Electro-Mechanics has announced its intention to acquire a specialized company in the electric parts business.

Samsung Electronics is setting up a new team dedicated to the electric parts business this year, it also expects to create synergy effects with other Samsung affiliates including Samsung SDI and Samsung Display.

• Brand Name Drugs vs. Generic Drugs in Korean Pharmaceutical Market

As the prescription volume for generic drugs surpasses that of the original drugs, the original drug makers are poised to defend their market share.

In the markets of erectile dysfunction drugs (such as Cialis and Viagra) and prostatic hyperplasia and hair loss drugs (such as Avodart), generic drugs have increased their competitiveness. A look at the workings of the market helps explain how the generic drug makers succeeded in catching up with

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the original drug makers.

The generic drug makers have attempted to gain recognition based on various marketing strategies such as cheaper pricing, catchy brand-naming, different formulations, and symposiums for medical doctors.

For example, Viagra generics and Cialis generics are priced at one-fourth of the original drugs. Moreover, the Korean names of the Cialis generics are designed to remind the user of virility and stamina for men and such product names naturally recall the characteristics of the products.

A similar phenomenon has been seen in the Avodart generic market, as the local generic drug makers have expanded their market shares based on a price-cutting strategy. The Avodart generic drug makers have all reduced their drug prices: from the original price of KRW 900 per capsule (about USD 0.70) to KRW 540 per capsule (Hyundai Pharm's Damodat), KRW 709 per capsule (Samjin Pharm's ADUTA soft capsule and Chodang Pharm's Dutalex soft capsule), KRW 787 per capsule (Korea United Pharm's Avotan soft capsule) and about KRW 700 per capsule (JW Pharmaceutical's Neodart soft capsule).

Meanwhile, Hanmi Pharmaceutical's Duted

soft capsule focuses on the variation of the dose. Specifically, it reduces the capsule size from 18 mm to 10 mm and the contents from 350 mg to 112 mg, thereby making it more convenient to administer the drug.

Other generic drug makers have differentiated their products by introducing various dosage forms such as film, powder and chewable forms as well as tablets. Further, generic drug makers are promoting their products by holding nation-wide symposiums for medical doctors to explain that their drugs have the same efficacy as the original drug.

However, the original drug makers also are making every effort to keep their market shares. Most of all, the original drug makers are confident that medical doctors trust the clinical data that they have accumulated so far.

Specifically, Eli Lilly, the owner of Cialis, has positioned its product as a medication, as compared to recently-released generic drugs which focus mainly on the longer lasting strength to improve erectile dysfunction.

Additionally, Cialis is reported to apply to benign prostatic hyperplasia and benign prostatic hyperplasia symptoms accompanied by erectile dysfunction, as well as mere erectile dysfunction. Since "Cialis 5

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mg for once daily use” is the first and only approved medication, medical doctors have trusted the product since its release in 2009.

In the prostatic hyperplasia and hair loss medication market, GlaxoSmithKline, owner of the original drug Avodart, has established a partnership with Teva-Handok Pharma to roll out its own generic version of Avodart (dutasteride) at a price of KRW 788 per capsule, which is produced with the same ingredients and by the same facilities as those of the original drug.

Although doctors still appear to prefer the original drugs, opinions differ as to how the selection is made between the original drugs and generic drugs.

An urologist at a Korean university hospital said, “It is a very special case that the generic drugs surpass the original drugs as in the Korean erectile dysfunction drugs market. Medical doctors generally demand larger and accumulated clinical data for drugs, especially, for cancers or chronic diseases, which require an extended period of administration. The prescription volume for the original drugs may decrease due to the release of the generic versions of the drugs, but the original drugs will still be preferred in general except for some diseases.”

• Samsung Group: Recent Trends in Industrial Technologies

1. Samsung Electronics to cut investment in memory chips – In preparation for worsening market conditions, Samsung Electronics is expected to reduce its investment in the chip business in 2016. According to HIS, a global market research firm, Samsung Electronics will to cut its investment in NAND flash memory chips to USD 2 billion in 2016, compared with USD 3.3 billion in 2015. Samsung Electronics will also reduce its investment in DRAM semiconductors to USD 5.3 billion, down USD 1 billion from a year ago. Samsung has decided to reduce its investment in memory business because customer demand for IT products has decreased in general due to the global economic recession.

In the meantime, competitors of Samsung Electronics plan to expand their investment in the chip business. For example, SK Hynix, Korea’s second largest chipmaker, announced that it will invest over KRW 6 trillion this year, maintaining its investment at about the same level as last year. Toshiba is expected to invest USD 3.4 billion in the business, while Micron Technology Inc. will invest USD 2.3 billion and Intel will invest USD 1.5 billion. A semiconductor industry official said that as Samsung Electronics

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mass-produces its products based on 10 nano-class technology from this year, it is expected to widen the technological gap with its competitors, which still focus on 20 nano-class technology. Samsung Electronics will also concentrate on improving its profitability by producing high-value products and placing greater importance on 3rd generation (48-layer) V-NAND in the NAND flash field, while reducing investment in that area.

2. Samsung Electronics mass-produces 4GB HBM DRAM – Samsung Electronics announced that it will begin mass production of 4 GB High-Bandwidth Memory2 (HBM2) DRAM, which is seven times faster than the existing DRAM, planning to take the leading position in the next-generation graphic DRAM and High Performance Computing (HPC) markets. The new 4 GB HBM2 DRAM consists of four 8 GB HBM2 DRAMs adapting its latest 20 nano-class process, made of a buffer chip with four core chips stacked up thereon and each connected by the so-called TSV bump. The new TSV technology will be used in manufacturing 8 GB HBM2 DRAM chips, punching approximately 5,000 fine holes in each chip, which is 36 times more than those of the existing 8 GB TSV DDR4. Samsung also plans to mass-produce next 8GB HBM2 DRAM within the first half of this year, doubling the capacity of the 8GB HBM2 DRAM. Further, Samsung plans to expand

its production of HBM DRAM in order to keep pace with increasing global customer demand and preempt the leading position in the HBM DRAM market.

3. Samsung Electronics develops 3D Xpoint semiconductor – Samsung has succeeded in developing 3D Xpoint technology, which is acknowledged as a technology that can be applied to next-generation memory semiconductors having high density with a three-dimensional intersection based on the technical features of ReRAM. Its technical features are almost identical to the principles of 3D Xpoint technology that Intel revealed to the market last year. Though the 3D Xpoint has not been commercialized yet, in theory it should have more than 1,000 times of the data accessing speed of existing NAND. It is understood that Samsung does not plan to commercialize the 3D Xpoint immediately while it looks into expanding its application to various product lines. Samsung appears to have completed the development of 3D Xpoint technology in order to promptly respond to future market conditions, since its major competitors Intel and Micron Technology announced the start of mass production of products utilizing 3D Xpoint technology a year ago.

4. Samsung Electronics to bring QLED to market to beat OLED – Samsung is

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preparing to bring to market a new quantum dot light emitting diode (QLED) display. The QLED is a light emitting diode like OLED but emits visible light without a backlight unit using quantum dots (QD), which are semiconductor particles with a radius of 2 ~ 10 nanometers. The QLED has advantages in that it can produce light in various colors such as red, green and blue according to the size and the voltage. It also has a longer life than the OLED, and can be produced at a lower cost. An official of Samsung Electronics said that the QLED is acknowledged as a genuine light emitting diode in that it can emit light itself without any color filter, whereas the OLED TV requires a color filter.

Tough competition for the next-generation TV market is expected between competitors as Samsung plans to start mass production of the QLED as early as next year.

5. Samsung Display becomes major supplier to Apple on flexible OLED –

Samsung Display will likely be a flexible OLED supplier for Apple's iPhone, which will require Samsung to invest KRW 9 trillion in production equipment. Samsung Display is expected to be a major supplier, securing the biggest portion of the panel supply market for the iPhone, which will employ the flexible OLED in the future instead of using the current LTPS LCD.

• LG Group: Recent Trends in Industrial Technologies

1. LG Innotek beefs up materials and electronic components businesses –

LG Innotek plans to strengthen its materials and electronic components businesses as a new growth engine, announcing that it will enter the metal power inductor and two-metal chip-on-film businesses. This year LG plans to build a system for mass-production with an investment of KRW 70 billion, and also is considering an acquisition to commercialize these products earlier. The company has set a goal of approximately KRW 200 billion in sales for its materials and electronic components businesses within three years.

Metal power inductors are electronic components to be placed inside the internal circuits of smartphones, displays, automobiles, and other displays to optimize the electric current, enabling a digital device to work stably and suppressing malfunctions due to overcurrent. Two-metal chip-on-film is an electronic component that connects the display panel in smartphones, TVs, and the like to the driving chip and main circuit board. This permits a variety of designs for smartphones or smartwatches which have a curved flexible display by folding or rolling the display.

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Preparation, research and development of these products is expected to take almost 10 years. However, LG Innotek expects to commercialize these products earlier, because metal power inductors have a similar production process to that of the existing printed circuit boards and two-metal chip-on-film can be produced on the basis of the tape substrate, HDI substrate and semiconductor substrate that LG Innotek already has.

2. LG Display decides on processing method for 6th generation flexible OLED

– LG Display has decided to operate the 6th generation flexible OLED production line located in Gumi-city of Korea in two separating processing types, taking a similar approach to Samsung Display which supplies the OLED panels for smartphones having a large screen of over five inches. LG Display has been debating whether to adopt the new 6th generation mother glass separation type, which greatly affects the production cost. Cutting the mother glass into smaller pieces increases production time and cost since there are more substrates to process. However, it is not efficient to use larger screens because that increases the possibility of damaged products. LG Display had trouble in deciding on the most efficient production type to meet the demands of various smartphone manufacturers. An LG Display spokesman said, “It is expected that

we will move faster in building the production line since the important decision has been made.”

TRADEMARKS

• Amendment of Korean Trademark Act effective September 1, 2016

New amendments to the Korean Trademark Act were published on February 29, 2016 and will take effect as of September 1, 2016. In order to ease the confusion to the consumers, however, the amendments do not include the co-existence agreement system between the owners of conflicting marks which would promote the use of trademarks.

The details of the amendments are set out below.

1. Any party can file a cancellation action against a registered mark on the basis of non-use

Currently, a non-use cancellation action can only be filed by an “interested party” who is engaged in a business related to the goods associated with the registered mark, or who owns a trademark application that was refused or is likely to be refused on the basis of the registered mark.

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However, under the Amended Korean Trademark Act, the standing requirement is eliminated and any party can file a non-use cancellation action. Therefore, it will be easier for new market entrants to file non-use cancellation actions and secure their marks.

2. A pending trademark can be registered if another party's conflicting mark expired during the examination stage of the pending mark

Currently, a pending trademark that is identical or confusingly similar to another party's prior-registered mark that expired during the examination stage of the pending mark cannot be registered, since the prior-registered mark was effective at the time the application for the pending mark was filed. Under the Amended Korean Trademark Act, such pending trademark may be registered if there is no other basis for refusal.

3. Removal of the one-year waiting period for the filing of a trademark application after the expiration of a confusingly similar or an identical prior-registered mark

Currently, an application to register a mark that is identical or confusingly similar to another party's prior-registered mark can

be granted, if it is filed one year after the expiration of the prior-registered mark. The Amended Korean Trademark Act has eliminated the one-year waiting period.

4. Recognition of "electronic" use of a trademark

The Amended Korean Trademark Act will include "use in an electronic manner" as one of the statutory types of trademark use.

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• Ministry of Environment Implements Provisions on Disclosure of Chemical Substances

On December 31, 2015, the Ministry of Environment's latest regulations pursuant to the Chemicals Control Act came into effect. These regulations including the details of the standards for disclosure of chemicals-handling information, the disclosure procedures therefor, and the procedures for deliberation by the Deliberative Committee on Disclosure of Information on Chemicals (the "DCDIC"), which is tasked with overseeing the process.

For a place of business handling chemical substances, the scope of information to be disclosed includes general information on

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the place of business (e.g., the name of the company and its representative, the location of its facilities and the environmental office with jurisdiction), the maximum storage quantity of toxic chemical substances at its storage facility, any occurrence of chemical accidents, emissions and movement quantity for each chemical substance that is the target of research (e.g., quantity of atmospheric chemicals, marine chemicals and soil chemicals emitted at the site, quantity of chemicals buried in a landfill managed by the company, quantity of waste water and other waste products moved from the site). When the relevant information is disclosed, in any case (i) where it causes material interference in national security, maintenance of public order or public welfare, (ii) where it causes confusion due to low credibility of information, or (iii) where it is not necessary to disclose the relevant information with the DCDIC to protect trade secrets of the relevant company, the relevant information may be excluded from the information to be disclosed.

After completing research on statistics and emission quantity of chemical substances, the Minister of Environment will post the aforesaid information at each relevant place of business or publish the result of the research on its official website. However, disclosure may be withheld of matters

which are still under deliberation by the DCDIC or which the DCDIC determines to be inappropriate for disclosure.

If a company handling chemicals wishes to protect the relevant information that it has prepared and reported, it should submit a request for protection of information and an application for deliberation, and have the relevant information reviewed by the DCDIC as to whether it should be protected or not. In addition, when a person handling chemicals is in breach of any law or fails to perform an order by the Minister of Environment, the Minister of Environment must provide an opportunity to explain the reason therefore before posting the relevant chemicals-handling information on its website.

Such provisions have been implemented since December 31, 2015 and the Ministry of Environment held an explanatory session as to the disclosure system for companies and civic groups on January 15, 2015. The companies which attended the explanatory session expressed many concerns as to the danger of disclosure of trade secrets as a result of disclosures by the places of business handling chemical substances. There is a good deal of public interest as to how the Ministry of Environment may improve the information disclosure system that is already in effect.

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- **Proposed amendments to Foreign Legal Consultant Act as to establishment of a joint law firm between foreign and domestic law firms passed without change by National Assembly**

On February 4, 2016, the National Assembly of the Republic of Korea held a plenary session and passed proposed amendments to the Foreign Legal Consultant Act detailing an approval of establishment of joint law firms between Korean and foreign law firms. The amendments passed with the approval of 190 members, with five members abstaining among the 195 members present.

Pursuant to the amendments, a joint law firm may practice foreign law and a limited range of Korean law by employing Korean attorneys and foreign legal consultants (who must be qualified as foreign attorneys by the Minister of Justice and registered with the Korean Bar Association). The Korean and foreign law firms participating in a joint law firm must have been in operation for at least three years and must employ five attorneys or more having experience for at least five years. Also, the shareholding ratio and voting rights for the foreign law firm are limited to 49%.

The proposed amendments to the Foreign Legal Consultant Act were promulgated by the Legislation and Judiciary Committee (the “LJC”) on January 7, 2015, and led to objections by many in the international legal community. There was some controversy surrounding the amendments, as it was argued that the ambassadors of the United States, the United Kingdom, the European Union and Australia to Korea had infringed the legislative power of the National Assembly and interfered in the domestic affairs of Korea by requesting modifications to the proposed amendments through visiting the National Assembly or issuing statements. This led to some delay in the consideration of the proposed amendments by the National Assembly.

The four ambassadors to Korea requested modification as to what they argued were excessive limitations on the business of law firms such as (i) limitation to a shareholding ratio and a voting right of 49% or less for a foreign law firm; (ii) permission of a joint venture only with a Korean law firm that has been in operation for at least three years; and (iii) limitation of the work scope of legal matters.

However, the proposed amendments, including the details on the establishment

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procedure of a joint law firm, the work scope thereof and qualification requirements of a law firm participating in establishing a joint law firm, were passed by the National Assembly without any modification.

These amendments were made to implement the third stage of Korean legal services market liberalization prescribed under the E.U.-Korea Free Trade Agreement and the U.S.-Korea Free Trade Agreement. The third stage of opening will be applied after five years from the effective dates of the respective FTAs, that is, from July 2016 for the E.U. and from March 2017 for the U.S.

• Korean Supreme Court Orders Hyundai Department Store to Pay Performance Compensation for Music Streaming Service

On December 10, 2015, the Korean Supreme Court dismissed an appeal by Hyundai Department Store (“Hyundai”) against the Federation of Korean Music Performers and the Recording Industry Association in a lawsuit on compensation for performance. Thus it is settled that Hyundai is liable to pay the plaintiffs KRW 235 million.

Hyundai had played music provided by KT Music Corp., an online music distribution

service provider, by streaming in real time at its stores. Hyundai paid KT Music Corp. a monthly fee to use music services at its stores and KT Music Corp. in turn paid the two organizations part of the fees as compensation for transfer of digital sound. But the Supreme Court determined that performance compensation had not been included in the compensation for transfer of digital sound.

Pursuant to Article 76-2, Paragraph 1 of the Korean Copyright Act and Article 83-2, Paragraph 1 thereof, a person who performs using a ‘record for sale’ (originally referring to phonograph records) shall pay performance compensation to the relevant performer or the relevant record producer. Accordingly, it has become an issue in this case whether playing streaming music would be deemed to constitute ‘use’ of a ‘record for sale’.

The Court interpreted that a ‘record for sale’ includes a record for sale to unspecified individuals as well as a record in any form provided for transaction through the sale and that ‘use’ includes direct use playing a record for sale in direct way as well as indirect use playing a record for sale by streaming. Further, the Court ruled that Hyundai’s playing digital sound source by streaming would be deemed to constitute ‘use’ of a ‘record for sale’.

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This decision has expanded the concept of a 'record' to digital media from physical media, by reflecting the changes in how music is consumed over time. Furthermore, this is the first applicable decision by the Korean Supreme Court since Article 76-2, Paragraph 1 and Article 83-2, Paragraph 1 of the Korean Copyright Act, which granted the right to claim compensation for performance in accordance with international protection standards, came into effect in March 2009.

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• New Member: Attorney-at-Law Kyun-Tae Kim



Mr. Kyun-Tae Kim is an attorney-at-law having a long experience in litigation. For several years, he has provided clients with legal advice as to intellectual property matters, general

corporate legal matters and international trade affairs, and has been involved in various other areas including civil, family, administrative and criminal lawsuits.

He graduated from Seoul National University majoring in Law in 1998, passed the 41st bar exam in 1999 and completed the mandatory

training program at the Judicial Research & Training Institute (31st class). Thereafter, he served as a military judicial officer, a judge at the Suwon District Court, the Seoul Central District Court, the Jeonju District Court and the Uijeongbu District Court.

• Lee International Selected as an Outstanding Law Firm in 3 Practice Areas by Chambers Asia-Pacific 2016



Lee International has been selected as an outstanding law firm in the fields of Intellectual Property, International Trade and Real Estate in the Chambers Asia-Pacific 2016 legal directory, which assesses the legal market in the Asian-Pacific region, issued by the global legal media organization, Chambers & Partners.

• Lee International Selected as the Top Law Firm for Prosecution and Strategy by WTR

Lee International has been selected as the top law firm in the field of Trademark Prosecution and Strategy by World Trademark

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Review, which selected the 2016 World's Leading Trademark Professionals. Senior partner, Mr. Young-Hwan Na, and trademark

attorney, Ms. Seo-Young Im, of Lee International also received awards as 2016 noteworthy individuals in the fields of Enforcement and Litigation and Prosecution and Strategy, respectively, and were recognized as the World's Leading Trademark Professionals.



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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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