

[DOI: 10.20472/IAC.2016.025.013](https://doi.org/10.20472/IAC.2016.025.013)

JAE-SIK CHOI

Korea Institute of Intellectual Property, South Korea

A COMPARATIVE STUDY ON THE LAW OF REMEDY SYSTEM FOR PATENT INFRINGEMENT IN US AND KOREA

Abstract:

The purpose of this presentation is to review the right of patentee put in a statutory form in Korea patent law compared with that of USA and Japan patent law. The focus is a regular patent protect system, especially in criminal suit regarding patent infringement. The IP ("Intellectual Property") protection should be strengthened as much as possible, rather than impeded, if economies seek to move up the global innovation value chain. And the most effective remedy for damages of patent infringement is the criminal penalties and sanctions for IP rights infringement. That is the reason why the U.S. Chamber International IP Index includes the indicators of "Criminal standards including minimum imprisonment and minimum fines." Therefore, comparative analysis of remedy system of US and Korea for the patent infringement is performed. In US, as you see in the statement of "Except as otherwise provided in this title, whoever without authority makes, uses, offers to sell, or sells any patented invention, within the United States, or imports into the United States any patented invention during the term of the patent therefore infringes the patent", the definition of the patent infringement is only stated comprehensively and there is no criminal punishment for patent infringement. When the damages are not found by a jury, the court shall assess them. In either event the court may increase the damages up to three times the amount found or assessed. On contrast, in the case of Korean patent infringement claims, both civil and criminal remedies are available. Patent Law enacted in 1961 for patent infringement when penalties are explicitly stipulated increasingly so criminal remedies have been strengthened. In the Patent Act of Korea, Any person who infringes a patent right or exclusive license shall be punished by imprisonment not exceeding seven years or by a fine not exceeding 100 million won. Furthermore, If a representative of a juristic person, or an agent, an employee or any other employed person of a juristic person or individual has committed an offense under Articles 225 (1), 228 or 229 with respect to the duties of the juristic person or individual, not only shall the offender be punished, but also the juristic person shall be punished by a fine under any of the individual shall be punished by a fine referred to in the relevant provisions in Korea, which is named as "Joint Penal Provisions."

Keywords:

comparative study, remedy system for patent infringement, criminal penalties

JEL Classification: K11, K14, K00