

Mock Case for JSIP2023

# IP Infringement Lawsuit in Korea

October 17, 2023

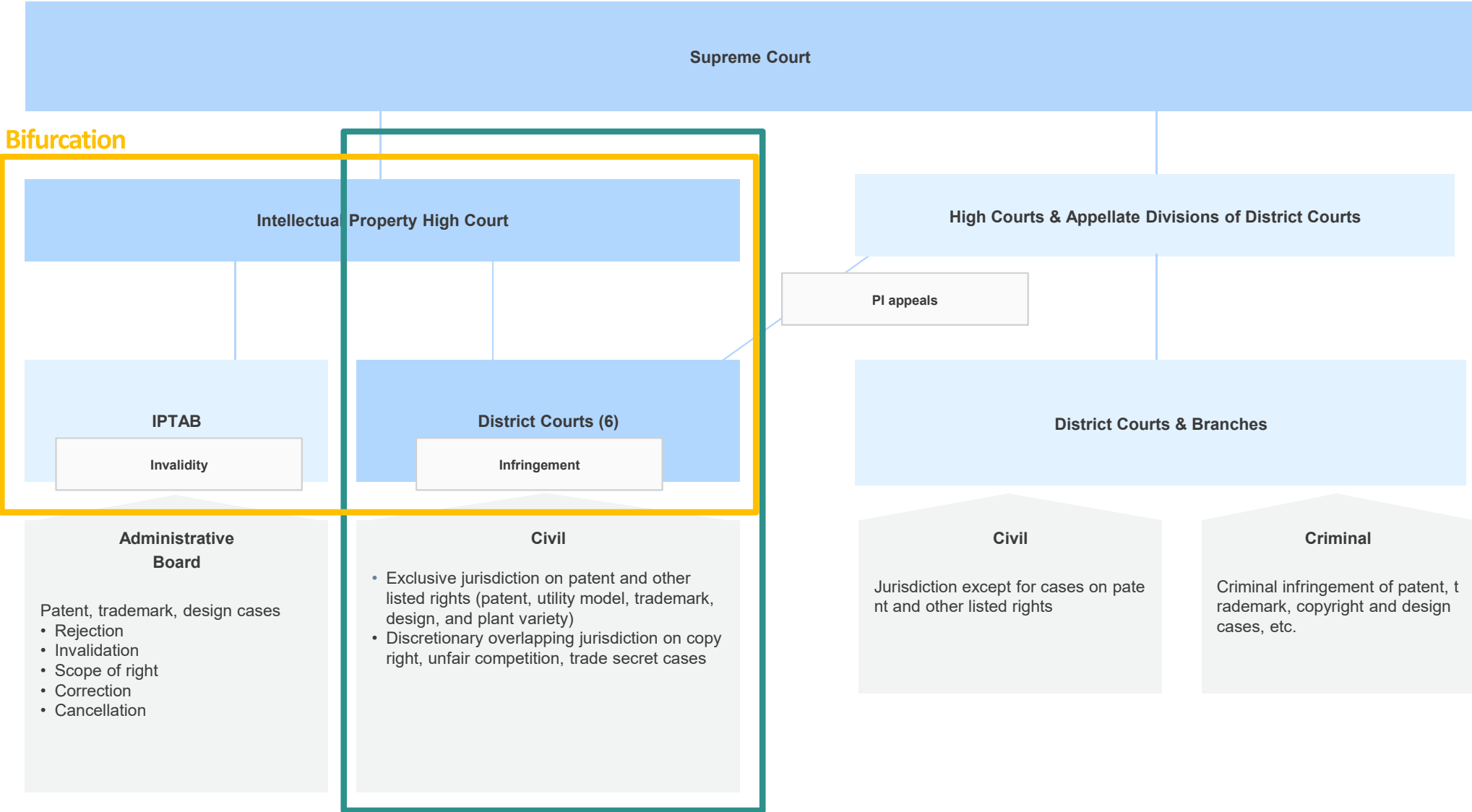
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# **I. IP Infringement Lawsuit**



# IP Jurisdiction at a Glance



**Bifurcation**

**Concentration**

**Administrative Board**

Patent, trademark, design cases

- Rejection
- Invalidation
- Scope of right
- Correction
- Cancellation

**Civil**

- Exclusive jurisdiction on patent and other listed rights (patent, utility model, trademark, design, and plant variety)
- Discretionary overlapping jurisdiction on copy right, unfair competition, trade secret cases

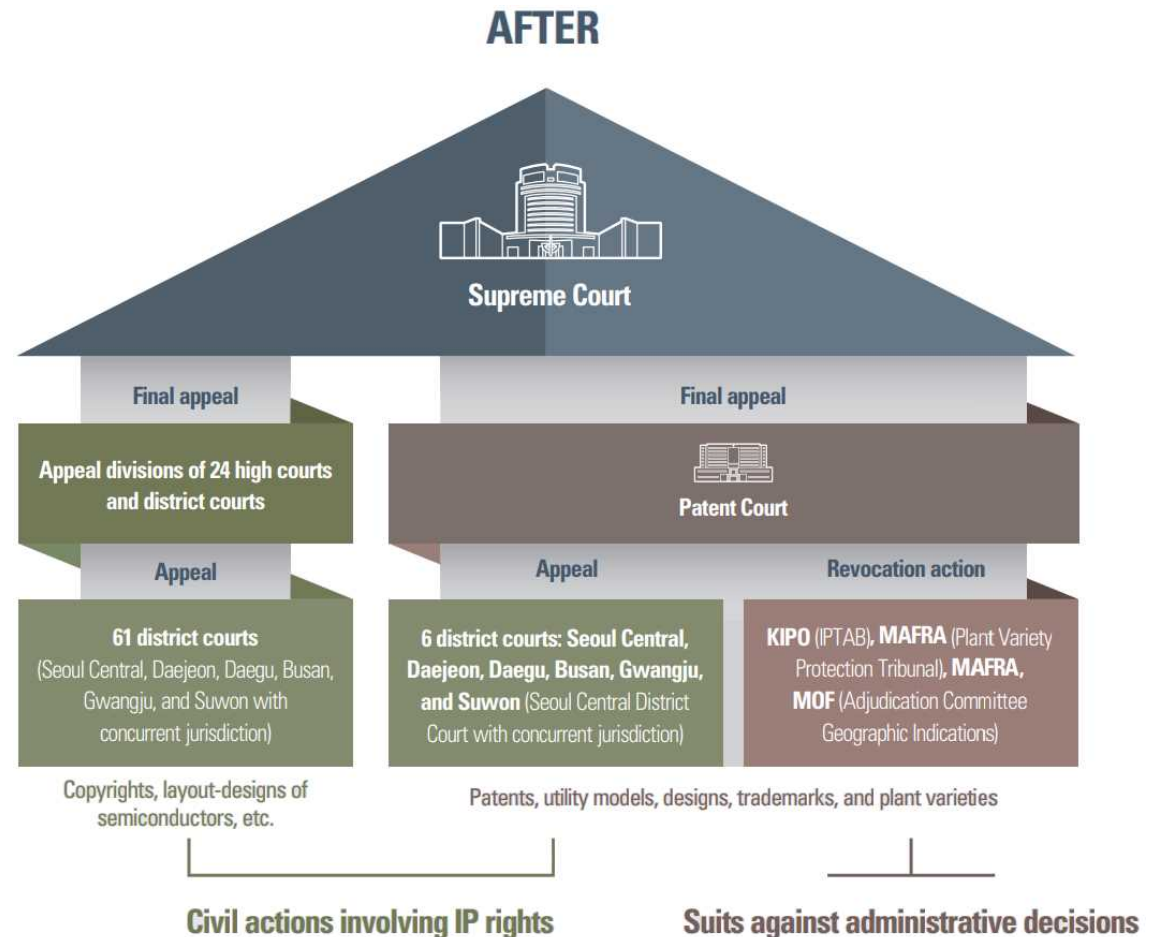
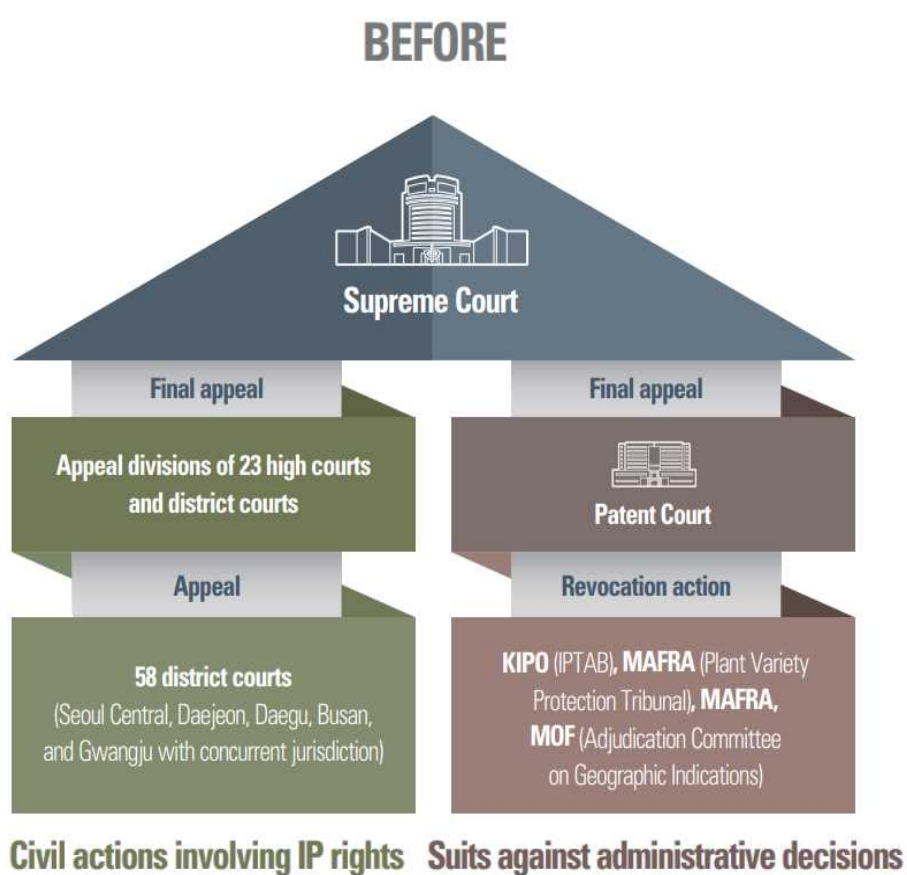
**Civil**

Jurisdiction except for cases on patent and other listed rights

**Criminal**

Criminal infringement of patent, trademark, copyright and design cases, etc.

# Concentrated Jurisdiction (1/2)



- Effective from January 1, 2016, the Civil Procedure Act and the Court Organization Act were amended to provide for exclusive IP jurisdiction for focused and in-depth review of certain IP matters in the first and second instances.

# Concentrated Jurisdiction (1/2)

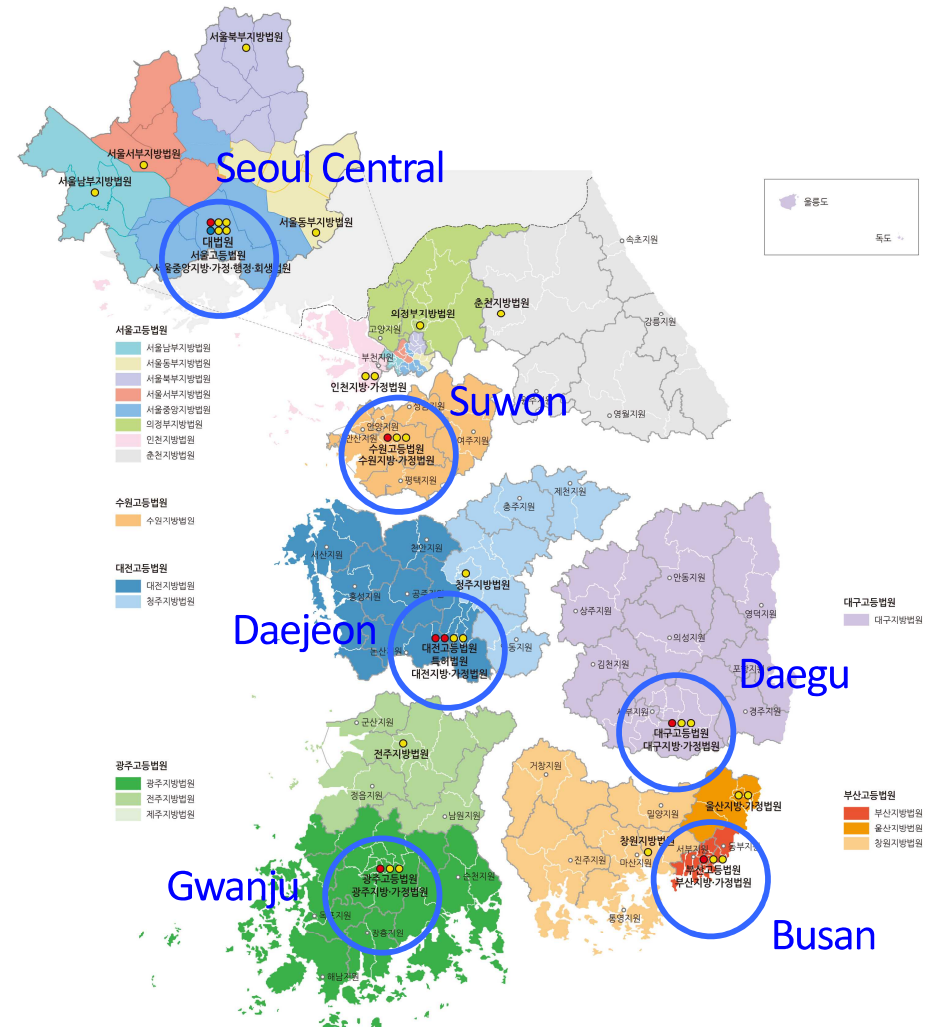
## ■ First-instance cases

- Seoul Central, Suwon, Daejeon, Daegu, Busan and Gwangju District Courts:
  - Exclusive jurisdiction on patent and other listed rights<sup>†</sup>, with selective concurrent jurisdiction to the Seoul Central District Court
  - Discretionary overlapping jurisdiction on copyright, unfair competition, and trade secret cases
  - Installed IP Divisions in charge of the relevant cases for in-depth adjudication

## ■ Appeals

- The IP High Court has exclusive jurisdiction over civil appeals regarding patent and other listed rights.
- Other cases are heard by a competent high court.

## ■ Final appeals: The Supreme Court hears final appeals.



<sup>†</sup> patent, utility model, design, trademark, and plant variety right

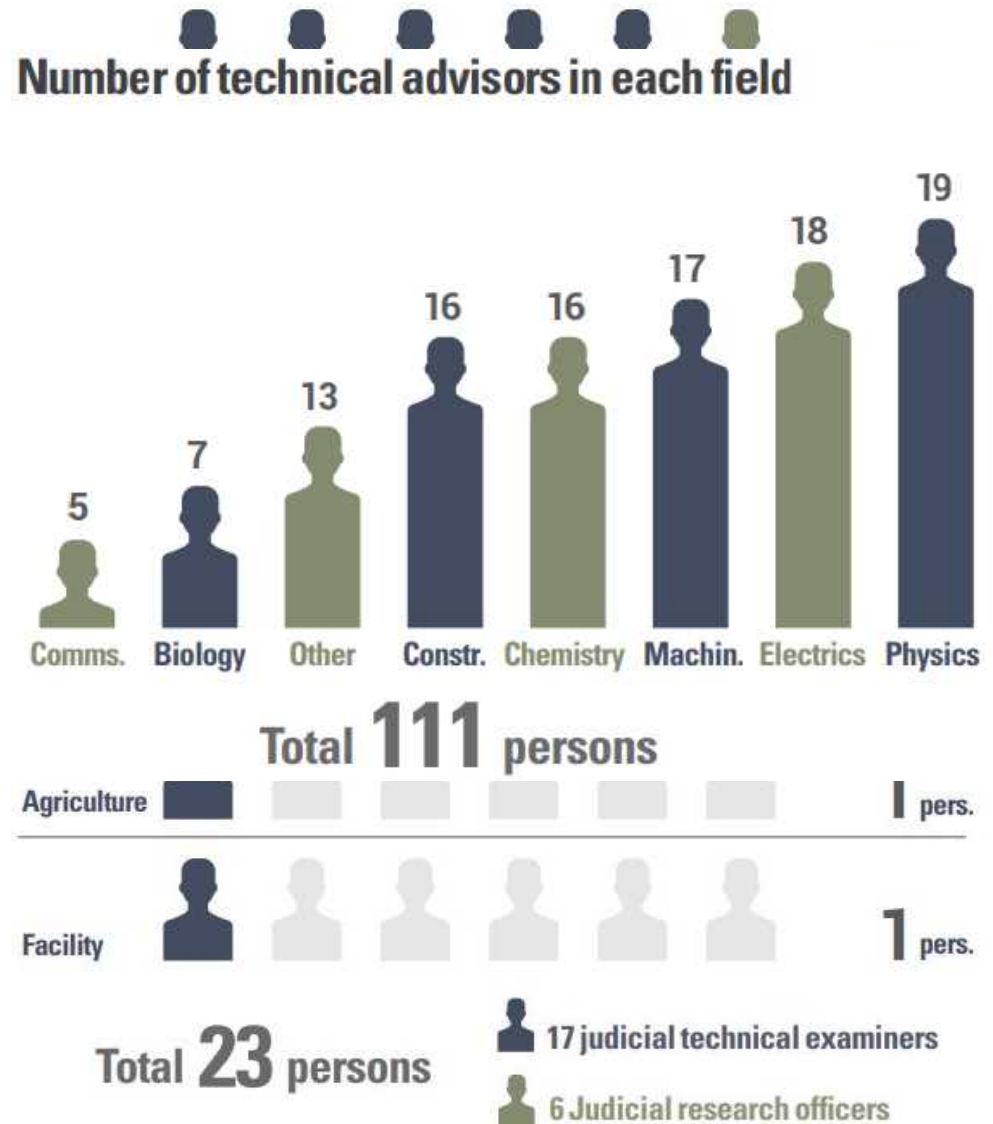
# Bifurcated Jurisdiction

- **Bifurcation between patent infringement and invalidity actions**
  - Infringement: Competent district court → IP High Court
  - Invalidation: Intellectual Property Trial and Appeal Board → IP High Court
- **The court may choose to review the invalidity issue or suspend the infringement proceeding while an invalidation case is ongoing. If the court proceeds with the infringement case at its discretion and holds that the patent is clearly invalid, it may dismiss the infringement claim on the ground of abuse of rights by the patentee.**
  - *Even before an administrative decision ruling the patented invention as invalid becomes final and conclusive, if it is obvious that the patent in question would be invalidated by such administrative trial on invalidation of the patent because the patented invention lacks inventive step, a claim seeking an injunction or damages based on the patent right should be considered unacceptable as an abuse of rights, unless there are special circumstances. If any defense is presented alleging that such claim constitutes an abuse of rights, the court presiding over the patent infringement lawsuit may, as a premise to determine the merits of the claim, examine and determine whether the patented invention has inventive step (Supreme Court en banc Decision 2010Da95390 rendered on January 19, 2012).*
- **If necessary, the IP High Court may examine invalidity/infringement cases in parallel.**

# Efforts for In-depth Review (1/2)

- **Technical examiners and judicial technical researchers**
  - Experts in machinery, communications, electrics and electronics, chemicals, medicine, agriculture and forest, construction, etc. that provide assistance for adjudication of patent cases
  - In principle, they are responsible for patent, utility model, design, and plant variety cases. At the court's request, they may also review cases concerning compensation for in-service invention and trade secret under the Unfair Competition Prevention and Trade Secret Protection Act.

## Current status of judicial technical examiners and judicial research officers (2020)

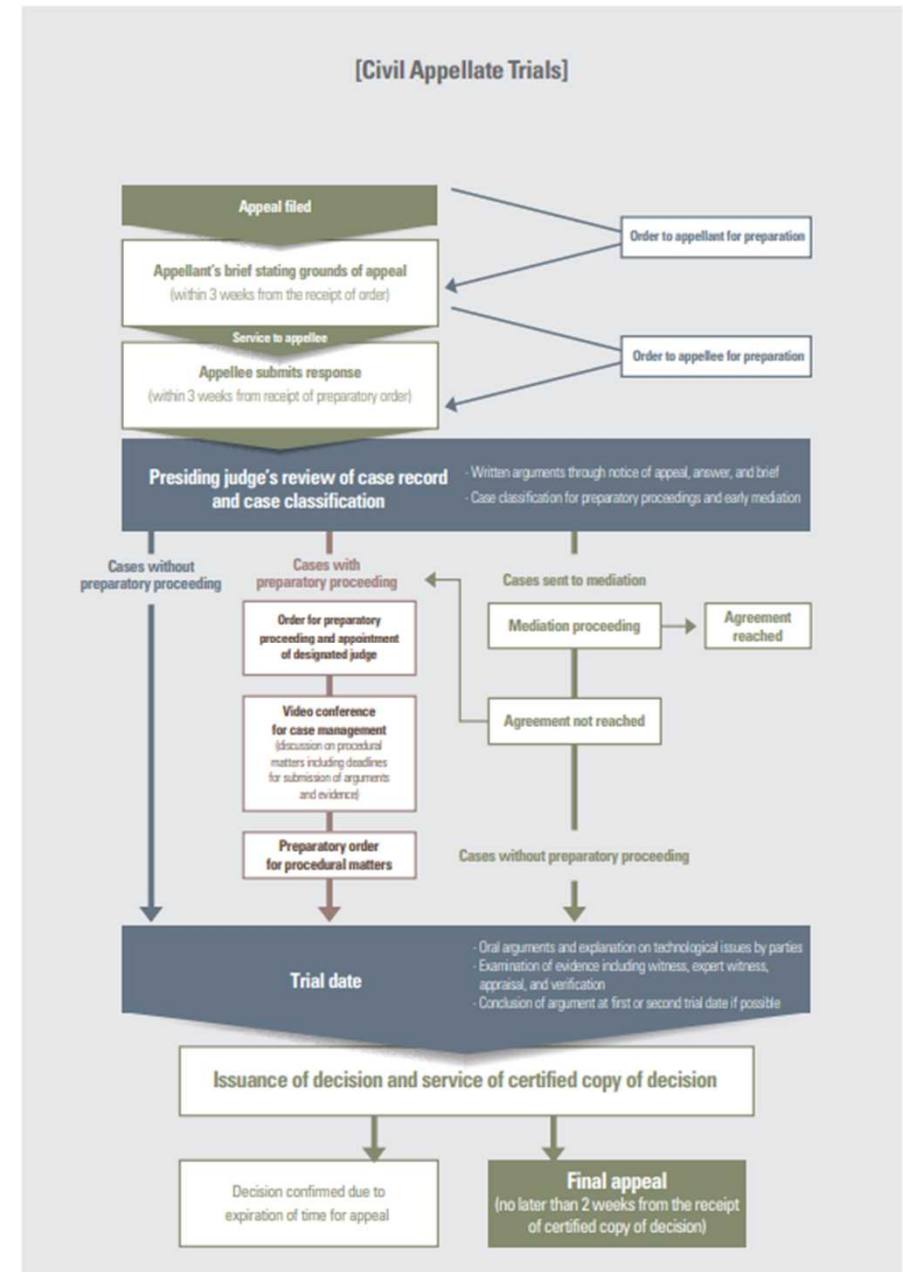




# Efforts for In-depth Review (2/2)

## ■ Issue-by-issue examination in infringement lawsuits

- For cases that require intensive examination of each claim and issue, the court may consult with the parties to present oral arguments issue by issue for in-depth review.
- If infringement and damages amount are at issue, the court would generally examine the existence of infringement first and then move onto deliberation on damages.



# International Division

- **The IP High Court and the Seoul Central District Court established International Divisions where parties can make oral arguments or submit documents in a foreign language in these courts if permission is given to handle the case as an “international case.”**
  - A case may be handled as an international case when a party to the lawsuit is a foreigner or a foreign company, there is a need to examine material evidence in a foreign language, or there are other circumstances that make the case “international” in nature.
- **Consent of the other party is required. The court may also refuse to proceed as an international case if significant delay is expected. The effect of the permission is limited to the level of the court.**
- **Decisions are rendered in Korean, and the decision in Korean is the basis for calculating the appeal period or the effect of the judgment. Parties will be given a translation of the decision in the foreign language.**