

Kluwer Arbitration Blog

IP Arbitration: Making Headway in South Korea

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In recent years, there has been a significant increase in IP cross-border disputes, including in non-traditional sectors. The Korean Commercial Arbitration Board (“KCAB”), which is the sole arbitral institution in Korea that is statutorily authorized to settle disputes under the Korean Arbitration Act, has experienced a gradual increase in IP-related cases. This article aims to provide case studies from the KCAB and other institutions that showcase the current and emerging uses of arbitration for IP disputes involving Korean businesses.

IP-related Disputes in Established Industries: Construction and Manufacturing Disputes

The construction and manufacturing industries have long been considered as established industries familiar with arbitration. As these industries gradually set foot in IP businesses, they are found to create IP cases as a core derivative.

Construction Industry

Arbitration remains a preferred choice for Korean construction companies, with [construction cases accounting for 26.4% of the KCAB’s total international caseload in 2021](#). Notably, disputes in industries previously considered unrelated to IP matters, such as construction, are now also considered IP-related disputes. Disputes involving claims of trademark infringement, trade secret theft, architectural copyright violation, and patent infringement related to equipment all boil down to IP disputes. The pending case of *Westinghouse Electric Company LLC v. Korea Electric Power Corporation and Korea Hydro & Nuclear Power Co., LTD* filed with the KCAB in October 2022 exemplifies the intricate nature of such disputes, as it revolves around determining the rightful owner of a nuclear reactor’s design license.

Manufacturing Industry

Another mainstay of Korea’s economy and status as a global industrial powerhouse is the manufacturing industry, which accounts for [90% of the country’s exports and 30% of its GDP](#). A concrete example of an IP dispute in the manufacturing sector involved LG Display (the subsidiary of a significant Korean conglomerate), which was engaged in a [patent violation dispute](#) against Sharp, a Japanese electronics manufacturer. This high-profile case sheds light on the hidden IP issues within the manufacturing industry. Cases of this nature will further contribute to the growth

of caseloads in the arbitration community as a whole and the Korean arbitration market in particular.

IP-related Disputes in Emerging Industries: Gaming, Life Sciences & Healthcare, Entertainment, and Web 3.0 Disputes

Emerging industries such as gaming, life sciences and healthcare, entertainment, and web 3.0 – previously regarded as non-traditional sectors – are increasingly contributing to arbitration caseloads with [gaming and entertainment cases accounting for 7.4% of the KCAB’s total international caseload in 2020](#). Korea is showing strong performance in these emerging markets rooted in IP-related business. Disputes in these niche sectors encompass a wide range of IP-related matters, including enforceability, infringement, validity, ownership, scope, and duration of IP rights.

Gaming

The gaming industry in Korea is worth approximately USD 7 billion and is forecasted to further expand in leaps and bounds. In 2020, the Korean game developer WeMade, which co-developed the online game “The Legend of Mir 3,” won [a SIAC administered arbitration](#) against a Chinese gaming company for violating a software licensing agreement and failing to pay royalties. WeMade went on to win three consecutive awards in arbitrations administered by the [ICC](#), the [SIAC](#), and the [KCAB](#) over disputes dealing with the ownership rights for the game series. This line of cases demonstrates how arbitration can function as a trusted tool for resolving IP disputes in the gaming industry.

Life Sciences & Healthcare

The life sciences and healthcare sector generates a considerable number of disputes given that companies in the sector vigorously protect their sensitive commercial information. Collaborative IP agreements between parties such as pharmaceutical companies, research institutes, and hospitals give rise to disputes during the research, production, manufacturing, or distribution stages. In this regard, it is worth mentioning that in 2021, [a license dispute](#) between the Korean pharmaceutical company Kolon Life Science Inc. and the Japanese pharmaceutical company Mitsubishi Tanabe Pharma was successfully resolved through arbitration.

Entertainment: Global Rise of K-Culture

Recently, the entertainment industry has begun viewing arbitration with greater interest due to the global rise of Korean cultural content and its overseas expansion, as is demonstrated by the successes of “Squid Game” and “Parasite.” Korean idol groups such as BTS and Blackpink have been signing significant contracts covering portrait rights, agency contracts, performance contracts, copyright contracts, and loyalty contracts. It is also notable that the Korean entertainment company [HYBE took over Ithaca Holdings](#), a prominent US entertainment management company. These high-profile cross-border transactions allow us to anticipate that disputes that may arise in the near future could be forwarded to arbitration.

Arbitration may be particularly suitable for these types of disputes in that it can serve the best interest in resolving issues quickly and privately without generating any negative press. Also,

while parties often have ongoing relationships, within the project from which the dispute arose and beyond, arbitration's confidentiality and efficiency may maximize the chances of these professional relationships to remain intact.

Web 3.0: Blockchain and NFTs

The rise of Non-Fungible Tokens ("NFTs") driven by blockchain technology is poised to have a lasting impact in the area of IP, as it brings forward a novel concept of ownership over IP rights. Web 3.0 enables anonymous avatars from all around the world to interact with virtual content without requiring permission from an authorized owner.

Korea's top entertainment companies such as HYBE, YG, and SM have gradually shown their willingness to join the NFT market and unlock NFT's potential, demonstrating eagerness to resolve the problems of unfair revenue distribution and piracy of digital content. Recently, Naver and Line also teamed up to create a K-pop-based NFT service to broadcast live performances.

Yet, due to the nature of Web 3.0, which is currently lacking a comprehensive legal framework, investors are taking preventive measures to safeguard the ownership of IP rights. The expansion of the Web 3.0 market, combined with its innate feature, will undoubtedly give rise to new and complex legal issues.

In case disputes arise, arbitration may function as an optimal mechanism to resolve regulatory challenges, given that it guarantees flexibility and time-efficiency. Specifically, arbitration provides the flexibility to agree in advance on the applicable law or language of the proceedings, as well as the possibility of enforcement of its outcome under the New York Convention.

Conclusion

As mentioned above, international arbitration is expanding as a popular means of dispute resolution for IP-related disputes, and this is amply demonstrated in the context of Korean arbitration. This is due to two key factors. First, arbitration is particularly suitable for IP disputes, especially for emerging industries, given its consensual nature, confidentiality, time-efficiency, and the enforceability of awards. Second, Korea's environment is a place where IP businesses are easily nurtured, characterized by diverse startups, technological prowess, and a flexible attitude, which further enhances its prominence in this domain.

Nevertheless, the authors of this post concur with proposals that have been made (see, e.g., [here](#)) to solidify Korea's position as a global IP arbitration hub and unleash its full potential. First, KCAB should strive to implement professional IP expertise programs to nurture future arbitrators in line with advances in technology. By way of example, it is proposed that stakeholders within the KCAB and the arbitration community establish a certified arbitrator education and training system similar to the one employed by the Chartered Institute of Arbitrators. Second, further legislative efforts could be taken in Korea, which currently comprises robust IP laws and a specialized intellectual property court with trained judges. Amendments to the Korean Arbitration Act, recognizing the arbitrability of IP rights, would be beneficial in this respect, similar to the examples set by the amendment of the Hong Kong Arbitration Ordinance in 2018 and the Singapore International Arbitration Act in 2019. Such a shift would contribute to fostering the future of the Korean arbitration landscape as one of the major hubs of IP arbitration in the Asia-

Pacific region and beyond.

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