

Korea Intellectual Property Rights & Insurance Understandings

KO EA 301 ECO D OF UNDE STANDING ON INTELLECTUAL P OPE TY IGHTS

1. epresentatives of the Governments of the epublic of Korea and of the United States of America held a series of consultations from November, 1985 to July, 1986 in Seoul and Washington. concerning the opening of the Korean insurance market and protection of foreign intellectual property rights in Korea.
2. As a result of the consultations, understandings were reached on the measures to be taken by the Government of the epublic of Korea on both matters subject to the approval of the respective governments. The contents of the understandings reached between the two sides are attached.
3. Based on these understandings and in anticipation that the measures to be taken by the Government of the epublic of Korea will proceed as scheduled, the U.S. Government agreed to terminate the investigation of the Korean insurance market, as well as the protection of intellectual property rights initiated under Section 301 of the Trade Act of 1974, as amended.
4. As of the date both governments notify each other of their approval, the understandings set forth in the attached annexes will be implemented and the 301 investigation will terminated.

For the Government of the epublic of Korea

For the Government of the United States of America

Annexes: 1. Exchange of letters on insurance 2. Exchange of letters on process patents 3. ecord of understanding on intellectual property 4. Explanatory letter on administrative guidance.

Dear (OKG Official):

I have the honor to acknowledge receipt of your letter of today's date which reads as follows:

Dear Ambassador Yeutter:

This letter sets forth measures that the Government of the epublic of Korea (OKG) will undertake in connection with insurance practices.

A. NON-LIFE INSU ANCE

1. The OKG will license two U.S. firms to underwrite compulsory fire insurance and will assist the two U.S. firms to become admitted to the fire pool in all geographic areas by July 31, 1986.
2. The allocation of premia and risks within the fire pool is not subject to government regulation or control, but is a matter of private agreement. Accordingly, the method of allocating premia and risks within the fire pool will be negotiated and, decided upon by the participating firms, including participating U.S. firms. The OKG will provide support for a fair and reasonable system of allocation of premia within the fire pool. In this regard, it is understood that U.S. firms will participate in the fire pool on the basis of the same allocation formula that applies to Korean firms participating in the pool. This principle would Permit U.S. firms, under the current allocation formula, to share equally, in premia distribution within the pool. Subsequent to the date of this letter, the U.S. firms referred to in paragraphs A. 1. and A. 2. will participate fully in any reformulation of the distribution of premia. It is understood that any change in the current formula would be through agreement among all the insurance firms participating in the pool including the two U.S. firms referred to in paragraphs A. 1. and A. 2. It is understood that the U.S. firms operating in the pool will not share risks and participate in the allocation of premia for the buildings owned by the government or defense contractors. It is further understood that the proportional R

share of the freight pool represented by the bills of lading by the government. Otherwise contractors will not change significantly. Should either government so request, the two governments shall consult the consultative mechanism concerning this issue.

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B. LIFE INSURANCE

The ROKG will cease at least one branch of a U.S. insurance firm to enter the life insurance by the end of 1986.

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C. ADDITIONAL LICENSING

The ROKG will cease all foreign U.S. insurance firms to enter the life and fire insurance Korea. Korea's insurance authorities will be prepared to receive license applications as soon as the section 301 cases are terminated, and will provide all necessary formalities as to the technical requirements for submitting applications. All applications will be reviewed in a timely fashion and decisions rendered on the applications of U.S. firms will be provided to the government.

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D. CONSULTATIVE MECHANISM

The ROKG and the United States government agree to consult through the Korea-U.S. Economic Consultative Trade Subgroup regarding (1) any matters relating to the implementation of the previously agreed reach technical and administrative matters and (2) other issues of mutual interest to either party. Consultations under the Trade Subgroup concerning regulatory and capitalization requirements, reinsurance arrangements will begin. As of August 1986 and proceed according to a schedule to be developed by the two governments that have to reach specific arrangements by August 1986.

It is our understanding that, recognition of these measures, the United States Government has terminated the investigation to insurance practices Korea undertake under section 301 of the Trade Act of 1974, as amended.

Sincerely

ROKG Official

Based on the commitments contained in your letter, and in recognition that implementation of these commitments will proceed as scheduled, the United States Government has terminated the investigation to insurance practices Korea undertake under section 301 of the Trade Act of 1974, as amended.

Sincerely

Clayton Yeutter

XCHANG OF LETTERS ON PROCEEDINGS

Dear ROKG Official:

I have the honor to acknowledge receipt of your letter of today's date which reads as follows:

Dear Ambassador Yeutter, I have the honor to acknowledge receipt of your letter of today's date.

This letter sets forth the measures to be taken by the Government of the Republic of Korea (ROKG) to provide protection for certain pending process patent applications.

Applications for process patents that are pending in Korea on the effective date of the agreement may be amended to include protection claims upon the request of the applicant. The opportunity to submit protection claims will be effective for 90 days following the effective date of the Korea patent law. The specific procedures for filing such amendments will be substantially the same as those contained in the existing law.

Sincerely,

ROKG Official E

I acknowledge our letter as an integral part of the resolution of the section 301 case on intellectual property protection.

Sincerely,

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RECORD UNDERSTANDING

INTELLECTUAL PROPERTY RIGHTS

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A. COPYRIGHTS

1. The Government of the Republic of Korea (R.G.) will draft a comprehensive copyright bill which will be submitted to the National Assembly for the end of September 1986. The R.G. will exert its best efforts to ensure that the legislation is enacted so as to become effective no later than July 1, 1987.
2. The R.G. will accede to the Universal Copyright Convention (UCC) and the Geneva Phonograms Convention and will take the necessary steps to obtain the approval of the National Assembly for accession so as to make those conventions effective with respect to Korea within 90 days of the effectiveness of the new copyright law.
3. The copyright law which is enacted will be comprehensive in coverage, will provide protection to traditional works, i.e., those enumerated in Article I of the UCC, and will conform to the UCC. Copyright protection for computer programs will be recognized in the new copyright law.
4. Copyright protection for computer software will be described in the Computer Program Protection Law, to become effective at the same time as the new copyright law. The provisions of the Computer Programs Protection Law will be consistent with the copyright protection afforded to other literary works. An internationalist approach (the Program Distribution commitment) will be established by law to ensure that a minimization of copyright protection for software conforms to a minimization for other works.
5. Protection for sound recordings for a term of 20 years will be included in the new copyright law as a neighboring right, complementary to the existing Phonograms Law. In addition, the protection of sound recordings against unauthorized reproduction, importation and distribution will strengthen through strict enforcement of Korea's Phonograms Law.
6. The R.G. will study the feasibility of protection to databases as compilations. In the meantime, the new copyright law will provide for protection of copyrightable works whether or not they are incorporated in a database.
7. The R.G. will study the feasibility of extension in protection to semiconductor chips with an intention to provide protection against unauthorized reproduction.
8. The R.G. will study satellite broadcasts and cable TV, with a view toward protecting them under the new copyright law.
9. The R.G. will implement the transition computer licensing provisions in the new copyright law and the implementation regulations to conform with Article V of the UCC. The provisions of the new copyright law concerning the use of copyright works for the purpose of school education shall be implemented in a manner fully consistent with international copyright as reflected in the fair use provisions of the Tunis Model Law on Copyright for Developing Countries. Provisions permitting the reproduction of computer software when the author is unknown or cannot be found will be implemented in a manner consistent with the provisions of Article V of the UCC.
10. The R.G. will strengthen its position against copyright infringement under the new copyright law so that the rights of both domestic and foreign copyright owners can be protected effectively. Such provisions will be consistent with the natural advantage of protection for other offenses under Korean law. O

11. The RO K extend ab ty for copyr ght nfr ngement under the ne copyr ght a to nc ude the same ent t es (se ers and d str butors) as may be found ab e for o at on under ore a's Mot on P ctu re La and Phonograms La
12. The ne copyr ght a pro de a term of fe p us 50 years for rks ose authors are nd dua s, and a term of 50 years from frst pub cat on n the country of or g n for rks authored by jur d ca ent t es, such as corporat ons
13. Through admin strat e gu dance, pr nted mater a s copyr gh t^o n the Un ted States and pub shed dur ng the ten year per od, and computer soft re created and frst pub shed n the f e year per od pr or to the year n ch the ne copyr ght a becomes effect e be pre ented from unauthor zed reproduct on, pub cat on and d str but on from the effect e date of the ne copyr ght a As for sound record ngs, deo record ngs, mot on p ctu res and performances, through str cter enforcement of re e ant a , the RO K deny permiss on for the r mportat on, reproduct on, pub cat on, or d str but on (deny appro a of app cat on n the case of performances) n the absence of a a d cense or contract.

B. PATENT RI TS

1. A comprehens e b to amend the patent a to nc ude patent co erage for chemica and pharmaceut ca products and ne uses of chemica and pharmaceut ca products be ntroduced to the Nat ona Assemb y by the end of September 1986. The RO K exert ts best efforts to secure enactment of the b by the end of 1986. Regu at ons, gu de nes and other admin strat e mechan sms be formu ated so that app cat ons for patents may be accepted by the Off ce of Patents admin strat on no ater than Ju y 1, 1987.
2. In draft ng the proposed eg s at on, the RO K estab sh a patent term of 15 years from the date of pub cat on of the patent app cat on.
3. Measures re ated to Art c es 45 and 59 of the patent a be mod f ed so that non-exc us e censes be granted on y n those s tuat ons n ch the dependent patent represents a substant a techn ca ad ance o er the dominant patent.
4. Measures re ated to Art c es 51 and 52 of the patent a be mod f ed to reduce the d scret onary po r of the Off ce of Patents Admin strat on to grant non-exc us e censes.
5. Patent protect on for ne microorgan sms be effect e at the same t me as for chemica products and pharmaceut ca s.
6. ore a accede to the Budapest Treaty n 1987.
7. Through admin strat e gu dance, certa n products ch are patented n the Un ted States after January 1, 1980, but are marketed ne ther n ore a nor n the Un ted States pr or to the effect e date of the ne patent a be protected by den a of permiss on to manufacture or market such products n ore a thout author zed permiss on of the Un ted States patent o er(s) for ten years from the effect e date of the amended orean patent a The dent f cat on of these products be dec ded upon n the consu tat e mechan sm no ater than the effect e date of the amended orean patent a

C. TRADEMAR S

1. The RO K amended Art c e 24 of the Pres dent a Decree accompany ng the Fore gn Cap ta Inducement Act to remo e the requ rement for techno gy nducement as a cond t on for accept ng app cat ons for trademark censes. By remo ng th s requ rement, the trademark cense be permitted to cont nue beyond the fe of the accompany ng techno gy nducement agreement, and jo nt enture or ra mater a supp y agreement no onger be necessary for trademark cens ng.
2. ore a has comp ete y repea ed export requ rements on goods co ered by trademark censes, and has fted restr ct ons on roya ty terms n censes, under the ne M nstry of F nance gu de nes estab shed n September 1985. No other restr ct ons, such as restr ct ons on durat on or amount of roya t es, are mposed on trademark v censes.

3. Under the new Policy on Patent Administration guidelines established in 1984, import bans or restrictions consist of the cause under Articles 20 and 45 of the Trademark Act, thereby precluding cancellation or non-use or rejection of the trademark registration of goods subject to such restrictions.

4. Korea has adopted and implemented guidelines which prohibit domestic entities from registering trademarks which are identical or resemble those used by foreign entities, regardless of whether the foreign mark is well known in Korea.

D. ENFORCEMENT

The RRG will exercise its best efforts to ensure adequate protection of intellectual property rights through its enforcement of the relevant law, and will make public administrative rules and regulations affecting the protection of intellectual property rights. The RRG also will ensure adequate protection of proprietary data, direct all Korean law enforcement agencies to give priority to enforcement of intellectual property rights, and will enact effective penal laws for intellectual property rights violations.

F. CONSULTATIVE MECHANISM Korea and the United States agree to consultations will be held under the auspices of the Korea-U.S. Economic Consultation Trade Subgroup regarding (1) any matter relating to the implementation of the understanding reached respecting the 301 case on intellectual property rights and (2) other issues related to intellectual property or in areas of mutual interest.

Based on the commitments contained in this record of understanding, and in anticipation of implementation of these commitments, the United States Government has terminated the investigation in the Korea's protection of intellectual property initiated under section 301 of the Trade Act of 1974, as amended.

For the Government of the Republic of Korea

For the Government of the United States of America

Dear RESIDENT:

I have the honor to acknowledge receipt of your letter of today's date which reads as follows:

Dear Ambassador Yeu

With reference to the Record of Understanding, concerning protection of U.S. intellectual property rights in Korea, I am pleased to provide here an explanatory letter on the administrative guidance referred to in paragraphs A.13 and B.7 of said Record of Understanding to be taken by the RRG for protection of certain U.S. copyrights and patents.

The measures to be taken by the RRG through administrative guidance are as follows:

C. COPYRIGHTS

Through its specific application of administrative guidance, based on the provisions of the Law on Registration of Publishers and Printers, the RRG will use every available means to prevent the unauthorized reproduction, publication and distribution of U.S. copyrighted printed materials. Administrative guidance will be applied to all U.S. copyrighted printed materials created or published during the ten-year period prior to the year in which the new copyright law becomes effective. Such protection will be provided as to the effective date of the new copyright law.

The RRG will enforce its administrative guidance by means including denying or revoking registrations for publishers or printers who engage in the unauthorized reproduction, publication or distribution of U.S. copyrighted printed materials.

Through its specific application of administrative guidance, based on relevant law, the RRG will use every available means to prevent the unauthorized reproduction, publication, and distribution of copyrighted computer programs. Relevant law should include the Engineering Service Promotion Law which requires registration by "

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S c r ly,

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