

The Patent Eligibility of Medical Technologies from the Perceptive of Comparative Law

by Professor Young-Sun Cho, Korea University School of Law

Chaired by Associate Professor Tracey Evans Chan, Faculty of Law, NUS

Friday, 9 November 2018, 12pm to 1pm

Federal Conference Room, Federal Building,
NUS (Bukit Timah Campus)

ABSTRACT

With respect to medical technologies, the world's conventional regime is based on a dichotomy between 'medicine / medical devices' which are patent-eligible and 'medical methods', which are not. However, with the progress of biomedical engineering, diagnostic technologies and AI involved e-health systems, there is a rapid crumbling of borders between patent-eligible subjects and ineligible medical methods. This transition brought a worldwide need for more flexibility in patent eligibility of medical methods. This research aims to review the areas in which patent ineligibility of medical method may be problematic, why the patent in such areas is needed, its pros, cons, and possible alternatives to remedy shortcomings. To this end, this research adopts a comparative law approach focusing on the legislative, practical or academic movements and their logic towards patent eligibility of medical methods. This study reviews the relevant standards of Korea, Japan, China and Europe. It also compares these with the approach in the United States, which allows patents for medical methods in principle and treats biotechnology in a special way; as well as with the approach in Australia, where judicial precedent allows patent eligibility of medical method as such. This study also stresses the practical problems caused by the aforesaid dichotomy and the different approaches to resolving them in different jurisdictions, e.g. "Second Medical Use Claim", "Administration or Dosage Claim of Known Medicine", etc., along with legal/practical problems stemming from those approaches.

As a conclusion, this research proposes that medical methods combined with 'technology' shall be generally patent-eligible, and suggests a number of institutional countermeasures to cover possible disadvantages of such a regime change.

ABOUT THE SPEAKER



Cho, Youngsun is a professor in Intellectual Property Law at Korea University School of Law, South Korea. Before joining the faculty in 2008, he served as a judge for 13 years at the Patent Court and District Courts of Korea. He is the only academic professor who had a career as a Patent Court judge in Korea. He lectures on patent law, trademark law, copyright law in Korean and international intellectual property law in English. He also taught IP law for the executive LL.M program students of Univ. of Washington in St. Louis in the summer of 2010. He was vice president of the Korean Patent Law Academy (2009-2010) and chairman of the Patent Act Renovation Committee in KIPO (2015-2016). He participated in a number of international IP conferences as a speaker or moderator: recently, in the 2016's International IP Court Conference (Patent Court)/ the 2016's International IP Conference: Harmonization and Cooperation of Patent Trial and Litigation (Korean Intellectual Property Office). He authored a patent law textbook running into its 6th edition and co-authored several commentary books. He also joined the World's Law Encyclopedia Series (Wolters Kluwer, Netherlands) writing the monograph on Intellectual Property Law in South Korea (2015).

REGISTRATION

There is no registration fee for this seminar, but seats are limited. There is selected light lunch provided upon registration.

Closing Date: Friday, 2 November 2018

For enquiries, please contact Chris Chan at asli@nus.edu.sg

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