



Korea Introduces K-Discovery: Preparing for a New Evidence Regime in IP Litigation

2026.03.20

Key Takeaway:

Korea enacted its first statutory discovery-like mechanism — commonly referred to as “K-Discovery” — in January 2026 through amendments to the Act on the Promotion of Mutually Beneficial Cooperation Between Large Enterprises and Small and Medium Enterprises (the “Mutually Beneficial Cooperation Act” or “Act”). K-Discovery currently applies only to civil damages claims arising from the misappropriation of technical data. However, it is expected to extend to patent and unfair competition disputes sooner or later as several bills to introduce comparable mechanisms to those areas are under review in the National Assembly. The introduction of K-Discovery represents a significant shift in the evidentiary framework governing civil litigation in Korea. Companies operating in Korea — including overseas parent companies — should begin evaluating their potential exposure and operational preparedness in light of these developments.

I. Background and Legislative History

On January 29, 2026, the National Assembly of Korea passed an amendment to the Mutually Beneficial Cooperation Act. The amendments were promulgated on February 19, 2026 and will take effect on February 20, 2028, following a two-year transition period.

The amendments introduce, for the first time in Korean civil procedure, a discovery-like mechanism referred to domestically as “K-Discovery.” K-Discovery applies to civil damages claims arising from the misappropriation of technical data under the Act.

K-Discovery draws on two principal procedural models: expert inspection and evidence preservation procedures commonly used in certain European jurisdictions, such as Germany, as well as depositions used in U.S. discovery practice.

Currently, K-Discovery does not apply to all IP-related litigation. However, as several amendments to the Patent Act and the Unfair Competition Prevention Act to introduce similar mechanisms are now under review in the National Assembly,

K-Discovery is expected to be extended to patent and unfair competition disputes in the near term.

This newsletter summarizes the key features of K-Discovery and highlights potential implications for companies operating in Korea and their foreign headquarters.

II. Key Features of K-Discovery under the Mutually Beneficial Cooperation Act

1. Fact Inquiry Through Court-Appointed Experts (Expert Inspection)

Where a damages claim for technical data misappropriation under the Act has been filed, Korean courts may, upon application by a party, appoint one or more experts to conduct on-site inspections to procure evidence necessary to prove the occurrence of the misappropriation and the amount of damages stemming therefrom.

During such inspections, experts may question relevant personnel, review and copy documents, and conduct technical testing or measurements of equipment. These inspections are conducted under the supervision of the court and within the scope defined in the court's order.

Experts must include at least one qualified attorney, and may also include technical court officers and investigators, specialist advisors, patent attorneys, or other professionals designated under the Korean Supreme Court Rules.

The Act expressly protects attorney-client privileged communications,* which are excluded from the scope of expert inspection. In addition, where an inspection report contains trade secrets of the counterparty or third parties, the court may restrict access to the report to counsels only, using a mechanism similar to a U.S. Attorney's Eyes Only (AEO) designation.

Refusal or obstruction of an inspection may lead the court to draw adverse inferences against the non-complying party. Administrative fines may also be imposed, reaching KRW 100 million for corporations and KRW 50 million for officers or employees.

(* Amendments to the Attorney-at-Law Act introducing attorney-client privilege into Korean law were passed by the National Assembly in January 2026 and are expected to take effect one year after promulgation.)

2. Court-Ordered Evidence Preservation

Where a damages claim for technical data misappropriation under the Act has been filed — or is reasonably anticipated — courts may order the preservation of relevant evidence upon application by a party.

Preservation orders may remain in effect for up to one year and may be extended for an additional year. Before issuing such an order, the court must provide the custodian of the materials with an opportunity to be heard and may require

the applicant to post security.

Where preserved materials exist in electronic form and must be updated for legitimate operational reasons, the custodian may create a copy of the materials in their current state, submit the copy to the court, and then proceed with necessary updates.

Failure to comply with a preservation order may result in adverse inference. Intentional destruction of materials subject to a preservation order constitutes a criminal offense, punishable by up to seven years' imprisonment or a fine of up to KRW 100 million.

3. Party Examination

Where a damages claim for the misappropriation of technical data under the Act has been filed, courts may order mutual examination of relevant individuals upon application by both parties.** The procedure allows questioning of individuals, including a party to the dispute, where it is necessary to verify facts or materials relevant to proving the occurrence of misappropriation or calculating damages.

Examinations are recorded by audio or video, and court clerks prepare summary records of the testimony. Both parties may review and copy the recordings and may submit them, in whole or in part, with their transcripts as evidence.

Matters protected by attorney-client privilege may be excluded from the examination, but if included, the parties may demand the relevant statements be redacted from the recording. Obstruction of the examination process may result in adverse inference.

The examinee is required to take an oath before giving testimony. If a witness (who has taken the oath), other than a party to the case, makes a false statement, they are subject to criminal penalties of imprisonment of up to 3 years or a fine of up to KRW 10 million.

(** The language of the Act is ambiguous as to whether the application for the party examination must be jointly filed, can be separately filed but require both parties to make the request before examination order is granted, or if one application by one of the parties is sufficient.)

III. K-Discovery vs. U.S. Discovery: A Comparative Overview

Although K-Discovery introduces discovery-like procedures into Korean civil litigation, the framework differs in many respects from U.S. federal discovery practice. Most notably, K-Discovery is court-driven rather than party-driven, relies on court-appointed experts rather than counsel-led discovery, and has a relatively narrower scope of document production than under the Federal Rules of Civil Procedure.

The table below summarizes several of the most significant structural distinctions.

Category	K-Discovery	U.S. Discovery
Scope of Application	Currently limited to damages claims under the Mutually Beneficial Cooperation Act involving misappropriation of technical data; extension to patent and unfair competition disputes is pending legislation	Applies to virtually all federal civil actions
Initiation of Procedures	Primarily court-driven. Expert inspections and preservation orders issued upon application by a party; party examination granted upon application by both parties	Primarily party-driven. Discovery initiated and conducted by counsel, with courts intervening primarily to resolve disputes
On-Site Access to Evidence	Court-appointed experts may access a party's premises to inspect facilities, copy documents, question personnel, and conduct technical measurements or testing	Parties may request entry into property and facilities for inspection, photography, sampling, or testing
Testimony and Examination	"Party examination" requires authorization by the court upon application by both parties** (see above)	Depositions may be initiated by request to the other party and generally proceed without court supervision
Document Production	Scope of document production is relatively limited to documents necessary to prove the occurrence of misappropriation or calculate the amount of damages	Scope of document production is generally broader than in Korea (i.e., any documents relevant to the cause of action).
Third-Party Involvement	Preservation orders may extend to third-party custodians. Third parties may be examined regarding relevant facts or materials	Third parties may be compelled by subpoena to produce documents, testify, or permit inspection
Privilege and Confidentiality	Attorney-client privileged materials are excluded from expert inspections and examinations. Courts may restrict access to trade secrets through counsel-only (AEO-analogous) protections	Privileged materials are excluded under applicable privilege rules (privilege log required). Protective orders govern confidentiality in discovery
Pre-Litigation Preservation	No explicit statutory preservation duty before or after litigation, except when preservation order is issued	Duty to preserve evidence arises once litigation is reasonably anticipated (litigation hold doctrine)
Sanctions for Non-Compliance	Adverse inference for obstruction; administrative fines for inspection obstruction; criminal penalties for intentional destruction of preserved materials	Courts may impose sanctions, including cost-shifting, evidence exclusion, adverse inference, or default judgment

IV. Extension to IP Disputes: Legislative Outlook

Prior to the recent amendment to the Act, policymakers had already been considering proposals to introduce discovery-like procedures into Korea's IP statutes. Several bills amending the Patent Act and the Unfair Competition Prevention Act are currently pending before the National Assembly. These bills incorporate mechanisms similar to those adopted under the Mutually Beneficial Cooperation Act, including fact inquiry through court-appointed experts, court-ordered evidence preservation and party examination.***

(*** Unlike the Mutually Beneficial Cooperation Act, the proposed amendments to the Patent Act and the Unfair Competition Prevention Act provide that party examination may be requested by either party.)

The enactment of such legislative amendments is widely viewed as signaling a broader policy shift toward discovery-like procedures in Korean civil and IP litigation. Although the pending proposals do not replicate the full scope of U.S. discovery, the possibility that court-appointed experts may access corporate servers, research facilities, and manufacturing sites represents a significant shift in the evidentiary dynamics of IP disputes in Korea.

V. Key Implications

1. Information Governance and Privilege Strategy

With the introduction of court-appointed expert inspections and evidence preservation orders, company servers, research facilities, and production premises may become active sites of evidence collection during litigation. This means that evidentiary access may move beyond the post-hoc submission of materials toward real-time, on-site verification.

In the context of civil damages claims arising from the misappropriation of technical data, companies should consider proactive information governance measures, including:

- executing non-disclosure agreements when receiving technical data from business partners and maintaining internal processes governing the management, use, and disposal of such materials;
- maintaining clear segregation between technology internally developed and technology received from third parties, with documented development and usage histories;
- defining document retention schedules and implementing log management systems that record deletions and modifications of relevant materials; and
- before modifying or terminating collaborative arrangements, assessing the risk of technical data misappropriation claims and obtaining written confirmation or consent from the counterparty where appropriate.

In addition, in light of the introduction of attorney-client privilege into Korean law, companies should review internal documentation practices — including attorney involvement in document preparation and the classification of such materials — to ensure that privilege protection can be effectively asserted if K-Discovery procedures are invoked.

Meanwhile, if comparable K-Discovery procedures are extended to IP litigation, as current legislative developments suggest, companies may need to move from a reactive, post-dispute posture to a more proactive information governance framework in IP dispute contexts.

2. Increased Exposure to Enhanced Damages

K-Discovery may also increase the likelihood of enhanced damages awards in future IP disputes. Under the Patent Act and the Unfair Competition Prevention Act, Korean courts may award up to five times the amount of damages in cases of willful infringement. Legislative amendments adopted in 2024 and effective from July 2025 extended the same five-fold cap to trademark and design infringement.

If K-Discovery is introduced into IP litigation, there will be a greater chance of finding evidence to prove willful infringement, thereby increasing the risk of enhanced damages awards.

3. Absence of Pre-Litigation Preservation Obligations

The current legislation does not establish a statutory pre-litigation preservation obligation equivalent to the U.S. litigation hold doctrine. However, intentional destruction of materials subject to a court-issued preservation order constitutes a criminal offense.

While the legal consequences of evidence destruction occurring before issuance of a preservation order remain uncertain, companies are advised to consider implementing internal preservation protocols once litigation becomes reasonably foreseeable.

4. Considerations for Foreign Companies

Foreign companies should also note several practical considerations.

Unlike U.S. litigation, K-Discovery does not involve a Rule 26(f) meet-and-confer process, and court-appointed experts may gain access to corporate premises relatively early in the proceedings.

The regime also introduces criminal liability for intentional destruction of materials subject to a preservation order. In this regard, there is currently no clear guidance on whether preservation orders may be directly issued to officers or employees of an overseas parent company. This issue may arise in practice and therefore warrants close monitoring as the regime develops.

In addition, the scope of K-Discovery with respect to cross-border data storage remains legally unsettled. It is not yet clear whether data accessible only through overseas cloud infrastructure controlled by a foreign parent company would fall within the scope of inspection by the court-appointed experts or be subject to a preservation order.

Finally, compliance with Korean court orders might, in some circumstances, conflict with foreign laws, such as export control laws and data protection laws. Companies should therefore establish cross-border coordination mechanisms between Korean and overseas legal teams.

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