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## TIPLO News

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*This news mail distributed in Japanese and English from time to time provides updates on the development of law in Taiwan with focus on intellectual property rights law. For more information about the status of intellectual property right protection and practice in Taiwan, please visit our website [www.tiplo.com.tw](http://www.tiplo.com.tw)*

### *Topics in this issue*

- 01 Taiwan-Poland PPH MOTTAINAI program commences**
- 02 Near TWD1 hundred million damages awarded in a local flash memory product infringement case**
- 03 IP Court sustains Giga Solar Materials' non-infringement upon Heraeus' invention patent**
- 04 Settlement successfully reached between VIA Technologies and ASMedia for trade secrets misappropriation lawsuit**
- 05 World renowned sculptor Ju Ming awarded TWD48 million damages in copyright lawsuit**
- 06 Famous local restaurant Din Tai Fung receives affirmed favorable judgment in second instance proceedings of trademark lawsuit**
- 07 Academia Sinica and National Health Research Institutes jointly present medical achievements and novel technologies**
- 08 Economic crime cases ferreted out in 2016 account for the lowest case number for past ten years**

### **E170731Y1**

#### **01 Taiwan-Poland PPH MOTTAINAI program commences**

Taiwan and Poland have launched the Patent Prosecution Highway (PPH MOTTAINAI) program since August 1, 2017, another new collaborative achievement subsequent to Taiwan IPO's PPH cooperation with the US, Japan, Spain, and Korea.

The PPH cooperation between Taiwan IPO and PPO (Polish Patent Office) will accelerate the examination process of invention patent applications and patent granting in both Taiwan and Poland so as to facilitate applicants' patent layout for business and innovation. Under the Taiwan-Poland PPH MOTTAINAI program, an applicant who files a patent application for the same invention in both countries and obtains positive examination results from either patent office will be eligible for requesting for examination of PPH program with the other patent office to seek accelerated patent examination. For instance, if a Taiwanese national files a patent application for an invention first with Taiwan IPO and later with the PPO and further receives a favorable decision given by the PPO, the applicant will be eligible to request for the PPH examination at Taiwan IPO. To speed up patent examination process is why the PPH program is formulated and forged, and therefore, Taiwan IPO urges applicants of both countries to make more use of such a program. (July 2017)  
/CCS

### **E170719Y1**

#### **02 Near TWD1 hundred million damages awarded in a local flash memory product infringement case**

Toshiba Memory Corporation (TMC) initiated a patent infringement lawsuit with Taiwan IP Court against four Taiwan-based companies. The four companies are Powerchip Technology Corporation ("Powerchip"), Zentel Electronics Corp. ("Zentel"), and Powerflash Technology Corp. ("Powerflash") which were engaged in making, designing, or assisting in making the alleged infringing flash memory products ("products in dispute"), and also C.T.C. Co., Ltd. ("C.T.C.") which sold the products in dispute. On July 5, 2017, the IP Court rendered a judgment to the effect that Zentel and the other three co-defendants should jointly and severally pay to TMC TWD99,822,173 in damages and also the interest thereof at an annual rate of 5% accrued over the period from June 4, 2014 through the day when the aforesaid amount is paid in full and also a half of the litigation expenses incurred to TMC.

Zentel issued a press release indicating that they have been respecting IP rights and placing great importance on research and development and that they have never held the intent to infringe and never infringed upon any other's patent right. As such, they already filed an appeal against the aforesaid IP Court judgment with other co-defendants on July 31, 2017. (July 2017)

/CCS

### **E170710Y1**

#### **03 IP Court sustains Giga Solar Materials' non-infringement upon Heraeus' invention patent**

In June 2015, Heraeus Precious Metals North America Conshohocken LLC ("Heraeus") initiated an action with Taiwan IP Court against Giga Solar Materials Corp. ("Giga") over the alleged patent infringement that Giga infringed upon Heraeus' invention patent under Reg. No. I432539, titled "Electrically Conductive Paste for Forming the Electrodes of Solar Cells" by the front-side silver paste product for solar cells under the item no. 590, 590A, 600, 610, and 620 made and sold by Giga. In July 2015, Giga initiated a counterclaim that Heraeus violated the Taiwan Fair Trade Act and the "FTC Disposal Directions (Guidelines) on the Reviewing of Cases Involving Enterprises Issuing Warning Letters for Infringement on Copyright, Trademark, and Patent Rights". On July 7, 2017, the IP Court rendered a judgment on this case, finding that Giga does not infringe upon Heraeus' said invention patent

and that the actions initiated by and the motions for provisional execution filed by both sides are dismissed. (July 2017)

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**E170801Y3**

**E170731Y3**

**E170801Y4**

**E170731Y4**

**04 Settlement successfully reached between VIA Technologies and ASMedia for trade secrets misappropriation lawsuit**

VIA Technologies, Inc. ("VIA") made an announcement that on July 29, 2017 they reached a settlement in the lawsuit filed against ASUSTeK Computer, Inc. (hereinafter "Asus") and Asus' affiliate company, ASMedia Technology Inc. ("ASMedia") and also subsidiary, ASUS Computer International both in California, USA and in Taiwan, at the agreed upon settlement amount of USD15,000,000.

In 2013, VIA filed a lawsuit against ASMedia for trade secrets theft and copyright infringement, for which Taipei District Prosecutors Office decided to indict ASMedia and four employees thereof, including R&D vice president, CHANG Chi after conclusion of the prosecutorial investigation into the alleged misappropriation of VIA's trade secrets and violation of Copyright Act in November 2013. Further in December 2013, VIA initiated a civil action with Taipei District Court against ASMedia and Asus to claim damages in an amount of TWD4.137 billion for recovery of loss. However, ASMedia's chairman and president were not indicted. (July 2017)

/CCS

**E170726Y3**

**05 World renowned sculptor Ju Ming awarded TWD48 million damages in copyright lawsuit**

The locally famous Syuan Kong Temple, situated in Tainan, Taiwan, had been displaying the internationally well-known sculptor, Ju Ming's bronze sculptures of the *Taichi* series and the *Nativist* series and had also sold three pieces of these sculptures in a total amount of TWD57 million. However, Ju Ming learned of this matter and found in December 2013 that these sculptures on view at Syuan Kong Temple were all counterfeit and thus filed a copyright infringement lawsuit with the IP Court to seek damages against the said Temple. The IP Court examined this case and decided that the said Temple, the abbot at the said Temple, Huang and other defendants should jointly and severally pay to Ju Ming damages in an amount of TWD48 million and shall not continue displaying and selling these counterfeit sculptures and also that they should run a notice of the IP Court judgment in the front page of local newspapers for one day.

In late 2013, Ju Ming was informed that many bronze sculpture works of his were displayed at the said Temple, for which Ju Ming had relevant evidence gathered and confirmed that the bronze sculpture works displayed by the said Temple were all fake ones. Ju Ming, therefore, filed a lawsuit against the said Temple. Subsequently, Ju Ming's attorney joined in the police on-site investigation and found that the forged Ju Ming's signatures on five pieces of these fake sculptures had already been removed. Besides, the investigation revealed that the said Temple had sold three fake bronze sculptures, including two pieces titled "Single Whip" and "Preparation" during the period of February 2012 involving TWD57 million in total. Ju Ming commented on

this matter that Syuan Kong Temple, as a well-known religious body should have performed its enlightening and cultivating obligations but, on the contrary, distributed counterfeit sculptures to gain huge profits, which will affect many collectors' intent for collection.

The said Temple argued that they have been holding tens of thousand pieces of articles given by disciples as gifts and they do not have the ability nor obligation to authenticate them, and also that the artistic works donated by disciples were simply for display at the temple. According to the said Temple, their temple volunteer received these sculptures along with letter of authenticity, and therefore, the said Temple had no clue to know that these sculptures were counterfeit ones and that they do not hold the intent to distribute or sell them.

According to the IP Court's holding, the buyer confirmed purchase of three counterfeit sculptures from the said Temple and it is an affirmed fact that the said Temple displayed fake sculptures. In addition, the said Temple failed to produce any document or material of any kind to prove that these sculptures were indeed all given by disciples as gifts nor did they make any administrative books. Moreover, it is unreasonable for the said Temple to remove the signatures on these sculptures when involved in a lawsuit if it is true that these sculptures are genuine pieces.

Thus, the judge held that it is difficult to prove and calculate the said Temple's profits on the ground that no evidence is available to substantiate the buyer's full payment for the three sculptures sold by the said Temple. In spite of being a famous religious organization, the Syuan Kong Temple unexpectedly sells counterfeit sculptures whose origin was unknown, for which the court determined that the said Temple should pay TWD15 million dollars in damages. Also according to the IP Court judgment, the Syuan Kong Temple should pay TWD28 million for displaying 13 pieces of fake bronze sculptures and also TWD5 million for moral right infringement by using forged signature. That is to say, Syuan Kong Temple should pay a total of TWD48 million in damages to Ju Ming. This case is appealable. (July 2017)

/CCS

**E170714Y3**

### **06 Famous local restaurant Din Tai Fung receives affirmed favorable judgment in second instance proceedings of trademark lawsuit**

Polylight Design Co., Ltd. ("Polylight") sued Din Tai Fung Restaurant Inc. ("Din Tai Fung") over the latter's violation of Taiwan Copyright Act by infringing upon Polylight's rights in and to the 2-dimensional marks of the cartoon figure mascots, "Paozai" (包子), "Lungzai" (籠仔), and a frog designed by Polylight. The Taiwan Taipei District Court found Din Tai Fung and its responsible person not guilty in the first instance proceedings, which was later affirmed by the IP Court in the second instance proceedings. The case is appealable.

Polylight said that it had been designing and making the Din Tai Fung-specific Paozai and Lungzai products under a product development and reciprocal cooperation contract signed with Din Tai Fung since November 25, 2008. In 2009, however, upon Din Tai Fung's request, Polylight agreed to waive its rights in registering the 3-dimensional marks of these cartoon figure mascots, but not the 2-dimensional marks of the same. Further in August 2015, Din Tai Fung informed Polylight of termination of cooperation between them without Polylight's consent and had these mascot products manufactured by other suppliers, and therefore, Din Tai Fung plagiarized, reproduced, and adapted Polylight's device marks.

On the other hand, Din Tai Fung argued that they replaced Polylight with other suppliers due to Polylight's serious short supply and that was why Din Tai Fung terminated their cooperation in August 2015. According to Din Tai Fung, Polylight had already known about Ding Tai Fung's development, manufacture, and sale of the mascot related products without commenting on it during their cooperation, but Polylight filed a complaint in October 2015.

The Taiwan IP Court reviewed the email correspondence between both sides and decided in favor of Din Tai Fung and its responsible person on the following reasoning: Polylight indeed had caused short supply and Din Tai Fung had applied for registering the 2D and 3D marks for the "Paozai" and "Lungzai" characters with Taiwan IPO in September 2009 without receiving opposition from Polylight against Din Tai Fung's application for the 2D marks. In addition, the mascot products sold under Din Tai Fung's and Polylight's cooperation accounted for negligible percentage of Din Tai Fung's sales. Therefore, the IP Court negated the copyright infringement motive Polylight alleged against Din Tai Fung. (July 2017)

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## **E170714Y5**

### **07 Academia Sinica and National Health Research Institutes jointly present medical achievements and novel technologies**

Academia Sinica and National Health Research Institutes jointly held a presentation on July 13, 2017 to present seventeen new technologies in three major fields of "small molecule drugs", "personalized medicine", and "protein drugs".

Academia Sinica has more than a decade experiences in technology transfer and development. Among the new technologies introduced at this presentation, nine come from the R&D performances of Academia Sinica, all of which are top ones including the new therapies for cancer, Alzheimer's disease, other neurodegenerative diseases and the developments of antimicrobial peptides.

In the domain of small molecule drugs, the "selective sialyltransferase inhibitor", jointly developed by the team led by LI, Wen-Shan of the Institute of Chemistry, Academia Sinica and the National Institute of Cancer Research of National Health Research Institutes, is able to effectively inhibit tumor growth and cancer metastasis and also provide a therapy alternative to the cancer patients with "sialyated N-linked glycoproteins" proliferation.

In the aspect of personalized medicine, the "OptoP: a pioneering high content cell image-registered protein labeling system defining precise protein identification", innovated by the team headed by LIAO, Jung-Chi of the Institute of Atomic and Molecular Sciences, Academia Sinica, stands for the first system capable of obtaining target protein through cell imaging as location blueprint and the high flux and high precision light-directed labeling so as to conduct protein composition analysis and to effectively save experiment time.

As to protein drugs, LU, Joyce Jean's team from the Genomics Research Center of the Academia Sinica pioneers in creating the method for making mesenchymal stem cells by human differentiated somatic cells, which method takes only six days to fulfill a 70% turnover rate with medication, ultimately solving the clinical difficulty in obtaining mesenchymal stem cells and in their limited number and further providing an efficient and safer cell therapy method to be applied to tissue engineering and

regenerative medicine.

The National Health Research Institutes is not outshined by the Academia Sinica by their outstanding performance of the novel drug DBPR211. DBPR211 potentially serves as an antagonist for type 2 diabetes, obesity, and non-alcoholic fatty liver disease, a new therapeutic alternative to patients with diabetes and also a new combination for curing diabetic complications. In addition, DBPR116 has strong anti-pain effects brought by opiate receptor through special mechanism but without the side effects of morphine based drugs and therefore is comparatively safer. (July 2017)

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## E170713Y6

### 08 Economic crime cases ferreted out in 2016 account for the lowest case number for past ten years

According to the announcement of the Directorate General of Budget, Accounting, and Statistics, the police had cracked down on a total of 7,203 economic crime cases throughout 2016, which represents 1,225 cases fewer than those committed in 2015, a drop by 14.5% in a year and also the lowest number for the past ten years. Among the 7,203 cases, IPR infringement cases accounted for 4,946 cases (around 68.7%) and financial regulation violations, 1,286 cases (around 17.9%). There was a significant decrease by 40% in a year in the number of cases involving financial regulation violation, the statistics of the National Police Agency under the Ministry of the Interior showed.

The economic crime cases of 2016 involved a total value of TWD24.94 billion, down TWD4.67 billion, a 15.8% fall compared with that in 2015. The value involved in the IPR infringement cases is TWD14.48 billion (around 58.1%), which represents the most value involved in economic crime cases and a drastic drop of TWD5.03 billion (around 25.8%) in a year, while the cases of financial regulation violation involved the value of TWD10.1 billion (around 40.4%), up by TWD0.77 billion compared with that in 2015.

In addition, among the IPR infringement cases ferreted out in 2016, trademark infringement cases accounted for 2,642 cases (53.4%), down by 5.8% from 2015, and 2,200 out of 2,642 cases were those involving foreign elements (83.3%). Also, the cases of copyright infringement numbered 2,304 (46.6%), which represents an increase by 4.3% compared with that in 2015, and most of them are local cases without involving foreign elements (81.8%). (July 2017)

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