

TAIPEI MAIN OFFICE

7th Floor We Sheng Building,
No.125, Nanking East Rd. Sec.2,
P.O.BOX 39-243, Taipei 10409, Taiwan
Tel: 886-2-2507-2811 • Fax: 886-2-2508-3711
E-mail: tiplo@tiplo.com.tw
Website: www.tiplo.com.tw

TOKYO LIAISON OFFICE

No.506 Lions Mansion ,
13-11, Shinjuku 2-Chome,
Shinjuku-ku, Tokyo 160-0022, Japan
Tel: 81-3-3354-3033 • Fax: 81-3-3354-3010

© 2018 TIPLO, All Rights Reserved. TIPLO Attorneys-at-Law

TIPLO News
NOVEMBER 2018 (E228)

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

Topics in this issue

- 01 Winner list of 2018 National Invention and Creation Award comes out**
- 02 Kinmen kaoliang liquor maker receives detention for trademark infringement**
- 03 Local hotel owner pays TWD5 million in damages for copying hotel room design**
- 04 Foreign investments successfully sought at 2018 Taiwan Business Alliance Conference**

E181025Y1

01 Winner list of 2018 National Invention and Creation Award comes out

In the 2018 National Invention and Creation Award held by the Taiwan IPO, 41 out of 465 qualified entries were selected as outstanding patents. The 41 patents won six golden prizes and twenty silver prizes in the invention category and also five golden prizes and ten silver prizes in the creation category, respectively. Among this year's prize winners, enterprises accounted for the largest ratio at 46.4%, followed by individual winners at 19.5%, juridical persons at 19.5%, schools at 12.2%, and governmental agencies at 2.4%.

The prize winning patents involves technologies of photoelectric liquid crystal, information and communication, biopharmaceutics, medical engineering materials, textile, smart machinery, circular ecology, and so forth. These patents carry practicability and immense market value, and those originating from research and academic institutions have mostly been passed over to manufacturers under technology transfer for production.

In the invention category, many patents fully bring into play the superiority of Taiwan's information and communication industry, which patents include OtO Photonics Inc.'s patent titled "Spectrometer, Manufacturing Method for Waveguide of Spectrometer and Structure Thereof" and Health Ever Bio-Tech Co., Ltd's patent titled "Pharmaceutical Compositions of Carotenoid". Another prize-winning patent, "Dual-Core Self-Centering Brace", is an invention designed specifically in response to Taiwan's geographic location on the seismic zone. On the other hand, in the creation category, the prize winning patents are "electric heating textile", "linear guideway with easy-removable scraper", "grafting auxiliary machinery", "mobile power supply", "portable vacuum device", among which the "grafting auxiliary machinery" developed and improved by the Taichung District Agricultural Research and Extension Station Council of Agriculture Executive Yuan is characterized by its function of solving the problem of grafting and seedling in farming. The creation, "portable vacuum device" created by LI, Wen-Qin has the function of keeping food's freshness and nutrition.

In addition, the "2019 Ministry of Economy Industrial Innovation Joint Award Ceremony" as well as the "Award Ceremony and Promotional Display of Award-Winning Works of the 2018 National Innovation and Creation Award" are to be held successively from April 2019, and these award winning patents will be displayed at the excellent invention area of the 2019 Taiwan Innotech Expo. It is expected that public display and press coverage of these events will help the winning patents gain more presence and further create business opportunities for the new inventions so as to fulfill the goal of patent commercialization. (October 2018)

/CCS

E181028Y2

02 Kinmen kaoliang liquor maker receives detention for trademark infringement

Kinmen Kaoliang Liquor Inc. filed a lawsuit against Chinmen Dashuen Co., Ltd. ("Chinmen Dashuen") on the ground that Chinmen Dashuen infringed upon Kinmen Kaoliang Liquor Inc.'s trademark right by using on the kaoliang liquor product Chinmen Dashuen produced for sale under the Chinese designation "八二三紀念高粱酒" (hereinafter the "accused liquor product") from November 2012 a mark and word label that are similar or identical to that Kinmen Kaoliang Liquor Inc. uses on its kaoliang liquor product, "823金門高粱酒" (hereinafter "Kinmen Kaoliang Liquor's

liquor product”). This trademark dispute went through the second instance proceedings at the Taiwan IP Court and tentatively ended by the Taiwan IP Court’s judgment that the mark used on the accused liquor product is so similar to that used on Kinmen Kaoliang Liquor’s liquor product that it would cause confusion to consumers and thus Chinmen Dashuen violates the Taiwan Trademark Act and Chinmen Dashuen’s responsible person should be sentenced to 50 days of detention.

The Taiwan IP Court reversed the first-instance judgment Fuchien Kinmen District Court rendered on the same case, which found Chinmen Dashuen not guilty and holding no criminal intent for trademark infringement on the ground that the accused liquor product clearly indicates its source from Chinmen Dashuen and Chinese term “金門高粱酒” (meaning “Kinmen kaoliang liquor” in English) derives from Kinmen, not from Kinmen Kaoliang Liquor Inc..

The prosecutor appealed the first-instance judgment to the Taiwan IP Court. By reference of the Taiwan IPO’s interpretation, the Taiwan IP Court ruled that the product designation of the accused kaoliang liquor, “八二三紀念高粱酒” is similar to Kinmen Kaoliang Liquor Inc.’s Chinese marks, “823 金門高粱酒” and “金門”. Moreover, the enlarged two Chinese characters, “金門” on the bottle of the accused liquor product is indeed likely to cause consumers to confuse the accused liquor product with Kinmen Kaoliang Liquor Inc.’s liquor product and further to have a mistaken thought that the two products come from the same source or affiliated companies.

In addition, as a competitor to Kinmen Kaoliang Liquor Inc. in the same trade, Chinmen Dashuen apparently shows no bona fide intent by using the bottle label, packaging box, paper bag, and carton that are all identical or highly similar to those of Kinmen Kaoliang Liquor Inc.’s liquor product, for which the IP Court reversed the first-instance judgment to find Chinmen Dashuen guilty and decide that Chinmen Dashuen’s responsible person should be sentenced to 50 days of detention which is commutable to a fine payment of TWD50,000, and the seized 591 bottles of liquor and 416 packaging cartons shall be all confiscated. This case is still appealable. (October 2018)

Attorneys-at-Law /CCS

E181005Y3

E181005Y4

03 Local hotel owner pays TWD5 million in damages for copying hotel room design

Two local hotels were involved in room design imitation dispute to form the Fair Trade Act violation case, for which the Taiwan IP Court decided that 桂田璽悅酒店股份有限公司 (hereinafter referred to as the “defendant hotel”) violates the Taiwan Fair Trade Act by imitating the room design of Palais de Chine Hotel (Chinese: 君品酒店) under LDC Hotels & Resorts Group (Chinese: 雲朗觀光股份有限公司) and thus should pay TWD5 million as damages.

According to LDC Hotels & Resorts Group (hereinafter referred to as the “plaintiff hotel”), the defendant hotel’s responsible person had stayed at the deluxe room of Palais de Chine Hotel twice during May 2014. During the stay, the responsible person also requested to look around in the superior rooms along with many retinues taking pictures of and measuring the design, furniture, decoration and arrangement of the room. At the end of 2014, plaintiff hotel found that Sheraton Taitung Hotel (under

the defendant hotel) had five types of rooms whose design, including materials of the wall and location of furniture, was identical to that of the deluxe room and superior room of Palais de Chine Hotel, for which the plaintiff hotel filed a lawsuit against the defendant hotel for imitation.

Defendant hotel denied the act of imitation alleged against it by the plaintiff hotel and pointed out that their room design is to satisfy the tourist's needs as the main purpose, rather than to present an artistic work, and thus, room design does not constitute a work as defined by the Copyright Act. Also, the defendant hotel asserted that Sheraton Taitung Hotel has been operated under the brand name of "Sheraton" and attracts people with its local customs and seascape, which is totally irrelevant to the plaintiff hotel and Palais de Chine Hotel, and therefore, there is no occurrence of copyright infringement or Fair Trade Act violation as alleged by the plaintiff hotel.

The Taiwan IP Court ruled that the defendant hotel violates the Taiwan Fair Trade Act and should pay TWD5 million as damages to the plaintiff hotel based on the following reasoning. The defendant hotel's responsible person, who has been running hotel business for more than ten years, should have realized that hotel room design is a main factor of room price and thus room design always costs hotel service providers a lot to attract consumers. The defendant hotel's responsible person, however, took advantage of his stay at Palais de Chine Hotel to take pictures of the room design thereof so as to imitate the room design. Without creating his own design, the defendant hotel's responsible person copied Palais de Chine Hotel's room design to the room of Sheraton Taitung Hotel, which causes consumers to mistakenly believe at their first sight that the defendant hotel and Palais de Chine Hotel are affiliated companies. Based on the foregoing, the IP Court sustained the defendant hotel's offense of imitation as examined and affirmed by the Taiwan Development & Research Academia of Economic & Technology.

Moreover, according to the IP Court judgment, the defendant hotel should remove the room decoration and furniture in the room, be enjoined from leasing the room to consumers before removal and from using the pictures that contain the infringed Palais de Chine Hotel room, remove the pictures that contain the infringed Palais de Chine Hotel room from the defendant hotel's website and on Agoda.com and ezfly, and also should publish the gist of the IP Court judgment in Apply Daily. (October 2018)

/CCS

E181008Y8

E181008Z8

04 Foreign investments successfully sought at 2018 Taiwan Business Alliance Conference

The Ministry of Economic Affairs held the 2018 Taiwan Business Alliance Conference on October 8, 2018 and signed letters of intent with twenty-three foreign companies. Among the twenty-three foreign companies, eight are Japan-based ones to show their greatest interest in investing Taiwan, representing 35% of the countries signing LOI with Taiwan. The US came in at second with four companies (17%) signing the LOI, while Singapore and Switzerland each ranked 3rd (9%). Other countries which signed the LOI included the manufacturers of New Southbound Countries, such as, Thailand.

In regard to the foreign investments, the U.K.-based ARM Holdings plc will continue

its investment in Taiwan's semiconductor sector, particularly in applications in the Internet of Things and artificial intelligence, while Singaporean UnaBiz will be engaged in developing the technology and device of the Internet of Things. In addition, Japanese enterprise, LINE Corp. will inject more funds into Taiwan, and BVI companies are going to establish R&D center in Taiwan to carry out the system structure, design, and development of AI services.

Taiwan has been acting as the leader in the sectors of semiconductors and flat panel displays and is good at process innovation and commercialization. Supported and strengthened by its complete industrial clusters, Taiwan also attracts investments from materials, equipment, and logistics companies with manufacturing expertise. For example, the U.S.-based Entegris Inc. will expand technology center in Taiwan and will also increase manufacture in Taiwan to meet the growing demand from the industrial applications of microelectronics and high quality graphite products. Also, Japan-based Senju Electronic will set up semiconductors material factory in Taiwan.

Taiwan market easily takes in matters with respect to creation and international affairs and thus is suitable for all kinds of services, including food and beverage industry. That is why commercial places or buildings combining shopping, leisure, and food and beverage would take off in Taiwan, which brings Mitsui Fudosan Co., Ltd. to not only start outlet business but also is planning to open a restaurant in Taiwan. Likewise, U.S.-based Expedia Group is planning to centralize all overseas e-commerce-related transactions in its Taiwan subsidiary for management, and Daiwa House Industry is also to build commercial settings in Taiwan. (October 2018)

/CCS



台灣國際專利法律事務所

TAIPEI MAIN OFFICE
7th Floor We Sheng Building,
No.125, Nanking East Rd. Sec.2,
P.O.BOX 39-243, Taipei 10409, Taiwan
Tel: 886-2-2507-2811 • Fax: 886-2-2508-3711
E-mail: tiplo@tiplo.com.tw
Website: www.tiplo.com.tw

TOKYO LIAISON OFFICE
No.506 Lions Mansion ,
13-11, Shinjuku 2-Chome,
Shinjuku-ku, Tokyo 160-0022, Japan
Tel: 81-3-3354-3033 • Fax: 81-3-3354-3010

© 2018 TIPL, All Rights Reserved. TIPL Attorneys-at-Law