

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

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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

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E190130Y1

01 Revised draft of Enforcement Rules for Patent Linkage is published

On September 11, 2018, the Ministry of Health and Welfare made an announcement to enact the "Enforcement Rules for Patent Linkage" and published a draft version thereof and further held public hearings to seek comments and opinions from all sectors on November 6, 2018 and November 27, 2018. After thorough compilation and revisions, a revised draft version of the "Enforcement Rules for Patent Linkage" was presented on January 30, 2019. The differences between the two draft versions are summarized below.

1. As suggested and by reference of the legislation of the US, Korea, and Canada

that different polymorphs are eligible for listing in patent linkage system with one condition that test data thereof substantiating their curative effects should be provided as well, the 2nd paragraph of Article 3 of the revised version sets forth that for substance invention that covers different polymorphs of an active ingredients, the test data proving that the polymorph has the equal effect to the active ingredient is required to be produced for application for registration and market approval. Also as indicated in the same Article, the relevant process, intermediate, metabolite, or packaging of a drug is not eligible for listing.

2. According to the 3rd paragraph of Article 8 of the revised version, where a generic drug approval applicant who originally made his/her declaration based on item (1), (2), or (3) of Article 48-9 of the Pharmaceutical Affairs Act changed and made a declaration based on item (4) instead, the said applicant does not have to “withdraw” his/her original application, while the date of his/her application will be the date when the form of his/her change of declaration is submitted to the central competent authority.

3. For facilitating international economic and trade negotiations and encouraging domestic biotechnology development and domestic R&D of biosimilar products, biosimilar products are eligible for listing into patent linkage system in the revised version of the “Enforcement Rules for Patent Linkage”, and the revised version lays down the applicability of the provisions governing the drug approval and permit application for generic drugs to biosimilar products for protecting the patents regarding biologics.

The revised version is to be published for sixty (60) days for gathering public opinions. (January 2019)

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02 Taiwan IPO releases statistics of patent and trademark applications for 2018

Taiwan IPO had received a total of 73,421 patent applications throughout 2018, which marks a slight 1% decrease from those filed in 2017. The number of invention patent applications increased by 3% for the second consecutive year. Breakdown by nationality, the invention patent applications in 2018 comprised 18,365 cases filed by Taiwanese nationals and 29,064 cases filed by foreign nationals, both of which saw their respective rise by 1% and 4%. On the other hand, there had been 84,816 trademark applications filed with Taiwan IPO throughout 2018, reaching an 18-year record high. As to examination efficiency, the average first office action pendency for invention patent applications are shortened to less than 9 months, and the total disposal of trademark applications now takes only around 5 months. Also, pending applications are down to about 46,000 cases. The overall examination service presents accelerated and quality performance.

If analyzed by nationality of applicants of overall patent applications in 2018, 39,278 applications were filed by Taiwanese nationals, declining by 4%. On the contrary, there had been a total of 34,143 patent applications filed by foreign nationals, which marks a 4% grow. Among the applications filed by Taiwanese nationals, invention patent applications went up slightly by 1%, totaling 18,365 cases, while the design patent applications and utility model patent applications dropped by 1% and 9%, respectively, each amounting to 4,252 cases and 16,661 cases in number. The

patent applications filed by foreign nationals in 2018 consisted of 29,064 for invention patents, 1,249 cases for utility model patents, and 3,840 cases for design patents. The number of invention and utility model patent applications grew by 4%, but the number of design patent applications remained stable.

According to the further analysis of the patent applications filed by Taiwanese nationals, the rise of invention patent applications resulted from a 3% increase in the number of applications filed by enterprises and schools. There is a 2% and 8% growth in the number of applications filed by large enterprises and small and medium-size enterprises, respectively. The slight slip in the number of design patent applications was attributable to the 15% decrease in the applications filed by individuals. Further, the applications for utility model patents filed by enterprises, schools, research institutions, and individuals all went down by 7~13%.

Further, the analysis by country (region) shows that Japan continued to head the list of foreign applicants by filing the most applications for all three kinds of patents in Taiwan with 14,169 applications, surpassing the US at the 2nd spot (7,345 applications) and China at the 3rd place (3,506 applications). In terms of category of patents, Japan also claimed the top by filing the most invention and design patent applications, while China outshined other countries in utility model patent applications.

In trademark applications, a total of 84,816 trademark registration applications had been filed throughout 2018, hitting an 18-year record high and mainly attributable to the upward number of non-resident applications. By nationality, Taiwanese nationals had filed 59,840 applications, 2% down compared with last year, and foreign nationals had filed 24,976 applications, a leap by 11%.

The top five filing countries (region) of trademark applications are China at the top with 5,770 applications (a 19% yearly rise), followed by Japan at the 2nd position with 4,728 applications (a 21% yearly rise), and the US at the 3rd spot with 4,187 applications (a 14% yearly growth), which shows their active trademark portfolios in Taiwan. Besides, four of the top five filing countries (region) are in Asia.

Faced with the continued growth in the number of patent/trademark registration applications, the Taiwan IPO has been putting efforts to fulfill examination efficiency and implementing lots of accelerated examination measures and also inking PPH pilot programs with other patent offices, which has successfully shortened the first office action pendency for invention patent applications to less than nine months; the total disposal of trademark applications now takes only about five months, the lowest point for the past ten years. In addition, pending patent/trademark applications are lowered to 46,000 cases approximately. The foregoing would serve as a big push to facilitating applicants' industrial arrangement and business management. (January 2019)

/CCS

E190128Y1

03 TIPO releases statistics of patent applications and grants for 2018

Taiwan IPO released the statistics of patent applications filed and patent grants in 2018. Among the overall applications for all three kinds of patents, TSMC held onto the top spot in the list of applications filed by local firms with 944 applications, while Qualcomm topped the list of patent applications filed by foreign entities with 1,011 applications. As to the ranking of grants of all three kinds of patents, TSMC and Semiconductor Energy Laboratory (SEL) each claimed the top honor on the list of

patent grants to domestic and foreign applicants with 430 grants and 474 grants, respectively. Besides, there was a 2% increase in the number of invention patent applications filed by local corporate applicants for two straight years.

As revealed by Taiwan IPO's statistics, the number of TSMC's patent applications has been continuously increasing since 2015 among local applicants to reach its record high in 2018 and remain on top for three consecutive years. AU Optronics Corp. jumped to the 2nd place with 586 applications, while Realtek Semiconductor Corp. broke into the top 10 for the first time with 195 applications, up 60% from the previous year. Meanwhile, HTC returned to the 9th place by filing a total of 185 applications with a 78% yearly rise, the most notable growth among the top 10. Moreover, Hon Hai Precision Industry Co., Ltd. dropped to the 6th spot with 246 filings at a 49% decrease, and Far East University was the only university named in the top 10 ranking with 184 filings.

Among foreign corporate applicants, Qualcomm claimed the top with 1,011 applications, which marks not only a 67% yearly growth but also the most significant growth among the top 10 non-resident applicants. Surpassed by Qualcomm, Alibaba Group fell to the 2nd place with 599 applications, down 21%. DISCO Corporation and Corning both saw their yearly rise at 37% and 18%, respectively, and got their respective entry into the top 10 ranking by filing 285 and 270 applications each. In addition, China-based OPPO slipped to the 9th spot from the 7th with 253 applications, down 22%.

The analysis of the structure of the overall patent applications filed in 2018 shows that business entities are mainly responsible for Taiwan's innovative force and 78% of the 2018 applications were filed for invention patents. Applications for invention patents, utility model patents, and design patents all have their respective yearly growth at 2%, 7%, and 53%.

Moreover, 25 universities were named among the top 100 patent applicants for 2018, and the numbers of applications for invention patents and design patents rose by 5% and 26%, respectively, even though that of utility model patents slowly dropped by 2%. Among the named 25 universities, Far East University championed with 184 filings mostly for utility model patents (159 applications). As for the applications for invention patents filed by these universities, National Cheng Kung University took the lead among the 25 universities with 92 filings, overtaking National Tsing Hua University and National Chiao Tung University, both with 85 applications. National Taiwan University and National Taiwan University of Science and Technology both saw their respective annual growth by 45% with 64 filings and 42 filings, respectively.

On the other hand, 6 research institutions were recognized among the top 100 patent applicants for the same year; however, these institutions saw an yearly 5% decline in the number of their applications for invention patents. ITRI (Industrial Technology Research Institute) stayed firmly at No. 1 position among the 6 named top applicants with 441 applications and also snatched the 5th position in the ranking of the named resident applicants. NCSIST (National Chung-Shan Institute of Science & Technology) followed ITRI to take the 2nd place by filing 112 applications.

With a view to reinforcing Taiwanese enterprises' IPR concept and R&D ability and further to elevating industrial competitiveness and to go with the government's efforts in promoting technologies in the sectors of financial technology, biomedicine, information and communication, and precision machinery, Taiwan IPO has been taking the initiative to contact the companies of relevant industries to offer courses and sessions regarding patent application and patent analysis and had held 33 sessions in 2018. On the other hand, in view of the fact that 98% of the enterprises

in Taiwan are small and medium-sized ones which do not own R&D force and relevant resources as much as large enterprises, Taiwan IPO has also held 10 sessions specifically customized for small and medium-sized enterprises to promote IPR concept. Beginning in 2018, Taiwan IPO provides the service of reply to IPR-related questions to small and medium-sized enterprises through video conference. More and more resources will be invested for the ultimate purpose of enhancing Taiwan's R&D and creative force. (January 2019)

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04 Guanta Computer named among Derwent Top 100 Global Innovators as a newcomer

Clarivate Analytics published the annual report of the Derwent Top 100 Global Innovators 2018-19 on January 23, 2019. Taiwan has made appearance in the list for six consecutive years with Hon Hai and ITRI joining the list for two consecutive years on account of their respective sustained outstanding performance in the indicators of patent application-to-grant success rate and patent influence. Taiwan-based Guanta Computer made its debut with its prominent improvement in the indicators of global reach of the portfolio and patent influence.

According to the general manager of Clarivate Analytics Taiwan, ITRI's high ranking in the indicator of patent influence has revealed its technological superiority and visibility and its influence on industrial innovation, while Hon Hai's stellar achievement in the aspect of patent application-to-grant success rate demonstrates its outstanding performance in the quality and quantity of innovation. As a matter of fact, Guanta Computer had almost risen to the top 100 global innovators in the past few years, and in 2018, Guanta Computer finally broke into the top 100 global innovators list by its distinguished achievement in the aspects of global reach of its patent technologies and patent influence.

Among the organizations or enterprises in the hardware and electronics industries that were identified as the most innovative ones in 2018, Cisco and Xiaomi also got their respective entry into list in addition to Guanta Computer. There are other four companies that appear in the list for the very first time, which are BYD, JEF Steel, Kaspersky Lab, and Mitsubishi Chemical Corporation.

As revealed in Clarivate Analytics' press release, following the continuous trend in 2017, the global innovation hub has been shifting from west to east. Asian leads the top 100 list with 48 organizations and enterprises recognized as the top innovators, followed by the United States with 33 companies, and Europe, with 19. Russia joins the list for the first time as a result of the inclusion of the Russia-based software company, Kaspersky Lab, into the list. In addition, representation among different industry sectors was stable in 2018. The hardware and electronics industries remain on top of the list. It is noteworthy that the number of the aerospace and defense organizations admitted into the global innovators list had doubled. Other noticeable changes are that the number of organizations or companies in the chemical and cosmetics, pharmaceuticals and oil, gas and energy industries slightly dropped. (January 2019)

/CCS

E190105Y3

05 Infringer sentenced to six months in prison for plagiarizing famous Taiwanese comic artist's works

The famous Taiwanese comic artist, XIAO Yan-Zhong ("Xiao") confronted plagiarism by JIA Zhao ("Jia"), who declared himself to be a marketing expert to adapt the comic characters of Xiao's well-known comics series, "The Moment", rearrange these characters into a new copywriting titled "The Mouse", upload them onto a Facebook fan page called "Angel TALK Paris" (Chinese: Angel TALK 法國軟麵包專賣店), and further make them the main characters of a series of collection cards for sale. For the civil aspects of this case, the Taiwan IP Court already granted an award of damages in an amount of TWD3 million to Xiao, and the owner of the said Facebook fan page should pay TWD300,000 out of the awarded TWD3 million damages. In the criminal aspect of the same case, Taiwan Tainan District Court ruled in the first instance that Jia should receive 8-month prison sentence for violating the Taiwan Copyright Act. Jia filed an appeal against the judgment and then the Taiwan IP Court vacated the first-instance judgment and imposed a 6-month prison sentence on Jia, which may be commuted to a fine of TWD360,000 calculated at the rate of TWD2,000 per day. This case is appealable.

As the creator and copyright holder of the comics series, "The Moment", Xiao had once held a solo exhibition of his series of works, "The Moment" in Beijing, China in August 2013. However, without Xiao's prior consent and due authorization, Jia made simply slight changes to the comic characters of Xiao's "The Moment" by imitating these characters by computer mouth and also adapted Xiao's text creations to rearrange them into a series of advertising materials, "The Mouse", and post them to the said Facebook fan page together with Jia's picture to lead viewers to believe that those drawings and texts are created by Jia himself. Moreover, Jia's plagiarism took another form of colorable napkins carrying these imitated comic characters to be distributed in a book store in Tainan, Taiwan for customers' use, to be framed as picture for exhibition, and further printed as collection cards for sale at the price of TWD5,000 each. Jia's foregoing acts have constituted grave infringement.

In the appeal, Jia stated that in his cooperation with Xiao in 2013, he was authorized by Xiao for marketing and he had also acquired Xiao's consent to adapting his comic characters of "The Moment", which was why he imitated and rearranged them into the series of "The Mouse". Based on the foregoing reason, Jia argued that the "The Mouse" is not the reproduction of Xiao's works but adaptation, and further requested for having the first-instance judgment vacated and sought a settlement with Xiao.

After comparing the "The Moment" and "The Mouse", the judge of Taiwan IP Court found Jia's arguments about adaptation untenable on the grounds that the characters based on cats, dogs, and horses in both "The Moment" and "The Mouse" are substantially similar in lines, direction, size, and percentage of the overall arrangement, and that Jia's drawing would make viewers identify Jia's drawing techniques with those of Xiao, and also that Jia had admitted his taking Xiao's works as reference for "The Mouse". However, in view of the facts that Jia has been trying to reach a settlement with Xiao and the infringement does not last for a long time, and Jia has removed "The Mouse", and also that this is a personal property dispute, the judge considers it unnecessary for Jia to serve prison sentence and thus commuted the original sentence to six months in prison instead. (January 2019)

/CCS

E190121Y5

06 ITRI and Kwang Yang Motor join hands to develop AI-based power management system for electric scooters

Electric scooter users will no longer be bothered by the circumstances that their electric scooters are not fully charged or in low power. Supported by the technology development program of the Ministry of Economic Affairs, the government-sponsored Industrial Technology Research Institute (ITRI) and Kwang Yang Motor Co. (Kwang Yang) inked an agreement for developing an AI-based energy management system for electric scooters on January 21, 2019. Under this agreement, ITRI and Kwang Yang will cooperate to focus on 36 technologies concerning “dynamic power estimation based on self-learning” to develop AI-based electric scooters of the new era. Equipped with such technologies, the AI-based power management system makes dynamic estimation of remaining power and analyzes users’ riding habit based on self-learning and thereby analyzes power consumption rate under varying running distances.

According to Mr. Alex, Y. M. Peng, the executive vice president of ITRI, the cooperation between ITRI and Kwang Yang opens a new era especially for the AI-based power management system. In generally circumstances, battery life and remaining power may vary with different climate and environment. The power management system can precisely estimate the remaining running distance available for users with errors less than 5% no matter in high or low temperature. Besides, with the power management system, electric scooters are under remote monitoring and control of power use, so that users can receive warning before power is exhausted, which makes the electric scooters with AI-based power management system different from and superior to other electric scooters.

Kwang Yang’s general manager pointed out that Kwang Yang has been working with ITRI for more than twenty years to achieve a lot of brilliant performances. Their recent cooperation in 17 cases has resulted in the successful developments of 36 technologies concerning electric scooters. Those technologies are able to reinforce the energy management system, control system, motor cooling system, and anti-theft system of electric scooters. (January 2019)

Attorneys-at-Law /CCS



台灣國際專利法律事務所

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7th Floor We Sheng Building,
No.125, Nanking East Rd. Sec.2,
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