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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)*

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## E190416Y1

### 01 Taiwan's Legislative Yuan greenlights the amendment to partial provisions of Taiwan Patent Act

Taiwan IPO issued a press release to the effect that Taiwan's Legislative Yuan passed the amendment to partial provisions of Taiwan's Patent Act on April 16, 2019. The amendment will boost the development of Taiwan's design industry by extending the term of design protection, relax restrictions on divisional applications for invention and utility model patents, and further enhance review efficiency of patent remedies, and ultimately establish a more complete and robust patent protection system.

In response to law relaxation and international regulation adjustment and for perfecting patent examination practices, Taiwan IPO proposed the amendment to partial provisions of the Patent Act and successfully had it approved by the Executive Yuan on December 27, 2018 and further submitted to the Legislative Yuan for deliberation. Highlights of the amended seventeen articles are summarized as follows.

#### 1. Relaxation of the time limit and applicable scope for filing divisional applications

Under this amendment, a request for division of application may be filed after receipt of the allowance decision of either the first examination or re-examination of the invention patent application, and the timing restriction for filing a divisional application is also extended from the current 30 days to 3 months after receipt of an allowance decision. The same stipulation shall apply also to utility model patent applications.

#### 2. Review efficiency improvement in invalidation proceedings

In order to avoid delay in invalidation proceedings caused by undue and constant submissions of supplementary grounds, evidence, or amendment for invalidation by the parties to invalidation proceedings, this amendment imposes a statutory 3-month time period for submission of grounds for invalidation, and delayed submissions will not be examined. The amendment also designates a time period during which patentees may request for amendment of claims during invalidation proceedings.

#### 3. Stipulation for filing post-grant amendments of utility model patent

Without going through substantive examination, claims of utility model patents may be amended at any time after grant in an undue manner, which will prejudice a third party's rights and interests. To avoid the foregoing situation, the amendment specifies time limits for post-grant amendment and also sets forth that post-grant amendments shall be rendered after substantive examination, instead of formality examination as stipulated currently.

#### 4. Extension of design patent term

By reference of the Hague Agreement Concerning the International Registration of *Industrial Designs that adopts 15-year term for design patent protection and for reinforcing design patents protection, the amendment extends the term of design patents from 12 to 15 years, which will facilitate the development of Taiwan's design industry.*

#### 5. Solution of patent-related records preservation

Under the current Patent Act, patent-related files shall be kept permanently, and thus there have been a total of more than 2.1 million of patent-related files accumulated

and kept for the time being, which has resulted in a problem of insufficient storage space. Following international practices, the amendment provides that patent-related files or documents should be kept for a specific time period by classification, and those without preservation value may be destroyed periodically so as to solve the file storage space problem.

Taiwan IPO's amendment has removed some regulatory restrictions in the current Patent Act, the relaxation that will upgrade examination efficiency, conduce to enterprises' patent deployment, and enhance the development of Taiwan's industrial design. This amendment will be propagandized in the future to provide to people a clear picture with respect to the details of the amendment. (April 2019)

/CCS

## **E190325Y1**

### **02 Taiwan IP Court finds Gudeng Precision infringing Entegris's patent right**

US-based leading supplier of semiconductor wafer and reticle carrier, Entegris, Inc. initiated a patent lawsuit against the Taiwanese competitor, Gudeng Precision Industrial Co., Ltd. ("Gudeng Precision") in 2015, alleging that Gudeng Precision infringed upon Entegris' Taiwanese patent entitled "Reticle Carrier Including Reticle, Positioning and Location Means" by the "Reticle SMIF Pod" product manufactured and sold by Gudeng Precision ("infringing product"). On March 22, 2019, Taiwan IP Court rendered a judgment against Gudeng Precision in the first instance proceedings and awarded Entegris TWD978,869,835 in damages which is equivalent to 1.5 times Gudeng Precision's sales volume of the infringing product sold from 2009 through 2018, TWD650,000,000 and more.

Gudeng Precision held a press conference and issued a press release, announcing that Gudeng Precision will post security in the amount of TWD978,869,835 to be exempted from provisional execution of the damages awarded to Entegris before the judgment becomes final. That is to say, the judgment will not affect Gudeng Precision's business operation. Gudeng Precision also stated that they will appeal this judgment and take other steps against many unreasonable and disputes in the judgment. They will also produce evidence to win this case in the long run. In the meantime, Gudeng Precision indicated that their company runs as usual and none of their customers' rights and interests will be prejudiced accordingly. (March 2019)

/CCS

## **E190306Y1**

### **03 Taiwanese corporate sponsor of the 2017 Taipei Universiade is ordered to pay TWD 1 million damages for patent infringement**

Da Ai Technology Co., Ltd. (大愛感恩科技公司; "Da Ai") sponsored the 2017 Summer Universiade in Taipei and distributed 100,000 pieces of sport foldable fans as giveaways bearing the universiade mascot bear, Bravo. Da Ai purchased the steel ring frame of the sport foldable fans from Chen Chia Industrial Co., Ltd. (晨嘉實業有限公司; "Chen Chia") with the steel ring frame manufactured by a Chinese supplier entrusted by Chen Chia. However, Lucky Special International Co., Ltd. (台灣吉特公司; "Lucky Special") filed a lawsuit against Da Ai and Chen Chia, alleging that the two companies infringed Lucky Special's utility model patent titled "flexibility structure for flat-plate type object" by the steel ring frame used in the sport foldable fans distributed in the 2017 Taipei Universiade as giveaways.

This matter was brought to the Taiwan IP Court for trial. Taipei IP Court rendered a judgment against Lucky Special in the first-instance proceedings, and Lucky Special appealed this case to have it tried in the second instance proceedings. In the second-instance proceedings, the infringement alleged against Chen Chia was sustained and Da Ai was held to be responsible for its negligence and failure in fulfilling its obligation of inspection. A final judgment favorable to Lucky Special was passed with binding effects to award Lucky Special TWD1 million in damages to be jointly and severally payable by Chen Chia and Da Ai. (March 2019)

/CCS

## **E190416Y3**

### **04 Amendments to Article 83 and 93 of Taiwan Copyright Act passed at the Legislative Yuan**

As reported in Taiwan IPO's press release, Taiwan's Legislative Yuan greenlighted the amendments to Article 87 and 93 of the Taiwan Copyright Act on April 16, 2019. According to the amendments, providers that offer set-top boxes or apps providing access to infringing websites will face a maximum two-year jail sentence or/and a fine up to TWD500,000. The amendments formulate and define new types of infringement as a result of the rise of some emerging technologies, aiming to curb malicious or severe online infringement.

In recent years, some set-top boxes or apps commercially available on the market provide users with convenient channels linking to websites on which unauthorized or pirated contents are available. Without duly authorized or licensed, the providers of such products or services have been earning extravagant profits by charging users monthly rental fees or selling set-top boxes outright, which has seriously prejudiced the rights and interests of the economic rights holders and duly-authorized OTT service providers and further affected the development of Taiwan's film and television industry.

To actualize IP rights protection in Taiwan, the amendments add and define the following three kinds of acts that will constitute copyright infringement and lead to a maximum sentence of 2 years in prison or/and a fine up to TWD500,000, in addition to damages payment for civil liability:

1. Act of launching on Google Play, Apple Store, or other platforms the apps that assemble illegal source links to the websites providing unauthorized and pirated audio/visual contents for users' downloading;
2. Act of providing directions, assistance, or an access path for downloading and using computer programs that contain unauthorized or pirated contents, rather than directly offering such computer programs. For example, a provider sells a set-top box that does not contain the above-mentioned programs but gives guidance or access paths for installing them.
3. Act of manufacturing, importing or selling equipment that contains the links to the above-mentioned programs. For example, the act of making, importing, or selling the set-top boxes installed with such apps. Also, the act of knowingly selling the set-top boxes that contain links to websites providing infringing contents will also be punishable in the future.

The amendments specifically target those dishonest infringing set-top and apps providers who mislead or incite consumers into buying set-top boxes compiling links

to infringing websites by advertising their products or services free of monthly rental fees or free of fees for cable TV. Out of technological neutrality principle, the amendments will not affect the mobile phones, tablet PC, or legal OTT boxes not installed with such infringing apps. Besides, consumers who have bought such set-top boxes and apps that link to infringing contents would not be considered to have broken the laws, but the products or services they bought could be disconnected or cut off when providers of such products or services are investigated for offering illegal contents. Taiwan IPO also warns consumers against buying set-top boxes from unidentifiable source.

With these amendments being passed at the Legislative Yuan, it is hoped that infringement can be curbed and contained to promote the development of the cultural and creative industry and also the film and television industries in Taiwan. Taiwan IPO will propagate the details of the amendments to make them widely known to consumers. (April 2019)

/CCS

## E190322Y3

### **05 Local video game company ordered to pay TWD24 million for copyright infringement**

Soft-World International Corporation (智冠科技股份有限公司; “Soft-World International”) sued Heluo Games Co., Ltd. (河洛遊戲有限公司; “Heluo”) over plagiarism when it came to Soft-World International’s knowledge that Heluo plagiarized Soft-World International’s video game “武林群俠傳” (pronounced “*wu lin qun xia zhuan*” in Chinese; hereinafter “Soft-World International’s product”) to make its own video game “俠客風雲傳” (pronounced “*xia ke feng yun zhuan*” in Chinese; hereinafter “Heluo’s product”). Taiwan IP Court sustained Heluo’s infringement upon Soft-World International’s copyright, ordering that Heluo and its responsible person shall pay TWD24 million to Soft-World International and shall cease in distributing or transmitting in public Heluo’s product and also publish the main text of the Taiwan IP Court’s judgment on the front page of local newspapers for one day. This case is appealable.

According to Soft-World International, four employees of their game development division successfully developed Soft-World International’s product in August 2001. One male employee of the four is surnamed Hsu, who subsequently started his own business of a game company, Heluo and also launched Heluo’s product in July 2015. After receiving information from gamers that the story, operation interface, characters, etc. of Heluo’s product are extremely similar to those of Soft-World International’s product, and also knowing that Heluo even promoted and marketed their product with an advertising description that “Heluo’s product is a new version of Soft-World International’s product”, Soft-World International filed a lawsuit against Heluo, asserting that Heluo infringed upon its copyright by plagiarizing and adapting Soft-World International’s product.

Hsu defended himself and denied the infringement occurrence alleged against him by the following assertions. At the time when Heluo’s product was launched on market, the Taiwan Biweekly Game Magazine referred to Heluo’s product as the “new version” of Soft-World International’s product, which Soft-World International should have already known. In addition, the game disk, instruction, and packaging box were manufactured by Soft-World International as well. The foregoing facts make it unreasonable for Soft-World International to not file a lawsuit until June 2017, a point of time when the statute of limitations for seeking damages against Heluo already

lapsed. Moreover, Hsu negated the alleged infringement by arguing that the story, characters, conversations of Heluo's product are more diversified than those of Soft-World International's product.

After thorough investigation, the IP Court established the occurrence of Heluo's infringement upon Soft-World International's copyright because of the high similarity between the two products in design and personality of characters, events and stories, scenes, conversations, moves of martial art, and even weapons. In consideration of Heluo's profits accumulated in an amount of TWD48.59 million by selling Heluo's product and also the profits distribution as agreed by and between Soft-World International and Heluo, the IP Court ruled that Heluo and Hsu shall pay Soft-World International TWD24 million in damages. (March 2019)

/CCS

## E190315Y5

### 06 Taiwan NTHU goes ahead to make MRAM breakthrough

A cross-disciplinary team, based at National Tsing Hua University of Taiwan, led by Prof. LAI Chih-Huang, dean of College of Engineering of National Tsing Hua University and also Prof. LIN Hsiu-Hau of Department of Physics, has successfully developed a new core technology of magnetic random access memory (MRAM) which works by using a spin current caused by the electrons to manipulate their exchange bias of a nanometer layer of platinum under the ferromagnetic and antiferromagnetic layers. This technology will expand memory space and the information stored will remain intact in case of power outage. Mobile phones or tablet PCs equipped with MRAM technology can stay on standby mode for a time period for at least one time longer. Prof. Lai and Prof. Lin's research findings have been published in the periodical, *Nature Materials*.

Prof. Lin explains how MRAM works. Electrons have both charge and spin. Spin of electrons would cause extremely tiny magnetic moment similar to thousands of micro magnets on wafer and work to record the signal of zero and one. Electric power will not be required when calculation is not processing, and information stored will remain intact and stable even in case of power outage.

This research has been recognized by the top periodical of the academic world, thus to stand out as a revolutionary breakthrough and also to present a new vision in spintronics. (March 2019)

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