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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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E200122Y1

01 HTC receives favorable judgment in a patent lawsuit against 2 Chinese smartphone makers and wins TWD28.6 million in damages

HTC Corporation (hereinafter “HTC”) recently triumphed in a patent lawsuit in China against two Chinese smartphone makers, Zhuhai Meizu Technology Co., Ltd. (Chinese: 珠海市魅族科技有限公司; hereinafter “Meizu”) and ShenZhen Gionee Communication Equipment Co., Ltd. (Chinese: 深圳市金立通信設備有限公司; hereinafter “Gionee”). Beijing Intellectual Property Court sustained Meizu’s and Gionee’s infringement upon HTC’s invention patent involving a mobile device, by the two companies’ respective infringing products, Meizu’s *Mailan Note 5* and Gionee’s *Gionee M6*.

According to Beijing Intellectual Property Court’s judgment favorable to HTC, the infringed patent is a mobile device that has a metal chassis with a specific antenna structure. This invention has an aim to solve a technical problem of poor radiation signal caused by the shielding of the metal casing by designing an antenna structure that is combined with a metal appearance. This design has also been initially used and applied onto the HTC One M7 and serves as the main feature of HTC’s flagship phone. HTC has used this design onto its products until its release of U11 featured by an all-glass build.

Beijing Intellectual Property Court ruled that Meizu and Gionee should compensate HTC for economic loss and other expenses in a total of amount around RMB6.5 million (equivalent to TWD28.6 million approximately). (January 2020)

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02 Partial amendment to Trade Secrets Act passed to embrace “confidentiality order for investigation” system

As announced by the Taiwan IPO, the partial amendment to the Trade Secrets Act of Taiwan successfully underwent and received its third reading at the Legislative Yuan on December 31, 2019, introducing the system of “confidentiality order for investigation”, under which protection for trade secrets in dispute during investigation proceedings is ensured and reinforced and violators of confidentiality order for investigation will face a prison sentence up to three years, so as to prevent second-time trade secret leak, facilitate business entities’ willingness to file a lawsuit, and further to enable prosecutors to conclude prosecutorial investigation promptly. This amendment also strengthens protection for the trade secrets held by non-Taiwanese owners by allowing unrecognized foreign juristic persons to bringing a lawsuit, file a private prosecution, or initiate a civil action with an aim to attract foreign investments and step up industrial development.

This amendment consolidates the “confidentiality order for investigation” system in response to the unsatisfactory effects of imposition of criminal penalties in trade secrets infringement cases as revealed and discussed by the industrial sector in the effect review meeting held by the Taiwan IPO in February 2017. For satisfying the purpose of prompt conclusion of prosecutorial investigation in cases involving trade secrets, introduction of the system of court order to preserve confidentiality was suggested for the prosecutorial investigation proceedings, by which the enterprise will be more willing to provide relevant information and second-time leak of trade secrets can be deterred. Also, the system of confidentiality order for investigation derives

from one of the eight major strategies, trade secrets protection reinforcement, proposed by Taiwan Executive Yuan in March 2018 for countering China's 31 incentives toward Taiwan.

Key points of the confidentiality order for investigation system are summarized below.

1. Prosecutors may issue a confidentiality order *ex officio* during investigation when they deem it necessary;
2. Any person subject to a confidentiality order shall not use the information of investigation for non-investigation purposes or disclose such information to any other person not subject to a confidentiality order;
3. A confidentiality order shall be issued in writing or verbally and a trade secret owner shall be provided with an opportunity to state his/her opinions. The amendment also sets forth the procedures that cancel or change a confidentiality order and also the relation between a confidentiality order and a court order to preserve confidentiality.
4. Any person who violates a confidentiality order will face a prison sentence for a maximum period of three years, detention, and/or a fine of a maximum of TWD1 million, and

Notwithstanding the introduction of criminal penalties into the Trade Secrets Act in 2013, enterprises suffering from trade secrets theft are mostly unwilling to bring a lawsuit against the theft due to the concern that there might be second-time leak because they may have to provide more internal trade secrets to prove the theft during investigation proceedings, which actually poses more risk of leak and would make trade secrets accessible to their competitors. It is expected that this amendment will effectively impede second-time leak and take effect to urge enterprises to confront trade secrets infringement and to provide assistance in prosecutorial investigation by producing more evidence required so as to combat trade secrets theft and actualize prompt conclusion of investigation and ultimately to make Taiwan's trade secrets protection more sufficient and complete. (January 2020)

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