



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

Topics in this issue

- 01 Taiwan IPO releases “Analysis of Trends in Trademark Applications Filed by the Industry from 2017 through 2021”**
- 02 Amendment to Taiwan’s Intellectual Property Case Adjudication Act passed by legislature to ensure thorough trade secrets protection**
- 03 Taiwan Legislature adopts amendment to Statute for Industrial Innovation by three readings**

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- 01 Taiwan IPO releases “Analysis of Trends in Trademark Applications Filed by the Industry from 2017 through 2021”**

The World Intellectual Property Organization (WIPO) published the World Intellectual Property Indicators 2022 (WIPI 2022) on November 21, 2022 to make public the data of the global filings for trademarks, number of registrations, and application class count per unit of GDP of each country in 2021. Taiwan IPO released the “Analysis of Trends in Trademark Applications Filed by the Industry from 2017 through 2021” to present a brief analysis and comparison between Taiwan’s data of filings in 2021 and the WIPI 2022 as summarized below.

In 2021, despite the fact that Taiwan’s domestic demand had a turndown as the Covid-19 pandemic ran rampant, the number of classes of resident applications still saw a 1.82% growth. With the pandemic reaching its peak and then slowing down gradually, a slight resilience occurred in the number of classes of non-resident applications filed in Taiwan to form a 1.15% rise as compared with 2020.

The class counts of global filings increased strikingly in 2021 almost to 18,150,000 classes. China had the highest volume of filing activity with a class count of 9.45 million, surpassing the U.S. at the 2nd place with a class count of 899,000, the EU at the 3rd place with a class count of 497,000, India at the 4th place with a class count of 488,000, the UK at the 5th spot with a class count of 450,000. Japan dropped from

the 3rd place to rank 9th with a class count of 364,000, followed by South Korea at the 10th spot, down one place with a class count of 360,000. Taiwan moved up one notch to No. 17 with a class count of 123,000. Moreover, Taiwan's registration class count is around 102,000, ranking also the 17th position worldwide, while Taiwan's grant rate was 87%, above the global average.

In addition, the top four sectors that attracted the biggest proportion of total non-resident filing at Taiwan IPO and of the WIPO statistics are "research and technology", "health", "agriculture", "clothing and accessories", and "research and technology", "health", "clothing and accessories", "leisure and education", respectively. The sector, "research and technology" accounted for around 20% of the non-resident filing in Taiwan and also of the global non-resident filing reported. Also, the non-resident applications filed for the sector of "research and technology" at the Taiwan IPO apparently outnumber that reported in the WIPO statistics, which demonstrates that non-resident applicants attach significance to their brand development in that sector in Taiwan.

Throughout 2021, there had been approximately 14 million trademark applications filed globally that cover and specify 18.1 million of classes, representing a striking rise by 5.5%. In Taiwan, there had been a total of 95,000 trademark applications filed with the Taiwan IPO to specify over 120,000 classes, ranking 17th worldwide and marking a positive growth for five consecutive years. (Released 2023.01.13)

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02 Amendment to Taiwan's Intellectual Property Case Adjudication Act passed by legislature to ensure thorough trade secrets protection

The Legislative Yuan of Taiwan passed the third reading of the draft amendment to 77 articles (including 36 articles added and 41 articles amended) of the Intellectual Property Case Adjudication Act on January 12, 2023, which will form more substantial regulatory intensity than the current one comprising only 41 articles.

Major points of the amendment are summarized as follows.

1. Augmented trade secrets protection—The Intellectual Property and Commercial Court has exclusive jurisdiction over the cases involving trade secrets under reinforced protective measures.

Under the amendment, the Intellectual Property and Commercial Court (hereinafter the "IPC Court") has exclusive jurisdiction over the first-instance IP-related civil matters, while the first-instance criminal cases involving trade secrets misappropriation (including incidental civil actions) should be heard by the Intellectual Property Courts under the IPC Court as the court of the first instance, which is to effect professional, appropriate, and expeditious trial. Moreover, for compliance with the National Security Act, the amendment adds stipulation that the criminal cases involving trade secrets with respect to national core technologies should be subject to the jurisdiction of the second instance of the Intellectual Property Courts of the IPC Court for the first instance proceedings. The amendment also provides that the Supreme Court shall organize special court divisions to exclusively hear IP-related cases to ensure professional trial.

Besides, the amendment adds provisions with respect to the codes or names for identifying the evidentiary documents including trade secrets for de-identification and with respect to the right to access to dossier information. Also, the provisions governing the confidentiality preservation order system are amended to provide full

protection for trade secrets. Under the amendment, the offense of violating a confidentiality preservation order is a non-complaint-based one to aggravate the penalty therefor. In addition, the amendment introduces the offense of violating a confidentiality preservation order from abroad to reinforce protection for the trade secrets involved in litigation.

2. Concentrated trial of IP-related cases—Introduction of trial plan

According to the amendment, the court should discuss with the parties to a case to determine and adopt a trial plan for the cases where mandatory legal representation is required, where the circumstances of the cases are complicated, or where it is necessary. For reinforcing the efficiency of trial, the amendment sets forth the legal effects of departure from a trial plan.

3. Mandatory legal representation by lawyers

In consideration of the fact that IP-related civil cases require legal specialty and in order to protect the rights of the interested parties and to enhance trial efficiency, the amendment requires in new provisions the mandatory legal representation by qualified lawyers for certain types of IP-related civil cases.

4. Expansion of experts' participation—Introduction of expert verification and expert witness

For the court's establishing facts of cases that involve highly technical characters and professional aspects and for resolving a possible situation of the unequal status of the access to evidence between the parties and also for enhancing the parties' procedural equality during the course of trial, the amendment, by reference of the Patent Act of Japan, sets forth that the court may select and appoint a neutral expert upon motion after initiation of an action, who will conduct verification of evidence in the evidence gathering procedure. Additionally, the amendment incorporates the "expert witness" system adopted by the Commercial Case Adjudication Act, and the relevant provisions of the Commercial Case Adjudication Act shall apply *mutatis mutandis* in this amendment.

5. One-time resolution and avoidance of inconsistent judgments—Establishment of information exchange system between the court and the administrative authority

The amendment creates the systems for information exchange between the judicial trial and administrative examination, for seeking opinions from the competent authority in charge of intellectual property matters, and also establishes the obligation to disclose the ongoing litigation for the circumstance where the IP rights involved in the litigation have been exclusively licensed, and also sets up restrictions on re-trial due to the discrepancies of patent validity issue.

6. Enhancement of trial efficiency—Disclosure of technical examination officer's report

According to the amendment, the court may disclose all or part of the report prepared by the technical examination officers when necessary, and the parties will be provided with an opportunity to express their opinions on the report, before the court adopts the report as a basis for making a ruling. Furthermore, the amendment decreases the

standard of proof for the evidence submitted by the infringed party, and also obligates the accused infringer to submit evidence to support his/her defense.

7. Promotion of use of technological equipment and electronic judicial services

The amendment enlarges the scope of the parties/people to a lawsuit that can use technological equipment to participate in the proceedings, and facilitates service of original copies of written judgments in electronic forms.

8. Introduction of a system allowing victims' participation in trial proceedings

The amendment adds that the provisions governing victim participation in proceedings provided by the Code of Criminal Procedure shall apply *mutatis mutandis* with an aim to secure victims' rights.

9. Resolution of disputes

The provisions governing the "post-grant amendment defense against invalidity defense" and "incidental civil proceedings" are amended to solidify the mechanism for resolution of disputes arising from litigation. (Released 2023.01.12)

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E230107Y9

03 Taiwan Legislature adopts amendment to Statute for Industrial Innovation by three readings

The amendment to Article 10-2 and Article 72 of the Statute for Industrial Innovation passed its third reading by the Legislative Yuan of Taiwan on January 7, 2023. According to the Ministry of Economic Affairs, Taiwan is a crucial player in the global supply chain and a trustworthy partner to international leading suppliers, and hence, possesses its uniqueness and irreplaceability. Confronting the enormous incentives and tax benefits provided in the U.S., Japan, South Korea, and the EU with an aim to boost the autonomy of their key industries, Taiwan should also keep pace and solidify the international competitiveness of its key industries, for which the Ministry of Economic Affairs proposed the draft amendment to Article 10-2 and Article 72 of the Statute for Industrial Innovation. This amendment offers upgraded tax benefits to the R&D and equipment investment expenditures of the key industries that attain specific criteria. With the passage of this amendment, companies of Taiwan will be encouraged to keep core technologies in Taiwan, and the global minimum corporate tax rate will be introduced into Taiwan, and the industrial development and reasonable taxation will be both taken care of at the same time.

The key points of this amendment are summarized as follows.

1. Eligible entities are the domestic companies that are engaged in technological innovation and take a key position in the international supply chains and meet all other requirements, regardless of the type or category of industries.
2. The eligibility requirements are that a company's R&D expenditure and R&D intensity (the ratio of a companies' R&D investment to its net sales.) reach a certain scale and its effective tax rate attains a certain ratio. The amendment sets the effective tax rate threshold at 12% for 2023 and tentatively at 15% for 2024 onwards, except that the Ministry of Economic Affairs may, jointly with the Ministry of Finance,

request for the Executive Yuan's approval and adjustment of the threshold at 12% for 2024 after observing the status of the international implementation of the global minimum corporate tax rate introduced by the OECD, so as to provide a transitional period for the domestic entities.

3. The eligible entities will be granted the tax deductions of their income tax payable in the current year in the amounts equivalent to 25% of their expenditure on investment in cutting-edge and innovative R&D and 5% of their expenditure on purchase of new equipment for use in advanced manufacturing processes, provided that the purchase cost must reach a specified level. The two deductions each shall not exceed 30% of the payable income tax for the current year and the two deductions in total shall be capped in an amount equivalent to 50% of the income tax payable in the current year.

4. The implementation period of the draft amendment begins from January 1, 2023 through December 31, 2029 upon approval.

The Ministry of Economic Affairs in conjunction with the Ministry of Finance will within six months complete the subordinate legislation and sub-rules supplementation for establishing the scope of application, eligibility requirements, and definitions, and application procedures, application deadlines, examination mechanism, and required documents, etc. after considering the status of domestic and foreign industries' development, the R&D expenditure and R&D intensity of listed and over-the-counter companies and after consulting with experts from the industry, the public, private and academic sectors, with the sub-rules to be adjusted in line with the tendency of industrial development when necessary. In addition, the applications for tax cuts will be examined jointly by relevant authorities and outside experts. Besides, for the issues of concern about the small and medium-sized enterprises and innovative development, the Ministry of Economic Affairs will sustain relevant measures of product development, digital transformation, and funding assistance to facilitate their development through multiple policies. (Released 2023.01.07)

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