



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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E230824Y1

- 01 Changes to accelerated examination trial operation and deferred examination for design patents take effect from September 1, 2023**

To accommodate the patent application strategies, patent portfolio, and the timelines for patent commercialization for design patents, Taiwan IPO begins to provide more diverse examination services for design patents from September 1, 2023. For example, Taiwan IPO will begin to accept requests for accelerated examination of design patents (with a trial program in operation until December 31, 2024) and will simultaneously amend the regulations for the deferred examination period (to be uniformly set within one year from the date of application).

1. Accelerated examination of design patent applications

Applicants of design patent applications that meet any of the following three criteria will be eligible to receive examination results within 2 months after the application documents required for accelerated examination are found complete.

- (a) Commercial exploitation by a third party

(b) The claimed design has won recognition by the prestigious national or international design awards, including the Golden Pin Design Award of Taiwan, iF Design Award of Germany, Red Dot Design Award of Germany, Good Design Award of Japan, and the International Design Excellence Awards of the United States.

(c) Design patent applications filed by startups.

2. Deferred examination

The period of deferred examination will be changed to a period within one year after the date of application without exception, regardless of priority rights being or being not claimed. More information and relevant Q&A with respect to accelerated examination and deferred examination for design patents are provided on Taiwan IPO's official website. (Released 2023.08.24)

<https://topic.tipo.gov.tw/patents-tw/cp-750-925650-1fdcd-101.html>

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02 Leading local game operator defeated and penalized in Fair Trade Act violation case

The Taipei High Administrative Court issued a press release on August 24, 2023 to the effect that the Court has entered into a judgment (under docket (111) Su-Zi No. 1005) on the case concerning Fair Trade Act violation filed by the plaintiff, Gamania Digital Entertainment Co., Ltd. against the defendant, the Taiwan Fair Trade Commission, and the judgment is in favor of the defendant and appealable.

The Taipei High Administrative Court judgment is summarized as follows.

1. Gist of the judgment: Plaintiff's lawsuit should be dismissed.
2. Brief of the case: As stated in the main text of the disposition, Gong-Chu-Zi No. 111039 made against the plaintiff, Gamania Digital Entertainment Co., Ltd. by the defendant, the Fair Trade Commission on June 10, 2022 (hereinafter the "**FTC Disposition**"), (1) The plaintiff, Gamania Digital Entertainment Co., Ltd. (hereinafter "Gamania"), for sale of the online game, Lineage M (hereinafter the "**game in dispute**") originally developed by NCSOFT, held a player forum event on December 14, 2019 and proclaimed that "the probability for the Taiwanese version is exactly the same with that for the Korean version" as response to the questions raised by players in the forum, "whether the probability of event production, card drawing, and synthesis can be disclosed" and "whether the probabilities currently set are the same with those in the Korean version". Gamania's proclamation as the response in the forum is sufficient to affect transaction decisions and hence constitutes false and misleading representations in violation of the 4th paragraph of Article 21 of the Fair Trade Act of Taiwan; therefore, (2) A fine of TWD2 million should be imposed on Gamania." Gamania disagreed with the FTC Disposition, and therefore, instituted an administrative lawsuit.

3. Summary of reasoning

(1) Gamania conducted the forum event in order to promote the game in dispute and to know players' thoughts on the game as a basis for the optimization of the game in dispute. Also, Gamania live streamed the event on Facebook on the same day and also broadcasted the highlight clips of the event on the official Youtube channel of the game in dispute for public viewing afterwards. With respect to the aforesaid questions raised by the players of the game in dispute at the forum event ("whether

the probability of event production, card drawing, and synthesis can be disclosed” and “whether the probabilities currently set are the same with those in the Korean version”) and Gamania’s reply to them (“the probability for the Taiwanese version is exactly the same with that for the Korean version”), the players were mostly concerned about the aforesaid questions, while Gamania also saw these questions as important and provided replies thereto because the questions and their replies to them will affect players’ willingness to pay for Taiwanese version.

In addition, Gamania admitted that the probability of success of production of the “Purple Cloth” for the Taiwanese version is 5% and that for the Korean version is 10%; that is, the success probability for production of the Purple Cloth in the Taiwanese version apparently differs from that for the Korean version, which makes it clear that the information provided and the representations made in the forum event were not consistent with facts. Such inconsistency is likely to cause the public to form mistaken understanding or to make erroneous decision with respect to the game in dispute, and ultimately to lead to the failure in the efficiency of market competition and give rise to the effect of unfair competition. In view of the foregoing, the Court determined that Gamania acts in violation of the 4th paragraph of Article 21 of the Fair Trade Act to which the provision of the 1st paragraph of the same Article applies *mutatis mutandis*. (The 1st paragraph of Article 21 of the Act provides that “No enterprise shall make or use false or misleading representations or symbols on the matter that is relevant to goods and is sufficient to affect trading decisions on goods or in advertisements, or in any other way make it known to the public.”)

(2) In accordance with the forepart of Article 42 of the Fair Trade Act and also Article 36 of the Enforcement Rules of the Fair Trade Act and taking into consideration of the motivation, purpose, expected improper benefits involved in, the degree and duration of harm to market order caused by, the benefits derived on account of Gamania’s unlawful act, Gamania’s scale, operating condition, market position, past violations, attitude on rectification, and cooperation in investigation, and also Gamania’s paid capital of TWD1.7 billion, turnover, and the sales volume of the game in dispute (from 2019 through 2021) and the sales volume of the Purple Cloth (from October 2019 through 2021), the FTC assessed and imposed an administrative fine of TWD2 million without going against the principle of proportionality.

(3) To sum up, the FTC Disposition did not involve any contravention of laws. (Released 2023.08.24)

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03 Amended Intellectual Property Case Adjudication Act enforced to reinforce trade secrets protection

On August 30, 2023, the Judicial Yuan of Taiwan issued a press release to the effect that the amendment to the Intellectual Property Case Adjudication Act of Taiwan, which is the drastic overhaul of the Act for the past fifteen years, has officially come into force. The Director-General of the Department of Administrative Litigation and Discipline expressed that this amendment will enhance Taiwan’s intellectual property litigation system with greater profession and efficiency to keep it in line with the international trends, and it will further provide more complete protection to trade secrets, boost industrial competitiveness, and thereby ensure the sustained and stable development of the whole semiconductor industry.

1. 9 Key points of the amendment to the Intellectual Property Case Adjudication Act:

This amendment marks a milestone of the intellectual property litigation system and contains nine major changes, which include augmented trade secrets protection in litigation, mandatory legal representation by lawyers, expansion of experts' intervention, concentrated trial of IP-related cases, one-time resolution (avoidance of inconsistent judgments), enhancement of trial efficiency, promotion of use of technological equipment (electronic judicial services), introduction of a system allowing victim's participation in trial proceedings, and resolution of disputes in practice.

2. Trial by specialized divisions, on-the-job training, and enhancement of professional trial

In order to put into effect the specialization of trial, in addition to the establishment of specialized divisions in the courts of all levels for specifically handling IP-related cases and the division of civil and criminal cases at the intellectual property court of the Intellectual Property and Commercial Court, the Judicial Yuan will be constantly holding courses in regard to intellectual property litigation and trade secrets litigation involving national security with an aim to reinforce judges' professional knowledge.

3. Enactment of 13 relevant acts or guidelines in support of establishment of a complete and comprehensive regime for trial of IP cases

The Judicial Yuan has accomplished the enactment or amendments of a total of 13 sub-laws, relevant statutory orders, and administrative rules, including the Intellectual Property Case Adjudication Rules, Regulations Governing Dossier Review and Non-Public Trial for Court's Handling of Trade Secrets Cases (tentative English translation), and Directions for Court's Handling of Trade Secrets Cases (tentative English translation) to be followed by courts. Moreover, the Judicial Yuan structures on its official website a special section that provides update information of the amended Intellectual Property Case Adjudication Act for people's understanding of amended contents. (Released 2023.08.30)

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