



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 Online store owner indicted for selling cracked Switch consoles, profiting over TWD4.78 million**
- 02 Accelerated Examination Program for Re-Examination (AEPR_e) launched on September 1, 2024 on trial basis**
- 03 Latest green trademark filings statistics released: Uni-President retains championship**
- 04 Delta's former senior executive sentenced to 2 years in prison for trade secrets theft**

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01 Online store owner indicted for selling cracked Switch consoles, profiting over TWD4.78 million

A man, surnamed Lin (hereinafter “Lin”), in New Taipei City, had opened an online store on Shopee to provide to players the services of bypassing the anti-piracy protection of Nintendo Switch consoles and to sell cracked versions of Switch consoles and pirated game software, earning illicit gains over TWD4.78 million in less than a year beginning from the end of 2022 through September 24, 2023.

According to the prosecutorial and police investigation, Nintendo Switch consoles are equipped with anti-piracy function to detect and verify if the game cartridges being read are genuine ones, and pirated ones are unable to be executed. Lin set up an online store to provide to players the technical services of cracking, disabling, or bypassing anti-piracy protection; players may either purchase from Lin modified consoles or send their own consoles to Lin for modification. It is understood that with modified chips purchased from unknown sources, Lin connected consoles to modified chip modules and used memory cards to store the executable files of the cracked versions of consoles to modify the operating system so that Switch consoles would not perform piracy checks.

To gather evidence, Nintendo placed an order with Lin’s online store and successfully got hold of a modified Switch console and a memory card on August 8, 2023. After the purchase, the prosecutor and the police initiated a raid action on Lin on November 29, 2023 and further searched and seized from Lin’s residence the 11 modified chip modules and 9 flexible cables as evidence. As revealed by the search result, there had been a total of 578 transactions conducted in Lin’s online store with illicit profits earned in a total amount of TWD4,788,761 throughout the period from January 1, 2023 to September 24, 2023. Following the investigation, the prosecutor charged Lin with violation of the Copyright Act. (Released 2024.08.01)

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02 Accelerated Examination Program for Re-Examination (AEPRé) launched on September 1, 2024 on trial basis

TIPO announced the launch of “Accelerated Examination Program for Re-Examination” (AEPRé) for implementation on a trial basis as of September 1, 2024. Under the AEPRé pilot program, TIPO will accelerate re-examination as long as the applicant voluntarily amends or deletes the claims rejected in previous substantive examination and retains the other non-rejected claims, which will help patent applicants secure patents.

According to TIPO, there are two stages in the examination of invention patent applications; if an invention patent application is rejected in the substantive examination stage, the applicant may request a re-examination. Under the AEPRé pilot program, the applications eligible for accelerated re-examination are those in which not all claims are rejected in the original decision of rejection. Applicants of such applications may request re-examination of their applications by “deleting the rejected claims or rewriting the non-rejected claims into independent claims” to have the patent scope in line with the scope approved in the previous substantive examination. The reexamination cases will undergo TIPO’s accelerated examination and TIPO will issue the first office action for the reexamination within 6 months from the filing date of such cases.

As revealed by the 2023 statistics, TIPO has received a total of 6,538 invention patent applications for re-examination, with the average pendency for the first office action and the disposal being 10.1 months and 13.1 months, respectively. The AEPRé pilot program, launched on September 1, 2024, is open to online applications without charging any official fees. Applicants of AEPRé applications will receive an office action or written decision within 6 months. Moreover, TIPO has evaluated and found that in actual practice, applicants of AEPRé applications will receive decisions within 2 or 3 months, a faster process for the applicants to obtain patents.

Please see more details concerning AEPRé on TIPO's website (<https://www.tipo.gov.tw/tw/cp-85-977635-e7dc7-1.html>). (Released 2024.08.29)

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03 Latest green trademark filings statistics released: Uni-President retains championship

Based on its continued monitoring of the trends in green trademark registration applications in Taiwan, TIPO has completed the "Analysis of Taiwan's Green Trademark Industry" as an extension of the 2023 publication of the "Comparative Analysis of Taiwan's Green Trademark Industry in the Last Ten Years" by incorporating the latest statistics to analyze the current status of Taiwan's green trademark industry. The analysis may serve as a reference for green industry's trademark strategies in response to global climate change and net-zero emission policies.

"Green trademarks" are not defined in accordance with the design or logo of a trademark but in terms of the designated goods or services in the trademark's applications contained in the Nice Classification; that is, a trademark is considered a "green trademark" as long as its designated goods or services include at least one environmentally friendly product or service. Also, by reference of the European Union's definition, the aforesaid Analysis examines the distribution of applications in nine major categories, which are "energy products", "transportation", "energy conservation", "reuse/recycling", "pollution control", "waste management", "agriculture", "environmental awareness", "climate change".

According to the Analysis report, applications for green trademarks have accounted for 14.49% of all trademark applications in Taiwan for the past ten years, developing in increasing percentages from an average of 13.00% in the early period of the past decade (2014-2016), 15.31% in the mid-term (2017-2020), to 14.64% in the later period (2021-2023). The long-term trend of the trademark applications demonstrates the industry's steadily rising awareness of carbon reduction, low carbon, and green energy and also applicants' growing awareness of the significance of green trademarks. Moreover, green trademark registration applications were mostly filed for the three major categories of "energy conservation", "pollution control", and "energy products", accounting for almost 80% of all green trademark applications, which indicates the industry's focus on the three key areas.

According to TIPO's breakdown by applicant nationality, Taiwanese applicants ranked 1st in the number of green trademark applications in Taiwan, outplaying those from China, the U.S., and Japan. Moreover, China had remarkable performance in the categories of "energy products", "transportation", "energy conservation", "pollution control", and "waste management", while the U.S. also showed strong performance in the categories of "energy products", "energy conservation", "reuse/recycling", "environmental awareness", "climate change". In addition, the numbers of green trademark applications filed by Japanese applicants ranked within the top 3 for

multiple categories, including “energy products”, “energy conservation”, and “climate change”.

As revealed by a breakdown of the top three applicants for the nine major categories, Uni-President, Apple Inc., Alibaba Group Holding Limited, and Nintendo Co., Ltd. are frequently named in the rankings as the leading applicants of green trademark applications in Taiwan. In particular, Uni-President and Apple Inc. dominate the top two positions for the major categories of “energy products”, “energy conservation”, and “waste management”. Notably, Uni-President has been holding the top position for green trademark applications in Taiwan. (Released 2024.08.29)
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04 Delta’s former senior executive sentenced to 2 years in prison for trade secrets theft

In 2023, a corporate espionage case broke out at Taiwan-based tech giant, Delta Electronics, Inc. (hereinafter “Delta”). In the case, Delta’s former senior executive, surnamed Juan, stole the confidential information pertaining to the R&D project in collaboration with Tesla for the “wall-mounted AC charging station” (hereinafter the “technology at issue”) and passed on the information to his new employer, a Chinese technology company, which caused tremendous loss to Taiwan’s tech industry. Taiwan Taoyuan District Court heard this case and rendered a judgment, sustaining Juan’s violation of the Trade Secrets Act and sentenced Juan to two years in prison for the intent to use the stolen information in China.

Taoyuan District Court sustained Juan’s violation of the Trade Secrets Act based on the findings summarized below: Juan copied the files containing the information pertaining to the technology at issue developed by Delta, and these files were Delta’s trade secrets with confidentiality and economic value and were well and reasonably protected. By the excuse of working overtime, Juan made a backup of these files to a cloud drive. He also made backup copies of these files on his personal computer by the pretext that he was trying to prevent loss of these files in case of the failure of the hard drive in the computer provided by Delta. In addition, Juan defended himself by saying that he indiscreetly copied these files to the computer provided by his new employer while copying the publicly accessible relevant laws and regulations for dictionary purpose. Based on the foregoing, Juan argued that he held no subjective intent to violate the Trade Secrets Act.

Moreover, the judge ruled that Juan’s act of making copies of Delta’s confidential files to his personal computer obviously violated Delta’s information security policy. According to Delta’s policy, employees are prohibited from taking documents home for overtime work, storing them on personal storage devices, as well as uploading them to any personal cloud drives. As such, if Juan violated the policy by storing confidential files in his personal computer for overtime work, he should have removed and deleted those files after completing his work or upon resignation and signing the resignation letter. There is no justification for deliberately violating Delta’s confidentiality measures and failing to remove those files and also retaining them for a long period of time. The foregoing makes it clear that Juan’s defensive arguments are to evade his liability and therefore should be inadmissible.

In addition, if the relevant laws and regulation Juan mentioned were readily and publicly available to anyone, Juan could have accessed to those laws and regulation through search online or any other legal channels during his employment in China, and as such, it is totally unreasonable for Juan to copy those laws and regulations together with Delta’s confidential files onto his computer provided by his new Chinese

employer. In terms of empirical rules and the laws of logic, it is more likely that Juan copied both those laws and regulation together with Delta's confidential files in the same folder as his reference materials during his employment in China for ease of access and retrieval, and he made up the foregoing plausible pretexts out of panic when confronting the prosecutor and the police who found out the actual situation through examining the seized items.

Based on the foregoing findings, Taiwan Taoyuan District Court held that Juan, as a former R&D staff member at Delta, clearly knew that the said technical information is Delta's trade secrets and the use of it, if any, would not only cause adverse impact on Delta's competitiveness in the electric vehicle charging station market but also forcefully hit the backbone of Taiwan's high-tech industry. Despite of this, Juan, however, still intended to use the said information in China to infringe upon Delta's trade secrets. According to Delta's statements, the said confidential information is independently developed by Delta and also the result of Delta's long-term and persistent tests and verification so as to hold uniqueness and technical superiority in the field of charging station for electric vehicles. Therefore, the said information is classified as Delta's top trade secret, which is not known or accessible to those not directly involved in such information, and hence, there should be an extremely slim chance for other manufacturers or suppliers to develop a design completely identical to Delta's said technology in terms of the specification and technology.

Delta estimated the value of the trade secret involved in this case to be TWD134.95 million spent in R&D and production, while the project for Tesla's second-generation wall-mounted AC charging station generates annual revenue of up to USD160 million. Juan's foregoing acts cause Delta's tremendous business loss in every year. In consideration of the extremely huge infringement upon legal interests and loss caused by Juan's foregoing acts and his post-offense incomplete repentance and failure to compensate Delta's loss or to gain Delta's understanding, Taiwan Taoyuan District Court sentenced Juan to 2-year imprisonment for violation of the Trade Secrets Act. (Released 2024.07.30)

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