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ENFORCEMENT

The Knowledge-Intensive Industries of Taiwan Account for 29% of the GDP in 2002, Next Only to Luxembourg, Switzerland, Germany, and the US.

The Taiwan Institute of Economic Research ("TIER") released its research paper on "Global Competitiveness Analysis of Taiwan's Research and Innovation" at the "2004 Industrial Science and Technology Innovation Conference: The Growth Engine of Innovative Economy", held on August 19 to 20, 2004. The TIER research pointed out that, comparing and assessing by proportional weighting of the knowledge-intensive industries in the GDP, which expresses the knowledge economic development process, in 2002, the knowledge-intensive industries in Taiwan account for 29% of the GDP, next only to Luxembourg, Switzerland, Germany, and the USA. Taiwan leads many other OECD countries in this respect which reflects that Taiwan is actively stepping into among the knowledge economy systems.

With respect to investments in research and development, in 2002, Taiwan's research and development investment amount (based on purchasing power parity) ranks 11th in the world, and investment by the industries in R&D ranks 12th in the world. Overall R&D accounts for 2.30% of the GDP. Industry R&D also sees rapid increases and accounts for 1.92 % of industry's added value.

On the technological performance, based on number of US utility patents obtained by Taiwan, Taiwan ranks 4th in number of patents, 3rd in number per million patents, and 4th in patent strength. Compared to the current impact index of patents in advanced countries, it is a commendable performance. However, the "technological diffusion influence scope" and "technological learning source scope" in patents are relatively lower, which reflects that Taiwan's industrial technology research and development lacks technological breadth, but has substantial depth in certain technological fields. This is highly correlated to the high concentration of Taiwan's industrial structure and research investments in [ICT] industries.

According to the latest patent statistics report by the U.S. Patent and Trademark Office ("USPTO"), in 2003 Taiwan was granted 6,676 patents by the USPTO, ranking 4th in the world, next only to the US (98,598), Japan (37,250), and Germany (12,140). Others from the 5th to the 10th places are: South Korea, France, UK, Canada, Italy and Sweden. (Drawn from http://www.cedi.cepd.gov.tw/tnen_info.php?iPath=&digests_id=524)

In recent years, the trends for assessing research powers of enterprises and research institutions, in relation to the patent index, has shifted gradually from quantitative evaluations such as total number and rate of increase to qualitative evaluations. Analyzing patent strength by the accumulated references made to the patent makes a qualitative evaluation of such patent. Currently, a more advanced method used internationally adopts the "Current Impact Index (CII)". That is, calculating the percentage and number of times references were made to the patents owned by enterprises in a recent period of time. A high value derived signifies better quality in such patents. The technology management scholars of this country developed the "Essential Patent Index (EPI)", which takes patents obtained by all enterprises in the same industry field in the same period of time and measures the patent performance of each enterprise on a standardized scale taking the top 25% most referenced patents. (Sources from http://www.money.chinatimes.com/news/tech/m9392309.htm)

The article also point out that, on the national innovation system level, the results of international evaluations on both the proportion of enterprise funding to university research funds and the "science-related" and "innovation connection" patent indices, show that there appears to be insufficient interactions among different innovation systems in Taiwan, particularly in science and technology between industries and academia, which may hinder Taiwan's development in the greater potential science-type industries.

Lastly, the TIER offered some policy suggestions including that: (i) the government should give closer attention to policy performances and feedback mechanisms so as to facilitate the selection of appropriate policy tools and maximize the distribution of resources; (ii) strengthening policies aimed at bridging the gap between "science" and "technology" in the national innovation system and actively promote closer cooperation among different sectors; and (iii) at the same time, actively encourage enterprises to conduct strategic mapping in the patent field, provide policy support to innovation in the service sector, assist traditional industries to proceed with innovative re-engineering work, so as to sidestep the traps of "locking" and "transformation failure," to overcome obstacles hindering the expansion to the more promising new industries.
(Sources from http://www.doit.moea.gov.tw/news/newscontent.asp? ListID =0490&TypeID =4&CountID =98&IdxID =29&top _ cid =)

USTR Responses Positively to Our Endeavors to Be Removed From or Down-graded in the Special 301 List

The Office of the United States Trade Representative ("USTR") announced the Special 301 List on May 1, 2004, in which Taiwan is listed on its Priority Watch List. In the efforts to be removed from or down-graded in the Special 301 List, and to allow the US to adequately understand the achievements of Taiwan's intellectual property rights protection, Wen-Xiang Lu, the Deputy Director of Taiwan Intellectual Property Office ("TIPO") met, on October 4, made an official visit to the US to meet with Charles Freeman (Deputy Assistant Trade Representative of USTR), Eric Smith (President of the International Intellectual Property Alliance), and representatives of Business Software Association (BSA), Motion Picture Association of America (MPAA), Recording Industry Association of American (RIAA), the Entertainment Software Association (ESA) , Association of American Publishers (AAP), etc., in Washington to exchange views.

During the meeting, the representatives of the TIPO explained to the US the recent efforts of the Taiwan government in actively protecting intellectual property rights, including mainly: (i) the legalization and establishment of the "IPR Protection Squad" in July of this year and operations set to officially begin on November 1; (ii) completion of amendments to the Copyright Law in August pursuant to close cooperation between the legislative and the administrative branches of the government; and (iii) introduction of the "Scheme for the Protection of Computer Software" following immense cooperation between all departments of the government since September 1, with a view to lower the software piracy rate to below 40% before the end of next year (2005).

USTR responded positively to our explanations and expressed that they will consult with relevant rights groups before reaching a decision during the review of the Special 301 List. TIPO stated that, overall, as the US rights groups and USTR administration offered positive responses to our Copyright Law amendment and enforcement results, this visit to the US will greatly help our endeavors to be removed from or down-graded in the Special 301 List.

Number of Patent Pending Cases Reduced By A Wide Margin

TIPO statistics show that, as of September 22, 2004, there are 84,700 pending patent cases. Compared to 110,406 pending patent cases at the end of 2002, the number of pending cases have significantly reduced by a margin of 25,706, a 23% reduction.

The increase in attention to intellectual property rights by Taiwanese public sends the number of patent applications soaring year by year. The total number of patent applications in 2003 including preliminary examinations, re-examinations, oppositions and invalidations amounts to 81,446 cases, which is 7.94% up from the number in 2002. The number of applications continues its increase this year. Patent applications lead to grant of rights in the application's innovative products. Coupled with the ever shorter life-span of commercial products, applicants all wish to obtain a definitive right at the earliest possible date. Therefore, the TIPO has always endeavored to speed up the processing of pending cases.

The main reasons for the significant reductions in pending cases despite the continuous increase in patent applications for the past year or so are as follows:

1. The amended Patent Law implemented on July 1 of this year adopts formality examination for new utility model applications. After implementation of the new law, all pending new utility model cases become subject to formality examination only. In order to prevent excessive impacts in the transition to the new law, the TIPO put in full force to process examination of new utility model cases. From January through June 2003, the TIPO concluded preliminary examinations and re-examinations of new utility models amounting to 43,300 cases.

2. After the new law is implemented, new utility model application now becomes subject to formality examination only. All applications satisfying formality requirements and are not in violation of public order or good moral may be granted patent, which significantly reduces the examination period from an average of 16 months examination period to less than 6 months. In the two months since the implementation of the new laws, around 8,000 cases have been concluded.

3. Continuously speeding up examination of utility patents and design patents. From January through August 2003, around 79,000 cases have been concluded.

4. Since the introduction of the early publication and request for examination mechanism as from October 26, 2002, currently, the ratio for requests for examination made is approximately 66%. To date, in approximately 23,000 applications for utility patents, no request for substantive examination have been made to the TIPO.

With the great improvement in examination efficiency, the average examination period of various types of patent applications in this country is relatively shorter than other countries, which benefits the growth of the high-tech industries where life-cycles are short. The TIPO will not only speed up processing pending cases, but will also adopt various measures to promote the quality of examination. In the future, the rights of patentees and the public will be protected for that the examination period is effectively shortened and examination quality is enhanced thereby reducing subsequent patent dispute cases.

ENFORCEMENT

New Reward Standard Is Implemented for Enforcement of Counterfeits

On September 23, 2004, the Executive Yuan approved the fourth point of "Ministry of Economic Affairs Key Points for Rewarding Enforcement of Counterfeits Cases" in relation to the reward standard, and implementation took effect on the same day. The first clause of the new standard stipulates that if counterfeit products are discovered and seized, the enforcement officer and the informant will each be rewarded a bonus in the amount equal to 5% of the total retail value of the counterfeit products, with a ceiling of NT$200,000.

According to the second clause, those who discover and seize counterfeit compact discs will be rewarded in accordance with the standard in the first clause. Those who discover and seize manufacturing equipment for counterfeit compact discs will be rewarded a bonus in the amount equal to 3% of the total retail value. The combined reward in the aggregate is capped at NT$2,000,000.

According to the third clause, if burning equipment for counterfeit compact discs are discovered and seized, the enforcement officer and the informant will each be rewarded a bonus in the amount equal to 20% of the total value of the burning equipment. Where the number of burning discovered and seized is 20 or more, the enforcement officer and the informant each is entitled to a further NT$50,000 bonus. The amount of reward to each of the enforcement officers and informants is capped at NT$500,000.

LAWS & REGULATIONS

TIPO Announces the "Operational Points for Applying for Certification Marks Based on Geographical Indication"

In accordance with Article 72 of the newly amended Trademark Law, which came into force on November 28, 2003, geographical indication may be eligible to be registered as certification marks. The TIPO on September 2, 2004 issued the "Operational Points for Applying for Certification Marks Based on Geographical Indication," and was implement as from the same day. The Operational Points expressly provide the legal basis for granting protection to "Geographical Indication" by way of registration as certification marks, the application documents formalities and the examination procedure.

Geographical indication, according to Article 22 of TRIPS, means an indication that identifies a products as originating in the territory of a member state, or a region or locality in that member state, where a given quality, reputation, or other characteristics of the product is essentially attributable to its geographical origin. When applying for certification marks on geographical indications, applicants should specify and provide objective evidences for the specific or superior quality, reputation, or other characteristics, as well as the geographical scope, the characteristics of the raw materials, methods and procedures for the manufacturing of the product, and special facts or elements about the geographical environment.

As to whether the quality, characteristics, or reputation of agricultural produce and alcoholic beverages are attributable to their geographical origin, the respective competent authority such as Council of Agriculture and the National Treasury Agency of the Ministry of Finance will assist in the determinations.

If a foreign geographical indication of a WTO member wishes to be registered for certification mark in Taiwan, the application can be made also pursuant to foregoing Operational Points. However, during substantive determinations on whether the quality, characteristics, or reputation of the products are attributable to their geographical origin, the examiners may review the statements and evidence submitted for obtaining geographical indication protection filed in that WTO member state. Therefore, it appears that the implementation of the Operational Points emphasizes on the determination of geographical indication of this country and on the compilation of protective lists; thus worth looking forward to.

Please refer to the Chinese edition of "Operational Points for Applying for Certification Marks Based on Geographical Indication" at http://www.tipo.gov.tw/service/news/ShowNewsContent.asp?wantDate=false&otype=1&postnum=5370&from=board

"Implementation Regulation for the Customs to Detain Trademark Infringing Products" Came Into Force on September 15, 2004

Pursuant to the measures concerning border control on trademark infringing products provided in the newly amended Trademark Law, which was announced on May 26, 2004, the Ministry of Economic Affairs and the Ministry of Finance together announced the "Implementation Regulation for the Customs to Detain Trademark Infringing Products" on September 25, 2004, in order to regulate the matters of applying for detainment, vacating detainment, inspection of detained objects, payment, provisions and return of bond or guarantee, required documentation, and other items that should be followed. This regulation comes into force on the date of its announcement.

The main points of the regulation are as follows:

1. Documents required and security to be provided upon application:

   When applying to detain imported or exported objects suspected of infringing trademark rights, the trademark owner shall explain the facts of infringement, prepare all written documents and provide bond in the amount equivalent to the Customs' estimated after-tax price of the imported goods or off-shore price of export goods, or other equivalent security.

2. Application procedures for detainment application and supplement procedure:

   The Customs should review the detainment application in accordance with this regulation. If any amendment or supplement is required, the Customs should promptly notify the applicant to for amendment or supplement. Prior to such amendment or supplement, the Customs clearance procedure shall not be affected.

3. Procedures for application for inspection and implementation:

   Applicant or detainee who applies for inspection of the detained objects in accordance with this regulation should make such application in writing, and conduct inspection in accordance with the time, place and manner that the Customs shall prescribe.

4. Security for application to vacate detainment:

   Detainees who applies to vacate the detainment should apply in writing, and provide bond in the amount equal to two times the value estimated above, or provide equivalent security.

5. The obligation to notify vacation of detainment:

   After the goods suspected of trademark infringement have been detained, upon a final court decision or judgment rejecting the detainment or affirming non-infringement, the applicant and the detainee shall notify the Customs in writing to facilitate the vacation of the detainment.

Chinese information of this regulation is available at http://www.tipo.gov.tw/service/news/ShowNewsContent.asp?wantDate=false&otype=1&postnum=5487&from=board

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