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U.S-Taiwan Business Council and American Chamber of Commerce in Taipei Calls for Removing Taiwan from the 301 Priority Watch List

Recently, the U.S-Taiwan Business Council and the American Chamber of Commerce made a public press release that calls for the US government to remove Taiwan from the 301 Priority Watch List. They also called for resuming the bilateral working negotiations for the “Trade and Investment Framework Agreement” (the “TIFA”), which have been suspended for two years. (The negotiations resumed on November 29 and 30, 2004 in Washington D.C.) Establishing a regular senior-level discussion channel on economical issues between Taiwan, the US and Mainland China is also proposed.

The U.S-Taiwan Business Council and the American Chamber of Commerce in Taipei listed the following reasons:

1. In the past year, Taiwan has made obvious progress on each of the following four issues: intellectual property rights protection and market liberalization of agricultural produce, pharmaceuticals, and telecommunications. In addition, the Legislative Yuan has also passed amendments to the Copyright Law to strengthen the protective measures of intellectual property rights.
2. As the 8th largest trading partner to the US, and an essential partner in the global business network, there is no doubt that a healthy dialogue on trade issues between the US and Taiwan, such as periodical senior-level discussions or forums on economical and commercial issues, is necessary.
3. The Taiwan-China issue is important and sensitive as far as US foreign policy is concerned. Close trilateral (US, China and Taiwan) economic relationship lays a

foundation for effective dialogue and peace. If any party is absent from the senior-level discussions, it is counterproductive to the security interests of the US as well as to the economics and politics.

The U.S-Taiwan Business Council is an unofficial American association, which provides its members with information concerning U.S-Taiwan bilateral investment, business and intellectual property matters. In the past, the Council have also criticized against Taiwan’s feeble efforts in protecting intellectual property rights. However, after Taiwan has made significant headway over the past 12 months, the Council now deems the efforts as significant progress for intellectual property rights protection, and thus calls for removing Taiwan from the 301 Priority Watch List.

Andrea Wu, President of the American Chamber of Commerce in Taipei, expressed that she hopes that both sides can build on the current momentum to establish an even more solid level of bilateral economic cooperation. She also said, “This is the critical moment when Taiwan’s industry is transforming into a knowledge-intensive one. Transnational companies have a great deal to contribute to the development, and the TIFA talks, if resumed, could help create a positive environment for interaction.”

U.S-Taiwan Business Council’s press release is available at http://www.us-taiwan.org/pressrelease/2004october12resume_tifa.pdf

American Chamber of Commerce’s press release is available at http://www.amcham.com.tw/top_story.php?id=152

Materials are drawn from

http://www.cedi.cepd.gov.tw/tnen_info.php?iPath=54&digests_id=563

Taiwan and US at the TIFA Meeting, Talks Over the Topic of Intellectual Property Rights

The 4th Trade and Industry Framework Agreement (“TIFA”)

meeting between Taiwan and the US took place in Washington D.C. on November 29 and 30, 2004. The four main issues being negotiated were: telecommunications, rice, intellectual property rights and pharmaceuticals. Charles Freeman III, the Deputy Assistant US Trade Representative of the USTR and his counterpart, Steve Chen (陳瑞隆), the Vice Minister of the Ministry of Economic Affairs (“MOEA”) are the top officials at the talks who exchanged opinions on the recent intellectual property right issues in concern of both Taiwan and the US, including the current status of Taiwan’s intellectual property rights protection, amendments to the intellectual property laws, and the Internet copyrights infringement issue. This meeting was conducted smoothly. Taiwan’s representatives were able to communicate thoroughly with the US representatives. The US side recognizes Taiwan’s efforts and results of protecting intellectual property rights, but still expresses concerns particularly on Internet infringement cases.

Protecting intellectual property rights is not only this country’s international obligations, but it also closely relates to the upgrading of domestic industries and enhancing international competitiveness. Promoting intellectual property rights protection is a long-term work which requires all citizens’ cooperation in order to foster an improved environment for intellectual property rights protection. Recently, this country has planned out some visionary policies towards intellectual property rights protection as well as made significant progress in both legal basis and enforcement respects, including:

1. Amendment of the Copyright Law announced by the President and went into force on September 1, 2004.
2. Integrated Enforcement Task Force (IETF) underwent the process of legalization on November 1, 2004.
3. The Taiwan Intellectual Property Office (“TIPO”) will break ground for the Intellectual Property Training School in order to assist courts, corporations, and agents in receiving the necessary education and training.
4. The Judicial Yuan has determined to establish specialized intellectual property right courts.
5. The United States government and right groups, domestic and abroad, acknowledged positively and complimented respectively on our sustained enforcement efforts and effective results.

The USTR is working on its annual out-of-cycle review. Ever since Taiwan was placed on the Special 301 Priority Watch List, to date, several rights groups have already submitted their opinions to the USTR. Through the thorough communications of this meeting, the MOEA stands optimistic on Taiwan’s removal from the Special 301 Priority Watch List.

Review of Invention Patent Application Adopts Itemized Examination Process to Raise Quality

The TIPO started a program of “Itemized Examination” for invention patent applications on July 1, 2004, to raise the quality of patent examination and to protect the legitimate rights and interests of patent holders. Namely, the independent claims and dependent claims of a patent application will be examined one-by-one. Pending cases, including preliminary examination and re-examinations, have already adopted the “Itemized Examination” approach. The examiners are intensively trained. Since the implementation of the program, the examination quality has been greatly raised.

In addition, if an invention patent application will likely not to be granted patent during preliminary examination, the applicant will be notified of the reasons before any final decision is made, so that the applicant has the opportunity to state his/her opinion during preliminary examination. In addition, to gather adequate information for examination, an in-personal interview mechanism during preliminary examination is also introduced. The “Patent Interview Operational Points” has been accordingly revised and went into force along with the new law, so as to protect the applicants.

The core of the patent system lies in the patent scope claimed in the applications. The scope of an invention patent is delineated by the independent claims and dependent claims. The scope of the patent granted subsequently will also be delineated by such independent claims and dependent claims. Therefore, “Itemized Examination” is the more appropriate way of examination; although at the same time it may increase the scope of prior art searches and the examination period may also be made lengthier. For a long time in the past, because the Patent Law did not prescribe the patent examination process, and because the TIPO lacked the examiners manpower, most of the examinations had to be outsourced, and “Itemized Examination” was not adopted; hence, the TIPO’s patent examination quality then was more

or less affected.

New Trademark Search System Activated

For the convenience of trademark applicants and for raising trademark examination quality, through a two-years effort, the TIPO's "Outsourcing of the Development, Establishment, Operation and Management of the Trademark Text and Graphic Search, Internet Search, and Electronic Gazette Systems" has been completed. Among them, the service to the public, the Internet Trademark Search System (Trademark Search System), has already launched on October 18, 2004.

Previously the TIPO offered two separate systems for trademark search services with different functions and service targets. The internet trademark search (Web edition) served the public and the information service system served only internal search purposes. The new Internet Trademark Search System integrates the functions of both the previous systems, including Graph Text Search, Case Number Search, Applicant Search, Case Progress Search, Graphic Search, Graphic Classification Route Search, and Goods and Service Similarity Search, and also adds new functions such as Boolean Query and Internet Search of the Electronic Trademark Gazette. The services are provided free of charge.

The new "Boolean Query" mainly provides advanced users a more sophisticated way to search trademarks. It is selection-menu oriented with logics settings (AND, OR, and NOT) aimed to satisfy the needs of the advanced users. In addition, the "Internet Search of Electronic Trademark Gazette" provides relevant information concerning the Trademark Gazette. All are welcome to inquire and use.

The system is available at
[http://WWW.203.69.69.28/Taiwan Intellectual Property Office_DR/index.jsp](http://WWW.203.69.69.28/Taiwan_Intellectual_Property_Office_DR/index.jsp)

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"Shop Owners' Support of Legitimate Products" Program Now in Action

In order to encourage the industry to join the ranks of protecting intellectual property rights, the TIPO is specially holding a "Shop Owners' Support of Legitimate Products"

program. From December 2, 2004, the TIPO will distribute free marking and stickers stating "This store does not sell pirated and counterfeit products." to those computer shops, boutique stores, KTVs, CD stores, chain retailers, and department stores that are willing to join in refusing to sell pirated and counterfeit products. At present, there are around 14,000 stores that have voluntarily participated in this program.

The representatives from the industries expressed that posting of the "This store does not sell pirated and counterfeit products." sticker is helpful to the establishment of business reputation. Particularly those shops that have been substantially affected by counterfeit products are happy to see the introduction of this program, and look forward to jointly to attain the goal of protecting intellectual property rights.

This program aims at inducing the shops to voluntarily refuse to sell pirated and counterfeit products. The TIPO will dispatch the markings/stickers for free to shops which are willing to participate. Inquiries should be directed by phone to: 02-2653-9292. The TIPO looks forward to lead the shops to treat seriously and support intellectual property rights, as well as allowing room for products of all invention and creation to survive and prosper, and transforming intellectual property rights protection into a nationwide campaign.

► LAWS & REGULATIONS ◀

Taiwan Will Allow Animal and Plant Patents

In order to implement the 2001 WTO Doha Round "TRIPS Agreement and Public Health Declaration," to cooperate with the Council of Agriculture's expected policy to allow animal and plant patents, and taking into account the litigation economy, the TIPO will initiate the next wave of Patent Law amendment, mainly including three parts: compulsory licensing for exporting medicines, allowing animal and plant patents, and reducing and consolidating the levels of administrative relief procedures.

The main reasons to further amend the Patent Law are:

1. With respect to compulsory licensing for exporting medicines:

According to the Declaration and the agreement reached at the WTO General Council on August 30, 2003, if a

WTO member lacks the capacity to manufacture medicines, but suffers from AIDS, malaria, pulmonary tuberculosis or other serious communicable diseases so great that there is a national crisis, such member may legally import lower-priced patented medicines from foreign countries. Article 76 of Taiwan's Patent Law permits compulsory licensing mainly for domestic use. Although it conforms to the stipulations under the TRIPS on compulsory licensing, in order to fit in the export use stated in the above Declaration, the current Patent Law requires amendment accordingly.

2. With respect to allowing animal and plant patents:

In order to encourage research, innovation, and protection of intellectual property rights, the Council of Agriculture, at the "Taiwan's Policy on Agricultural and Biological Technology Related Intellectual Property Rights" conference held on September 10, 2004, recommended that the TIPO amend Item 1, Article 24 of the Patent Law, in order to grant patents for animal and plant inventions, so that the industries would further contribute to the research in animals and plants patents, and to create new business opportunities. The TIPO will at the same time conduct studies on the issue of farmers' immunity and supporting measures, so as not to affect the farmers' means of livelihood.

3. With respect to reducing and consolidating the levels of administrative relief procedures:

The important conclusions and suggestions of the 24th Executive Yuan Technology Council Conference were: "Coordinate and improve the current dual administrative relief system of patents and trademarks. Reduce and consolidate the levels of administrative relief procedures and study the feasibility of a unified system." The TIPO has continuously worked on reducing the levels of administrative relief procedures, unitizing the administrative relief systems, and making litigation a faster and more efficient way to resolve infringement disputes. The TIPO has referred to foreign laws and evaluated domestic laws as the bases of revising the

Patent Law. In addition, the TIPO also takes into consideration the proposal of the Judicial Yuan to establish specialized intellectual property court, and will amend the Patent Law accordingly where necessary.

"Draft Amendments to the Substantive Examination Standards for Design Patents"

The TIPO held a public hearing on December 3, 2004, on the draft amendments of "Patents Examination Standard, Part III: 'Design Patents Substantive Examination Standard' Chapters I through VI". The draft explains the substantive examination standards concerning: (1) the specifications and principles of the figures, the names and categories of the new design product, description of the invention, illustrations and explanations, and one design one application; (2) the definition of a new design and the items not eligible to design patents according to law; (3) new design patenting requirements such as industrial application, novelty, and presumed loss of novelty and creativity; (4) international priority rights; (5) supplements, revisions, and corrections to the contents; (6) divisional applications, converted application, and associated designs.

The public hearing version of the draft can be found at: <http://www.tipo.gov.tw/service/news/ShowNewsContent.asp?wantDate=false&otype=1&postnum=6058&from=board>

The EMS System to be Discontinued from 2005

The TIPO publicly announced on November 24, 2004, that the "Export Monitor System of Computer Program-related Products" ("EMS") will be discontinued from January 1, 2005. The Operational Regulations of the Export Monitor System of Computer Program-related Products, will also be discontinued from the same time. The TIPO will stop receiving applications for computer program registration pursuant to the Operation Regulations from December 1, 2004.

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