



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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01 Amendments to Positive Patent Examination Pilot Program for Startups take effect as of January 1, 2024

Taiwan IPO had continued the implementation of the “Positive Patent Examination Pilot Program for Startups” (hereinafter the “Pilot Program”) from January 1, 2023 until December 31, 2023, and now the Pilot Program is revised to be implemented for another trial period of one year. The renewed Pilot Program relaxes the eligibility requirements for startups, according to which a startup company may qualify as an applicant for the renewed Pilot Program as long as it holds any invention patent applications. TIPO removed the requirement that an eligible startup company seeking participation in the revised Pilot Program shall be the applicant of the invention patent application at the time when the patent application is filed. In addition, under the revisions regarding the definition of startup companies, the calculation of the year of establishment within 8 years as a requirement for eligibility for the Pilot Program now starts from a startup company’s date of incorporation through “the date of application for the Pilot Program”, in lieu of “through the filing date of an invention patent application”. The renewed Pilot Program has come into force as of January 1, 2024. (Released 2023.11.30)

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02 Green trademark applications outnumber overall trademark applications in average for the past decade

To follow the global trend towards net zero emissions, the enterprises around the world have been strategizing carbon reduction arrangements, which is reflected in the status of green trademark applications in Taiwan throughout the past decade. According to TIPO’s analysis of green trademark applications of the past ten years, the average growth rate of green trademark applications filed in the past 10 years outshined that of the overall trademark applications in Taiwan, and most of the green trademark applications were filed for the three major categories of energy saving, pollution control, and energy products.

The overall trademark applications in Taiwan filed in each of the past three consecutive years since 2020 were above 90,000 cases: The number of trademark applications for the past decade has been going up at an average growth rate of 2.8%. In 2023, the number of trademark applications filed from January through October was 75,000 due to the slowdown of economy, marking a year-on-year decline of 4.2%.

The number of resident applications continues reaching record highs: A breakdown by applicant nationality reveals that overall trademark applications in Taiwan for the past decade were mostly filed by resident applicants that accounted for more than 70% of all trademark applications. In 2022, the number of resident applications hit another record high of 74,000 cases, which represents a 1.3% increase and takes up 78.4% of all applications. On the other hand, the number of non-resident applications did not return to pre-pandemic level in 2022 following a slump in the number due to the impact of the COVID-19 pandemic in 2020. In terms of the nationality of non-resident applications, 21.1% of these applications came from China, 17.5% from the U.S., and 17.3% from Japan.

There is a year-on-year increase in the number of female applicants: Overall observations for the past decade show that the proportion of female applicants has been rising year by year from 31.9% in 2013 to 41.3% in 2022, a consistent growth attributable to the government’s incessant efforts to promote trademark online

application system and the rise of digital economy, which has provided diversified opportunities for women to be employed and to start their own businesses, and therefore, heightened the proportions of female applications.

Average growth of green trademark applications in the past decade outplays that of overall trademark applications: According to TIPO's analysis report on the green trademark applications in Taiwan in the past decade, green trademark applications increased from 8,845 cases in 2013 to 15,105 cases in 2022, marking an average annual growth rate at 6.1%, outshining the average annual growth rate at 2.8% for overall trademark applications. Moreover, the proportion of green trademark applications in overall trademark applications is consistently on the rise; in 2022, green trademark applications accounted for 15.9% of overall trademark applications, seeing a 4% rise from 2013, which suggests that the businesses in Taiwan have been placing growing importance on green trademarks and such enhanced attention and efforts will ultimately contribute to Taiwan's fulfillment of net-zero emissions.

"Energy saving", "pollution control", and "energy products" are the top three major categories of green trademark applications in Taiwan: By proportions of the green trademark applications across the nine major categories in 2022, the top three categories in descending order for registration are "energy saving" with 6,745 cases applications, "pollution control" with 5,029 applications, and "energy products" with 3,740 cases, which are evidently higher than the applications of other categories. The observations of the green trademark applications filed for the nine major categories in the past ten years indicate a common growth in all categories, among which the category of "energy saving" transcended others in 2022 with the largest increase of 3,272 applications from 2013 and also surpassed the category of "pollution control" in 2017 to become the top category. In addition, the category of "reuse/recycling" experienced its highest average annual growth at 17.4% from 2013 to 2022. (Released 2023.12.15)

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03 IPC Court determines no infringement occurrence for copyright infringement lawsuit between two local online game developers

For the copyright infringement lawsuit filed by Soft-World International Corporation (hereinafter "Soft-World") against Heluo Games Co., Ltd. (hereinafter "Heluo") with respect to Heluo's suspected infringement by its *Tale of Wuxia* upon Soft-World's copyright in its *Enigma Online*, the Intellectual Property and Commercial Court of Taiwan (the IPC Court) rendered a judgment on November 20, 2023 after this case was remanded back to it by the Supreme Court of Taiwan. According to the IPC Court's holding provided in the judgment, Soft-World implied consent to Heluo's subsequent reproduction or adaptation of Soft-World's copyrighted *Enigma Online*, and Heluo did not infringe upon Soft-World's economic rights in *Enigma Online* either out of intention or by negligence; also, it is groundless for Soft-World to claim that Heluo infringed upon the oral and literary, artistic, and musical works contained in *Enigma Online*. In addition, the IPC Court vacated the first-instance judgment with respect to the claims that Heluo and its responsible person, XU Chang-Long should jointly and severally pay TWD24 million in damages to Soft-World and should remove infringement. In regard to another claim added in the second-instance proceedings that Heluo should run a notice of the gist of the judgment on this case in the front page of the local newspapers for one day, the IPC Court found the claim groundless and dismissed it accordingly. This case remains appealable. (Released 2023.12.14)

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04 Taiwan-Korea tax agreement takes effect from January 1, 2024

The Ministry of Finance announced on December 28, 2023 that the Agreement for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income between Taiwan and the Republic of Korea entered into force on December 27, 2023 has become effective since January 1, 2024, which serves as the 35th income tax agreement for Taiwan (hereinafter the "Taiwan-Korea Tax Agreement"). According to the Taiwan-Korea Tax Agreement, the tax withholding rates on non-residents' dividends, interest, royalties are all lowered to 10%, which is the same with that of the Taiwan-Japan tax treaty.

In spite of the competitive relation between Taiwan and South Korea, the two nations have also been sharing a close and complementary partnership in semiconductor integrated circuit and information technology communication. The Taiwan-Korea Tax Agreement provides a resolution of double taxation and reduces the withholding tax rates on the incomes of certain sources, which will ultimately create a more favorable environment with tax equality and boost bilateral economic ties, noted by the Ministry of Finance.

Absent the Taiwan-Korea Tax Agreement, South Korea imposed a 22% tax rate on non-residents' income from dividends, interest, and royalties, while Taiwan taxed non-residents' income from dividends, interest, and royalties at 21%, 15% or 20%, and 20%, respectively. Now with the Taiwan-Korea Tax Agreement, the withholding tax rates on the income of these sources all drop to 10%, a withholding rate similar to most tax treaties.

The Taiwan-Korea Tax Agreement sets out the provisions with respect to mutual agreement procedure. According those provisions, where the residents of both nations encounter disputes arising from the application of this Tax Agreement, they may seek consultation with the competent authorities for resolution. For example, they may request for corresponding adjustments for transfer pricing to avoid double taxation or apply for bilateral advance pricing agreement to reduce the risk of audits by either side's competent authority. (Released 2023.12.29)

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