



Taiwan Updates

May 2016

Legal Updates:

Recent Important Decisions

1. Article 30(x) of the Trademark Act provides that, if a trademark applying for registration is "identical with or similar to other's registered or prior-filed trademarks for identical or similar goods or services and thus may cause a likelihood of confusion among the relevant consumers," such trademark shall not be registered. "Similar goods" means that two different goods that have common or relevant characters based on functions, materials, makers, trade habits, actual market situation or other factors. If affixing an identical or similar trademark to such goods will cause consumers to mistakenly believe that the origins of such goods are identical or not identical but relevant under social convention and actual market situation, it shall be determined that the two goods are similar to each other. Although Article 19(5) of the Trademark Act authorizes the Enforcement Rules of the Trademark Act to enact the "Classification of Goods and Services," it is also evident that, pursuant to Article 19(6) of the Trademark Act, the determination of similar goods or services shall not be bound by the aforementioned Classification of Goods and Services. (Supreme Administrative Court 2016 Decision No. 42)
2. Article 273(1)(i) of the Code of Administrative Procedure provided that if the court obviously failed to apply appropriate laws, a re-trial action may be initiated to claim objection toward the binding final judgment. "Obviously failed to apply appropriate laws" shall mean that the laws applied by the binding final judgment are contrary to the laws that shall be applied to the case or contradict with the precedents. Since the administrative procedure is independent of the civil procedure, the administrative court shall not be bound by the precedents of the Supreme Court. Thus, the "precedents" herein denotes the precedents of the Supreme Administrative Court and does not include the precedents of the Supreme Court. (Supreme Administrative Court 2016 Decision No. 71)

Business Mergers and Acquisitions Act

Article 33 of the Business Mergers and Acquisitions Act provides that, after the resolution on share swap is adopted by a company, it shall make a public notice to shareholders, notify each shareholder and each pledgee of the shareholders registered in the shareholders' roster, no later than 30 days prior to the record date of the share swap, of the following matters:

1. The essentials of a resolution adopted by the shareholders' meeting or the Board of Directors.
2. Transfer of shares shall be executed on the record date of the share swap.
3. Shareholders shall file the share certificates they hold one day before the record date of the share swap; those share certificates not filed shall become null and void.

On March 22, 2016, Taiwan's Ministry of Economic Affairs promulgated the Jing-Shang-Tzu No. 10502016260 circular letter stating that all the companies listed on the Taiwan Stock Exchange ("TWSE"), General Stock Board ("GSB") or the Emerging Stock Board ("ESB") have issued their shares in non-physical form or deposited their physical securities at the Taiwan Depository and Clearing Corporation ("TDCC"). Therefore, there will be no possibility for such shares to be circulated and thus will cause no impact on the rights of the shareholders. Based on the foregoing, for the companies listed on the TWSE, OTC and ESB, they may simply make public notice of the matters prescribed in Article 33 of the Business Mergers and Acquisitions Act. However, any company not meeting the above-mentioned situation will still need to make public notice and notify its shareholders.

Personal Information Protection Act

Taiwan's Executive Yuan published that the amendment to Taiwan's Personal Information Protection Act, which was promulgated on December 30, 2015, came into force on March 15, 2016. The main points of this amendment include that: "medical records" constitutes one type of special personal information; the method of consent for the collection, processing and use of personal information is no longer limited to the "written" consent. For an introduction to the main points of this amendment, please refer to our February, 2016 Taiwan Updates.

Intellectual Property

The accelerated examination mechanisms of the current Accelerated Examination Program ("AEP"), Patent Prosecution Highway ("PPH"), and TW-Support Using the PPH Agreement ("TW-SUPA") all provide that: "[T]he unpublished patent application is only allowed to apply for an accelerated examination along with an early publication." Further, the applicant shall pay NT\$1,000 early publication fee. However, the proportion

of cases which have not been published (since an 18-month period after application has not expired) but proceed to a substantive examination has been increasing year by year. As a consequence, arranging early publication as a prerequisite to proceed to the examination of PPH cases will impact interaction and cooperation on PPH cases. Moreover, from an observation of the current PPH mechanisms in other countries, neither the Japan Patent Office (JPO), the Korean Intellectual Property Office (KIPO), nor the United States Patent and Trademark Office (USPTO) require that only published cases are allowed to apply for the PPH.

Based on the foregoing, as of April 1, 2016, the AEP, PPH, and TW-SUPA for the unpublished patent application is no longer conditioned on the early publication. This helps the applicant save the early publication fee and facilitates the use of all types of accelerated examination mechanisms.

Source: <http://www.tipo.gov.tw/ct.asp?xItem=571515&ctNode=7127&mp=1>

Economic Updates:

Foxconn signs takeover deal with Sharp on April 2, 2016

After four years of negotiations, HON HAI PRECISION IND. CO., LTD. ("Foxconn") entered into a 388.8 billion Japanese yen agreement with Sharp Corp. ("Sharp") on April 2, 2016 in order to acquire 66% stake in Sharp with 88 yen per share. Foxconn will have the technology of six main products on hand, including Organic Light-Emitting Diodes (OLED), Internet of Things (IoT) appliances, solar power and others. According to the Chairman of Foxconn, Terry Kuo, in addition to the IGZO (Indium Gallium Zinc Oxide) technology used in many mobile devices, Sharp also holds innovational R&D capabilities and is of quality assurance; along with Foxconn's manufacturing capacity, Mr. Kuo said Sharp will turn a profit under his leadership within four years. Foxconn's takeover of Sharp symbolizes the beginning of an effective industrial cooperation between Taiwan and Japan. Considering that Taiwan lacks brand development while Sharp is short on hardware manufacturing and customer management, complementary cooperation of both parties will build a new model for Taiwan and Japan, and will strengthen their capability to compete with South Korean and Chinese firms.

Taiwan actively discussing tax treaties to strengthen the economic and trade competitiveness of Taiwanese companies

The member counties of the Association of Southeast Asian Nations (ASEAN), the Trans-Pacific Partnership (TPP), the Regional Comprehensive Economic Partnership (RCEP) and others, which have not entered into a tax treaty with Taiwan, are considered priority targets by Taiwan's Executive

Yuan to discuss the possibility of a tax treaty. Taiwan's Executive Yuan anticipates, through tax treaties, reducing taxation regarding overseas investment and maintaining the stability of operation taxation in order to strengthen the economic and trade competitiveness of Taiwanese companies. Sung Hsiu-ling, General Director of the International Fiscal Affairs Department of Taiwan's Ministry of Finance, said the most important purpose of tax treaties is to avoid double taxation. When Taiwanese companies establish a business overseas and then begin earning profits, tax treaties keep them from worrying about double taxation from countries of incorporation and investment. Statistics shows that there are over 3,700 tax treaties worldwide. It further shows that South Korea has entered into 84 tax treaties, Japan has entered into 52, China has entered into 99, and Taiwan has entered into 29 due to its full promotion on tax treaties recently.

Government Updates:

DPP unveils "Cross-strait Agreement Supervisory Bill" and will keep promoting the Cross-Strait Agreement on Trade in Goods and the Cross-Strait Agreement on Trade in Service after May 20, 2016

The Democratic Progressive Party's ("DPP") version of the "Cross-strait Agreement Supervisory Bill" was unveiled in April. The DPP's version establishes the supervisory mechanisms for the pre, mid and post negotiation stages, and might go through the entire three-reading procedure in Taiwan's Legislative Yuan before May 20, 2016 at the earliest. There are six stages of supervisory mechanisms for the future cross-strait negotiations. Those include: (1) the competent authority shall hold a public hearing to discuss with the public, (2) developing a negotiation plan, and, upon approval of Taiwan's Legislative Yuan, begin the negotiation, (3) if a preliminary consensus is reached, immediate reports and explanations to Taiwan's Legislative Yuan will be required, (4) the negotiations shall be immediately suspended if the national security review determines that it might affect national security, (5) the draft of cross-strait agreement shall not be executed until Taiwan's Legislative Yuan grants approval; and (6) the cross-strait agreement shall not come into force until a clause-by-clause review of Taiwan's Legislative Yuan is completed. Business groups hold the opinion that the Cross-strait Agreement Supervisory Bill should focus on supervisory mechanisms, but keep room for negotiations; however, the DPP's version is too strict. With regard to the application of the "Cross-strait Agreement Supervisory Act," a consensus has been reached that it should apply to the Cross-Strait Agreement on Trade in Goods, which is still under negotiation. As for the application to the Cross-Strait Agreement on Trade in Service, which has been concluded but is not in force yet, there are different opinions on whether the "Cross-strait Agreement Supervisory Act" should be applied.

Premier-designate Lin Chuan said if the "Cross-strait Agreement Supervisory Act" is feasible, then the DPP government will keep promoting the Cross-Strait Agreement on Trade in Goods and the Cross-Strait Agreement on Trade in Service after May 20, 2016.

The premier-designate, Lin Chuan presents Cabinet members

The Premier-designate introduced future Cabinet members in April. The vice premier will be Lin Hsi-yao, a former Minister of State without portfolio, who will be responsible for the communication and coordination between the government, the Executive Yuan and the political parties in the future. The previous convention was that the Secretary-general of Executive Yuan was responsible for the communication and coordination between the Executive Yuan and the Legislative Yuan. The Cabinet spokesman will be Tung Chen-yuan, the former Deputy Minister of the Mainland Affairs Council. The Minister of Health and Welfare will be Lin Tzuo-yien, the former Vice Minister of the Ministry of Health and Welfare under the Ma Ying-jeou government. The Ministers without portfolio will be Shih Jun-ji, a former Financial Supervisory Commission Chairman, Chang Ching-sen, a former Vice Minister of the Council for Economic Planning and Development, Hsu Chang-yao, a former Minister of the Directorate General of Budget, Accounting and Statistics, Lin Wan-I, a former Minister of State without portfolio, and Lin Mei-chu, a former Deputy Interior Minister. Each of the five Ministers of State without portfolio is designated with an important role. The former Financial Supervisory Commission Chairman, Shih Jun-ji, will be leading in the areas of finance and economics, telecommunication, and negotiations regarding trade and economics. Taiwan is likely to join the Trans-Pacific Partnership ("TPP") in the future, and an organization, which is responsible for negotiations, will be established under the Executive Yuan and will be supervised by Shih Jun-ji. Chang Ching-sen will be supervising affairs regarding the homeland, transportation, energy, environment, agriculture, social housing, and urban-rural divide. Hsu Chang-yao will be responsible for affairs regarding budget and accounting and statics, human resource, and finance. Lin Mei-chu will be responsible for affairs regarding the interior, justice, transitional justice, judicial reform, and public order. Lin Wan-I will be supervising matters regarding the new government's major policies, such as the annuity and long-term care.

Cultural Updates:

Taipei 101 International Climbing Competition Starts on May 1

The Taipei 101 International Climbing Competition, which is co-hosted by Taipei 101 and the Taipei City Government, is now entering its twelfth year.

Every year, this competition attracts over 4,000 top athletes from all over the world to take on the challenge of Taipei 101, which is up to 91 stories, a total of 2046 stairs, and the vertical height of 390 meters.

The Taipei 101 International Climbing Competition was first held in 2005. It replaced the Empire State Building in New York and became the target for international athletes. Due to the high level of difficulty, the number of participants must be limited out of safety concerns. Participants must be at least 15 years of age and must have passed health checks. In addition, Taipei 101 joined the World Federation of Great Towers in 2014, and the Taipei 101 International Climbing Competition was also listed as one of the point accumulation competitions for the greatest international climbing tournament, the Towerrunning World Cup, in 2015.

Bluefin Tuna Cultural Festival

It has been 15 years since the Bluefin Tuna Cultural Festival was first held in Pingtung township of Donggang in 2001. It is now held by the Information and Tourism Department of Pingtung County Government and its opening day in 2016 is May 7.

Bluefin Tuna is considered an excellent option for sashimi (i.e., sliced raw fish) and has high economic value in Asia. Being an important fishing port in south Taiwan, Donggang is exceptionally rich in bluefin tuna and mainly exported to Japan years ago. However, due to the decrease in exporting during the 1990s, the Bluefin Tuna Cultural Festival was held in order to promote local customs and market bluefin tuna. The annual auction of "the first bluefin tuna" has successfully raised the awareness of bluefin tuna in Taiwan. Since the number of bluefin tuna has decreased in recent years, the Bluefin Tuna Cultural Festival has expanded its theme into tasting the three culinary treasures of Donggang: bluefin tuna, Escolar Eggs, and Sergestid Shrimp.

The Taiwan Updates content on Taiwanese law and regulations is meant to provide an overview of the latest legal developments in Taiwan. Due to the generality of this overview, the information contained herein may not be applicable in all situations and should not be acted or relied upon without special legal advice. For more information or advice on specific legal issues, please contact Lee and Li directly. Our contact information is provided below.

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