

Patent Infringement and Damage Calculation in Taiwan Legal Practice: Recovery of the Infringer's Profits

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Abstract

Patent infringement is one of the most important issues in patent laws. Civil remedy plays a crucial role and money damages are rewarded to compensate for the damages that patentees suffered. Following the principle set forth in Taiwanese civil law, the main goal of money damages is to compensate for past infringement, and only the actual damages can be recovered. Given the difficulty in calculating the actual damages, Article 97 (1) of the Taiwanese Patent Act stipulates three methods of calculation, namely the payment of compensatory damages, recovery of the profits incurred by infringer and reasonable royalty. This article asserts that prevention of further infringement shall also be the main goal of remedies, apart from compensation for past infringement. Thus the damage calculation of recovery of the infringer's profits takes a significant role in patent practice. This article analyzes the concept and status of this method and its application in detail.

Keywords: patent right, patent infringement, compensation for damage, damage calculation, compensatory damage, recovery of the infringer's profits

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