

Recent Trends and Developments in Intellectual Property Law in Taiwan

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Abstract

After the establishment of the Intellectual Property and Commercial Court (IPCC) in 2008 and the implementation of related laws and rules, a new chapter has been opened for the development of the intellectual property field in Taiwan. This article studies the decisions adjudicated by the IPCC, Supreme Court and Supreme Administrative Court, and observes the development of judicial practices from 2016 to July 2024. This article attempts to present observations from both a macro perspective and on the individual areas of the IP law, including cases related to pharmaceutical industry, entertainment industry and agriculture field. Due to the space limitations and the author's research focus, some important issues might not be included.

Regarding the IP fields, there has been considerable development in specific industrial sectors and legal interpretation over the past eight years, including the determination of inventive step of patent law, protection on famous trademark and trade secret. Some trial practices align with the expectations of various sectors and are in line with those of the U.S., Europe, and Japan. However, it is undeniable that there are still some legal concepts and the application of provisions in IP laws that need to be further elaborated by scholars and the courts. For example, it is questionable whether the industrial design should be protected by patent right. In addition, there are still long-standing litigation challenges. Evidence collections and the calculation of damages are two major issues. Due to the nature of intangible property right, it is barely possible to enforce the IP rights, if the IPCC

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is reluctant to grant the preservation of evidence and the amount of compensatory damages is small.

The courts' attitude towards the protection of IPR will, to some extent, have an influence on the industrial activities. This is the most significant difference between IP disputes and disputes involving natural persons. It is hoped that the IPCC can become a driving force in shaping Taiwan's IP "ecosystem".

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