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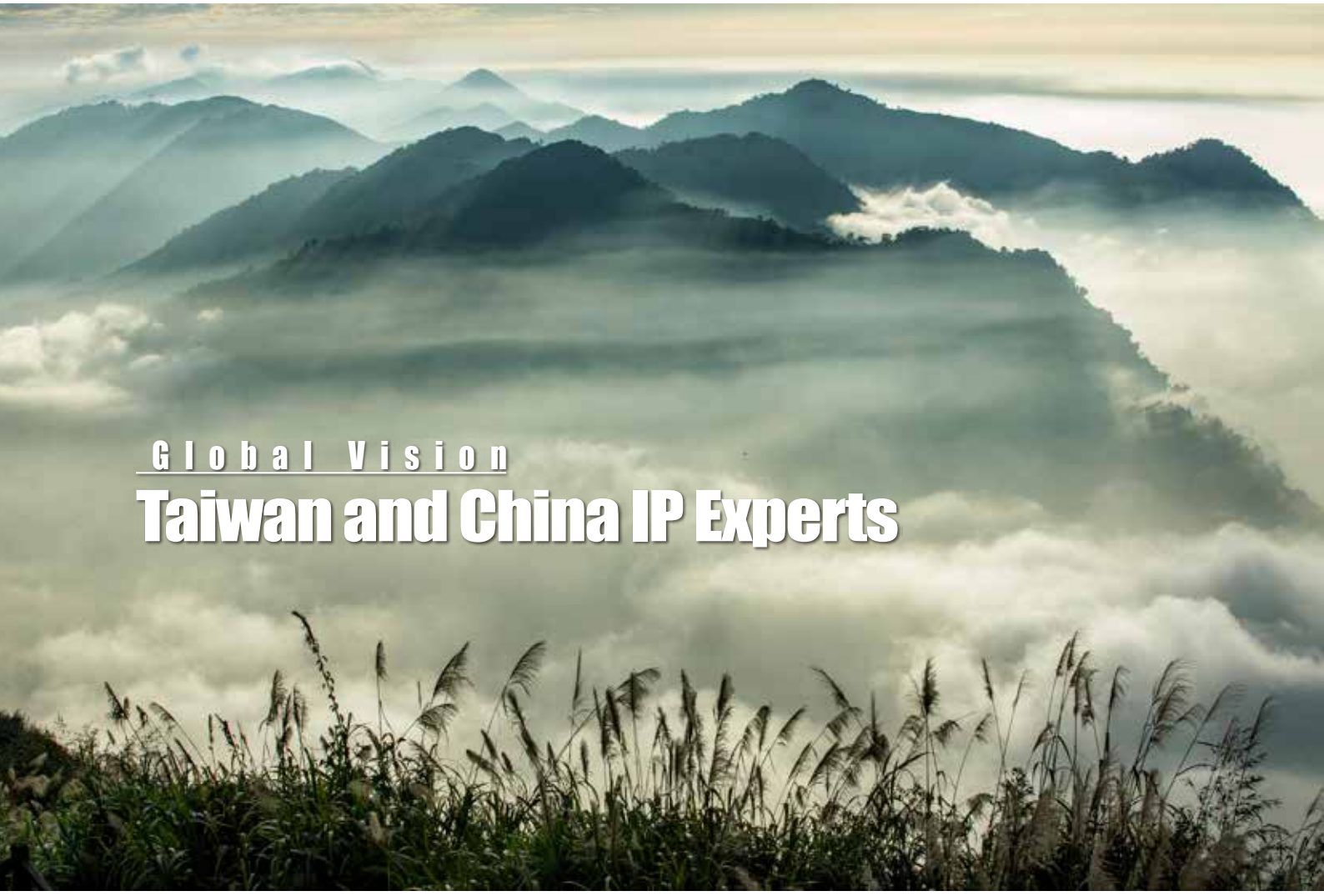


Global Vision

Taiwan and China IP Experts

CNIPA proposed a new draft for the Implementation Rules for Patent Law

In October of 2020, China passed the new Patent Law which was then scheduled to be effective on June 1st, 2021. Patent Law is a structural framework at a superior hierarchy to navigate patent policy. Phrasing is usually short and concise. How a specific statutory clause is to be carried out, it is sometimes resorting to auxiliary laws of lower level such as the Implementation Rules. To correspond to the new Patent Law in advance, CNIPA released a proposed version of the new Implementation Rules for Patent Law (new Rules) to invite public review and inputs.[1] Here are the digest for the new Rules.

Summary

Summary of invention is a necessary component for a complete filing of invention or utility model. For a patent application having drawings, the applicant must designate one figure which best illustrate the technical features of the invention or utility model as the drawing in the summary section.[2] Particularly, the new Rules relieve the drawings from possessing a minimal resolution that each detail remains discernable when a figure zooms in to the size of 4 cm x 6 cm. What is more, although the Patent Act requires conciseness of summary, the word count ceiling does not limit to 300 words anymore.

Partial Design

Partial design will become eligible subject matter as per new Patent Law. The scope of a design is defined by the drawings. To present the claimed part, the drawings shall present the entire product by solid lines and specific claimed part by dotted lines respectively.[3] Besides, the section of description shall include a paragraph to state explicitly the claimed part.

Priority

Restoration of priority is made possible.[4] For inventions and utility models beyond the 12-month period to file an application in China claiming priority to a first-filed foreign application, the applicant is able to restore the priority within two (2) months from the expiration of the 12-month period with paying additional fees. For erroneous or oblivious claim of priority at the time of filing an invention or utility model application, correction or addition of priority is available within 16 months from the priority date or four (4) months from the Chinese application day.[5]

In a PCT application that claimed priority but the international filing is made within two (2) months beyond the expiration of the 12-months period for priority, the applicant is able to restore priority within two (2) months from the entrance to the Chinese national phase, if the applicant fails to restore successfully the same during the international phase.[6]

Patent Evaluation Report

According to the new Rules, any entity or individual is able to request for a patent evaluation report for a granted patent. The patent applicant can request for the same at the time to register an allowed patent application.[7] The CNIPA shall duly

1 https://www.cnipa.gov.cn/art/2020/11/27/art_75_155294.html
2 Implementation Rules for Patent Law (2020; Draft) §23
3 *Id*. §27
4 *Id*. §31
5 *Id*. §31-2
6 *Id*. §110-1

finish a report, against a granted patent within two (2) months from the time receiving a request, or against an allowed patent application within two (2) months from the time of the grant publication.[8] For one utility model or design's granted patent or allowed application, there is only one evaluation report will be made.

Reexamination and Invalidation

CNIPA will have expanded powers to examine more proactively in the two proceedings. In re-examination, when necessary the CNIPA may raise new grounds of non-patentability that are not previously rejected during the first examination, while CNIPA shall offer the applicant an opportunity to respond.[9] Similarly, in invalidation, when necessary the CNIPA may examine other grounds of invalidity not previously challenged by the petitioner, and then shall offer the applicant an opportunity to respond.[10]

Open License

The patentee may voluntarily declare in writing that any entity or individual is able to obtain a license. A declaration shall include the patent number, the name of patentee, the royalty payment, any prerequisite(s), term of license, etc. The patentee may withdraw a license declaration. But the granted license before such a withdrawal remains binding until the license term ends. Unanimous consent of a declaration or withdrawal of an open license is necessary if a patent is owned by multiple parties.

Under any of the following circumstances, an open license declaration is not permitted.[11] The patent has been licensed to another exclusively or solely and meanwhile the patent license has been recorded; the patent has involved in a dispute or the court orders a preliminary injunction to suspend the patent; the patent has been behind an annuity payment; the patent has been pledged without a permission from the pledger; and others.

Patent Term Adjustment (PTA)

For an invention patent granted after four (4) years from filing or three (3) years from examination, the patentee may request a term adjustment to make up for the unreasonable delay attributable to the examiner during examination.[12] A request for adjustment shall be made within three (3) months from the patent grant.[13] Notably, any of the following circumstances of delay does not count into adjustment:[14] (1) applicant's failure to duly make a response to the CNIPA's Office Action within a designated period; (2) a postponement of examination; (3) incorporation by reference; and (4) others. Besides, a halt in patent prosecution owing to dispute of ownership or owing to a court's order of preliminary injunction is not a delay countable to adjustments.

Patent Term Extension (PTE)

There will be a mechanism to compensate for the time of unenforceability of a drug patent due to a market approval examination by the National Medical

8 *Id*. §57
9 *Id*. §62-1
10 *Id*. §68-1

11 *Id*. §72-3
12 Patent Law (2020) §42(2)
13 Implementation Rules for Patent Law (2020; Draft) §85-2
14 *Id*. §85-3

Products Administration (NMPA, f.k.a. the CFDA). The patentee may request a term extension to compensate for the unenforceable period for a maximum of 5 years and the remaining patent term in total caps at 14 years after the launch of a new drug.[15] Extension will be available for patents of composition, method of preparation, or medical use, for (a) new chemical entities, (b) biologics, or (c) Chinese traditional medicines.[16] The mathematical formula to calculate the total timeframe of extension is:

"(Date of drug approval issuance) – (date of patent filing) – (5 years)"[17]

The scope of enforceable patent right during the extended term limits to only the "overlap" of the patent and the approval - namely the specific drug and indication(s) granted in the approval.[18] A request for extension must be made within 3 months from the issuance of approval, and the patent requested shall have a remainder of term no less than 6 months.[19] A patent can only be extended once. Only one patent can be extended if one approved drug product associates with multiple patents; whereas only one approved drug product can be used to extend the patent if the patent involves multiple approved drug products.

15 Patent Law (2020) §42(3)
16 Implementation Rules for Patent Law (2020; Draft) §85-4
17 *Id*. §85-5
18 *Id*. §85-6
19 *Id*. §85-7

Taiwan Patent Act of 2021 Unveiled

As Taiwan enters 2021, the Taiwan Intellectual Property Office (TIPO) announced an initiative to amend the Patent Act on December 30, just two days prior to the end of 2020. TIPO brought up a planned overhaul of the patent system which will alter the content of roughly 50% of the Patent Act as it is currently construed, adding 30 articles, amending the wording of 33 articles and deleting 10 articles. The revisions draw inspiration from concepts found in the U.S., Japan, and Germany. The amendments constitute the most extensive revision of the Patent Act since 2012.

Establishment of a new division within TIPO

The most noticeable change brought by the amendment to the Patent Act is the creation of the tentatively-named Patent Review and Dispute Adjudication Board (PRDAB), the inspiration of which was taken from members of the IP5[1]. As its name suggests, regarding patent review, PRDAB will deal with primarily the second reviews of TIPO's decisions of (1) the first examination, (2) patent term extension for pharmaceutical products and agricultural chemicals, (3) post-grant amendments, and (4) other applications and procedural matters. As for dispute adjudication, PRDAB will be vested with jurisdiction over the decisions of (1) patent invalidation and (2) cancellation of patent term extension. (Art. 66-1)

Along with the organizational transformation brought by these changes, the current "re-examination" dealing with second review of the first examination will be abolished and be replaced by the aforementioned new patent review procedure handled by PRDAB. (Art. 66-1) PRDAB may carry out other searches and hence possibly raise new objections which were absent from the decision in first examination.

Under the amendments, divisional practice will be imposed with more restrictions, giving the applicant a narrower window of time to file for a divisional application. The former language of the Patent Act entailed that divisional applications were permitted all the way from first examination until the decision of re-examination, within three months from the allowance of first examination or re-examination. That is, a divisional was permitted so long as an application was pending in TIPO, assuming that other requirements were met. According to the amendment, however, a case of patent review by its nature is an appeal, or a remedial phase, despite the fact that pro forma it still remains in PRDAB of TIPO. Such a case entering the PRDAB phase is considered to have exited pendency and hence a division is no longer available. (Art. 34)

TIPO's rationale behind restricting divisions has attracted criticism. Firstly, at least in JPO and CNIPA, there remains a chance for division after a case is rejected from the first examination. While the new PRDAB is modeled after peer offices which do allow for less restricted division, PRDAB does not. Secondly, divisional applications are no longer permitted when a rejected case exits pendency from TIPO and then proceeds to the next stage of remedy

1 PTAB of the USPTO, Trial and Appeal Department (TAD) of the JPO, and Intellectual Property Trial and Appeal Board (IPTAB) of the KIPO

("administrative appeal" by the Ministry of Economic Affair which is explained in latter paragraphs), because logically TIPO has no control of the case anymore. But now the next stage of remedy following the first examination remains inside PRDAB under TIPO, therefore it seems unreasonable to refuse divisions.

Procedural Rules in PRDAB

PRDAB will manage each case by a panel of 3 or 5 members, one of whom will, tentatively devised, preside and be served by a senior examiner or divisional chief. (Art. 66-2) Under the PRDAB regime, there will also be new procedural measures such as oral debates, a preparation stage, procedural schedule planning, timely advice of interim opinion by the panel during a review, interim (interlocutory) decision, and pre- notification to close the review.

A patent review case will proceed as documentary examination by default, and the oral debate will be available by request or under PRDAB's discretion. Conversely, a dispute adjudication case will be conducted as an oral proceeding by default, while examination in documents is still only possible upon two adversary parties' mutual consents or by order of PRDAB.

"Procedural schedule" in dispute adjudication cases is a new system transplanted from the judicial courts. Under the current regime, the timeframe within which the patent challenger or the patentee can take a specific offensive activities or defensive counter-activities during an invalidation action is explicitly stipulated. However, the amendments remove the rigid timeframes. Instead, before a proceeding begins, PRDAB will plan a procedural schedule which will at least include (1) a set period of time to collect the facts, evidence, and disputable issues as well as (2) the prospective time to conclude the oral debates. (Art. 74-2) A procedural schedule will have flexibility to adjust the time of a particular stage on a case-by-case basis.

In both review and dispute cases, a third party whose interest in law is aligned with either party, may either request or be ordered to participate as an intervener for aiding in procedural challenges and defense. (Art. 66-4) PRDAB's decision concluding a proceeding also binds the intervener. An assignee in a patent review case or an exclusive licensee in a dispute case which falls under the category of" third party" insofar as that party has a legal interest which is aligned with a party in the proceeding.

Similar to the current counterpart regimes in China, Japan, and Korea, before the panel review of a patent review case, there is a pre-review stage which is presided by the examiner responsible for the case in the first examination and may decide to proceed to grant if amendment(s) to the rejected application are admissible without referring to the panel. (Art. 66-9)

Legal remedies beyond TIPO

Under the amendments, in instances in which a party is not satisfied with the decision made by PRDAB, that party may directly file a lawsuit to the Intellectual Property and Commercial Court (IPCC)[2], whereupon the current administrative appeal in the Ministry of Economic Affairs will be cancelled.

Furthermore, a lawsuit against the PRDAB decision brought into the IPCC will be conducted in accordance with civil litigation procedures rather than administrative litigation procedures. This entails that an administrative remedy is no longer available for patent related disputes.

A notable change in the area of evidence submission is that evidence not previously submitted to PRDAB can no longer be presented to the IPCC. This rule enables PRDAB to become a quasi-first instance trial court and also upholds the doctrine of equality of arms.

Resolution for patent ownership disputes

Under the current regime, a dispute regarding the determination of a real/lawful owner of a patent can be resolved in two ways, either (1) by resorting to invalidation by TIPO or (2) by seeking civil litigation in the court. TIPO is limited intrinsically in its ability to investigate true ownership of an intangible right, while conversely the courts are regarded as a better venue to do this. Under the draft amendments, it will no longer be possible to invalidate a patent held by an unlawful holder via TIPO. Going forward, patent ownership disputes will be resolved only by the judicial courts in the future.

While some practitioners question this change, they by and large agree with TIPO's rationale. By taking the current route of invalidation at TIPO, the true owner, after the disputed patent is announced invalid, is entitled to re-apply the same subject matter while keeping the original filing date as it was. It means that the true owner has a chance to make desired modifications to the application, assuming that there can be found support in the disclosure. However, the draft amendments have rendered the judicial system being the sole forum for the resolving the ownership dispute. The courts lack TIPO's power to alter the scope of a patent, which means that no further changes can be made to the patent even if a party regains patent rights after being determined the true owner of a patent.

Grace period of design to be extended to 12 months

The exemption from loss of novelty and creativeness of a design application will be 12 months from any intentional or unintentional disclosure, which is identical to the regimes in the U.S., the E.U., Japan, and Korea, as opposed to six (6) months under the current Patent law regime.

2 The Intellectual Property and Commercial Court will establish by transforming from the currently Intellectual Property Court.

Taiwan Trademark Act of 2021 Unveiled

TIPO announced a draft amendment to the Trademark Act on January 7. Almost identical to the draft Patent Act amendments which were released less than 10 days earlier, the amendment to the Trademark Act is aimed at overhauling the regime for the dispute resolution system in the area of remedies. A total of 53 articles will be revised, including 9 which will be modified, 33 added, and 11 deleted. There will also be an establishment of a new organization to specifically handle matters related to trademark review and disputes, following a series of complementary regulations.

Establishment of a new division within TIPO

TIPO drew inspiration from peer offices such as the TTAB of the USPTO and the TAD of the JPO in their establishment of an internal division called the "Trademark Review and Dispute Adjudication Board ("TRDAB"; the tentative English name until the official English name is announced) which holds an exclusive jurisdiction in resolving trademark rejections and other relevant issues. Specifically, its trademark review function will serve as the second review of (1) rejected trademark application after the first examination and (2) TIPO's other decisions for procedural matters such as invalid priority claims, assignment, licensing, pledges, renewal or abandonment. On the other hand, dispute adjudication functions include (1) invalidation and (2) cancellation. (Art. 56-1)

The TRDAB procedure for reviewing disputes will bring a major change to both the invalidation and cancellation mechanisms. Oral arguments before TRDAB will be a standard proceeding for contentious matters. As a result, TIPO will be deprived of the power to cancel a registered trademark at its discretion (Art. 63). Under the draft amendments, the actionable grounds for examiners to proactively initiate trademark invalidation will also be materially limited to absolute grounds of refusal, such as violation of public order and morality. (Art. 57(2))

Procedural Rules in TRDAB

TRDAB will adjudicate each case by a panel of three (3) or five (5) examiners, one of whom will preside and be served by a senior examiner or divisional chief. The panel will then come to a decision after a majority vote. (Art. 56-2) Furthermore, there will be new procedural measures such as oral proceedings, a case preparation stage, timely advice of interim opinion by the panel during a review, and pre-notification to close the review.

Legal remedies beyond TIPO

Under the amendments, in instances in which a party is not satisfied with the decision rendered by TRDAB, that party may directly file a lawsuit to the Intellectual Property and Commercial Court (IPCC)[1], which means that an administrative appeal in the Ministry of Economic Affairs will also be removed. Furthermore, a lawsuit against the TRDAB decision

1 The Intellectual Property and Commercial Court will launch on July 1 of 2021 and the current Intellectual Property Court will be dissolved.

brought to the IPCC will be conducted in accordance with civil litigation procedural rules rather those governing administrative litigation.

Since a trademark dispute will be resolved under civil litigation procedures at the IPCC under the draft amendments, this dispute resolution will become an adversary proceeding so that the two parties are invalidation/cancellation challenger and the trademark owner (Art. 67-9(2)). Therefore, the parties at the TRDAB stage and the litigation stage will be identical, which is an intended legal reform to the current administrative litigation regime where TIPO plays an adversary in a suit.

A notable change in the area of evidence submission is that evidence not previously submitted to TRDAB can no longer be presented to the IPCC (Art. 67-10). This rule enables TRDAB to become a quasi-first instance court and also upholds the doctrine of equality of arms.

Removal of Opposition

Opposition is one of the three currently available mechanisms to challenge a registration. It allows "anyone" to oppose a registration within three months from publication on absolute and relative grounds of refusal, such as lack of distinctiveness. These actionable grounds are the same as those for invalidation, which is now only available to an "interested party" and TIPO itself. By investigating into the accumulated cases, about 97% of oppositions were in fact raised by said interested parties on the relative grounds of refusal. That entails that opposition has been largely been absorbed by invalidation. Therefore, the draft amendments will merge the two mechanisms by leaving out opposition and then allowing essentially any interested party to invalidate a registration under the grounds of "relative facts of refusal."

CNIPA Order No. 391: Revising the Chemical Invention Chapter in Patent Examination Guidelines

CNIPA Order No. 391: Revising the Chemical Invention Chapter in Patent Examination Guidelines

Beginning from May, 2020, China National IP Administration ("CNIPA") launched a new program aimed to comprehensively revise the Patent Examination Guidelines. Segmented into different series, the new program released its first series of revisions, which related to Chapter 10 of the Part 2 of the Guidelines dedicated to chemical inventions. After reviewing the public input, CNIPA promulgated the first series of revisions as its Order No. 391 which has come into force on January 15, 2021 (hereinafter referred to as "Revisions"). Here are the main paragraphs touched upon in the first series.

Post-filing data supplement for chemical inventions has been allowed since 2016. Admissible data are those derivable from the as-filed disclosure by a person having ordinary skill in the art, in order to support the provable technical effects available in the disclosure. But it has been criticized by some patent practitioners that CNIPA was strict to determine what constitutes the admissibility of post-filing data. The Revisions now make it clear and emphasize that if the post-filing data are filed for the purpose of sufficient disclosure/enablement (§22(3)) and inventiveness (§26(3)), those will be accepted. For instance, an application claims a compound X, along with very detailed descriptions including examples to prepare the compound X, the beneficial effects of hypotension, and the method to measure hypotensive activity. But there was no experimental data in the patent specification. Experimental data filed after filing should be considered for sake of supporting the requirement of sufficient disclosure.

The Revisions rephrased the guidance for novelty.[1] A compound is not novel if its structural information such as name, molecular formula, etc. has been stated in a prior art reference detailed in a level that a person having ordinary skill in the art considers the compound being made public. It cannot be forthrightly deemed loss of novelty when only, as the Guidelines used to state, a reference "mentions" the compound. Besides, the source of prior art can be combined from different pages in one single document. When the compound's structural information in one cited reference is not enough to determine identity of compounds but other information including physical and chemical properties, synthetic methods, and experiment data are available to corroborate such identical compounds, a person having ordinary skill in the art may presume that the two compounds are essentially the same so that the cited prior art reference anticipates. Yet, the applicant can argue them being different by submitting more other evidence.

1 Section 5.1, Chapter 10, Part 2 of the Patent Examination Guidelines

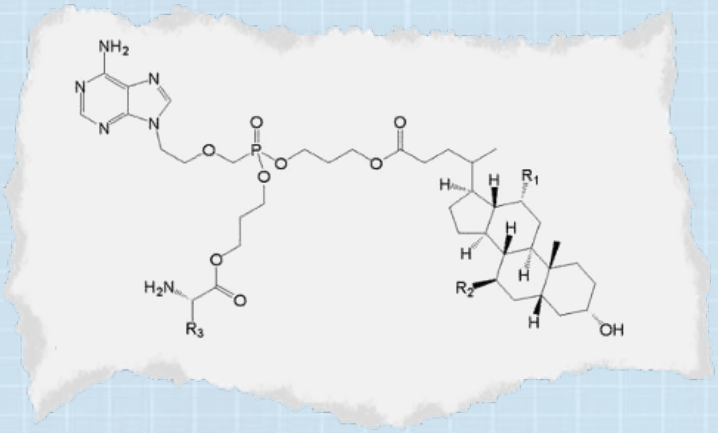
For determining inventive step, the Revisions highlighted the three-step test (or similarly the problem-solution approach), unexpected results, and technical suggestions, as follows.[2]

1. one shall firstly identify the structural difference between the prior art and the claimed compound as well as the technical problem to be solved by the structural modification's usage and/or effect, so as to determine whether the prior art reveals any technical suggestions. Particularly when the person having ordinary skill in the art can derive the claimed compound by reasoning, analysis, or limited experiment based on the cited prior art reference, said prior art introduces technical suggestions.

2. The claimed compound's structural modification from the closest known compound can bring about different usage or can be an improvement in effect. When the different usage or improvement in effect is unexpected, the claimed compound should be non-obvious in light of prior art and hence be inventive.

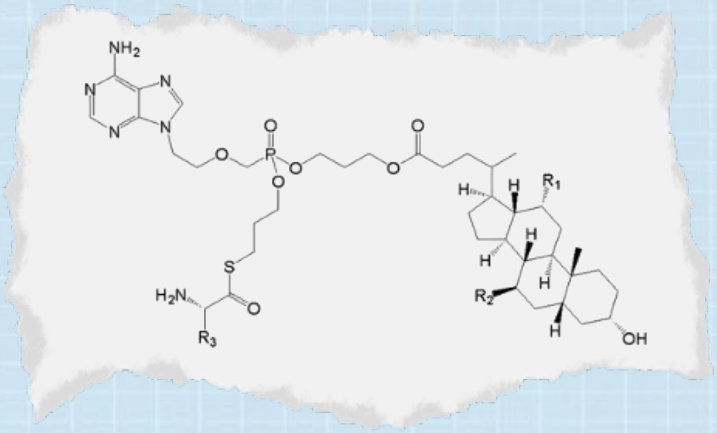
3. If the claimed invention's technical effect is known and inevitable, the claimed compound is not inventive.

For one instance,Prior art (Compound Va) is,



wherein R1=OH, R2=H, and R3=CH2CH(CH3)2.

Claimed invention (Compound Vb) is,



wherein R1 and R2 can be H or OH, R3 is a C1-6 alkyl group, whereas Vb includes a specific compound Vb1 where R1=OH, R =H, and R3 = CHCH3CH2CH3. Compound Vb1 has an anti-hepatitis B virus activity superior than compound Va does.

2 Section 6, Chapter 10, Part 2 of the Patent Examination Guidelines

In view of compound Va versus compound Vb, the only difference is that the linking atom between the amino residue and the phosporyl group – sulphur (-S-) for compound Vb and oxygen (-O-) for Va. Since the chemical properties of sulphur and oxygen are similar, a person skilled in the art has a motivation to undergo a substitution of atoms from oxygen to sulphur in order to attain compound Vb. Hence compound Vb does not have inventive step. In the contrary, compound Vb1 is different from compound Va by not only the linking atom but also the R3 group. Moreover, compound Vb1 possess a significantly superior activity against hepatitis B virus. In the prior art there is no such a technical suggestion to improve anti-hepatitis B virus activities by the indicated modifications in chemical structure. Hence compound Vb1 has inventive step.

The section for biotechnological inventions is another focus in the Revisions.[3] To draft a patent claim, a monoclonal antibody can now be defined by its structural limitations, in addition to defining by only the hybridoma which generates the claimed monoclonal antibody. This change accommodates well the development in amino acid sequencing technology where the structural data of monoclonal antibodies are becoming more easily identifiable.

The three-step test is again emphasized in the sections for biotechnology inventions. That is, the examiner is advised to determine the difference between the claimed invention and the closest prior art, and then to identify the technical problem to be solved by the technical effect of the claimed invention. Next, the examiner shall ascertain whether the prior art introduces a technical suggestion. Finally, based on a found technical suggestion, the examiner shall resolve whether the claimed invention is obvious in light of the prior art. This approach is surely applicable to various kinds of biotech/genetic subject matters such as genes, peptides, proteins, recombinant vectors, transformed DNAs, fusions cells, monoclonal antibodies.

3 Section 9.3, Chapter 10, Part 2 of the Patent Examination Guidelines

Largan v. AOET
IP Court Affirms a Large Award in Damages

The long-running infringement suit between the two Taiwanese optical lens giants Largan Co, Ltd. ("Largan") and Ability Opto-Electronics Technology Co., Ltd ("AOET") has ended in a second instance ruling by the Taiwan Intellectual Property Court ("IP Court"), affirming a previous ruling in which AOET was ordered to pay TWD 1.52 billion in damages to Largan.[1] The suit began when Largan, the largest aspheric lens producer in the world, filed a complaint for infringement against its s competitor AOET. In 2017, the trial court ruled in favor of Largan that AOET and six individuals were jointly liable for damages up to TWD 1.52 billion (roughly USD 54M). AOET appealed but then lost in the second instance.

Largan complained that two figureheads of AOET – a board member and the CEO – as well as four former Largan employees conspired to steal several schematic drawings beginning at some point prior to 2013. After acquiring Largan's know-how, the conspirators filed for patents in relation to at least the automatic process of high-end lens manufacture based on those which they had misappropriated. AOET was then granted two utility model patents by the Taiwan Intellectual Property Office ("TIPO"), thereby exposing what were in actuality Largan's trade secrets to the public.

AOET denied that it had engaged in any theft of intellectual properties, claiming that the drawings in question were not made from misappropriated designs, but were instead made by AOET itself according to general practices in the industry, adding that the four former Largan employees currently in the employ of AOET were not involved in the necessary fields required to create the allegedly stolen know-how such as designing machine structures and reviewing drawings , nor did they have the necessary passcodes to access to said confidential know-how. Moreover, AOET challenged the eligibility of Largan's supposedly misappropriated technology as protectable trade secrets, claiming that the drawings could have been drawn by any person with sufficient knowledge of automatic manufacture and applied mechanics.

AOET's claims were rebutted by the Taiwan IP Court, which, acting as the appellate court found that the four former employees used to access or at least had the opportunity to obtain access to the confidential technology. According to the Court's findings, the four individuals who all subsequently joined AOET admitted to having seen or maintained the patented machine, from programming machine-specific software to testing said machine on the product lines. Thus, the court held that the four former employees of Largan stole Largan's schematic drawings by means of reproduction and that the schematic drawings were substantially similar to those of Largan. As such, they were considered to have misappropriated Largan's trade secrets.

1 2013-CivilTradeLitigation-No.6 (102年度民營訴字第6號)

As the IP Court found, AOET's CEO was named as a co-inventor on the patent applications and a board member retained a law office to prosecute the patent applications on behalf of AOET. IP Court hence deemed that they have maliciously misappropriated Largan's trade secrets jointly in a conspiration. As such, the trial court's ruling that the two persons were jointly liable for infringement shall stand.

The IP Court also affirmed trial court's damages award. As per assessment by an accountant, Largan's fiscal loss amounted to TWD 510,321,123, equivalent to its invested cost in relation to research and development of the misappropriated trade secrets. Largan claimed for TWD 1,522,470,639 plus interest, not exceeding the ceiling of punitive damages, which is up to triple of the aforementioned loss. The IP Court affirmed the claimed damages and awarded them accordingly, which might be the largest award ever for a suit involving trade secret misappropriation.

Short Summary of Statute and Interpretations[2]

In Taiwan, a piece of confidential information is eligible to be a protectable trade secret when the following three elements are met:[3]

1. Secrecy: it is not known by general people engaging in the same field of information.

2. Economic Value: intrinsically it possesses genuine or potential economic value due to the nature of its secrecy.

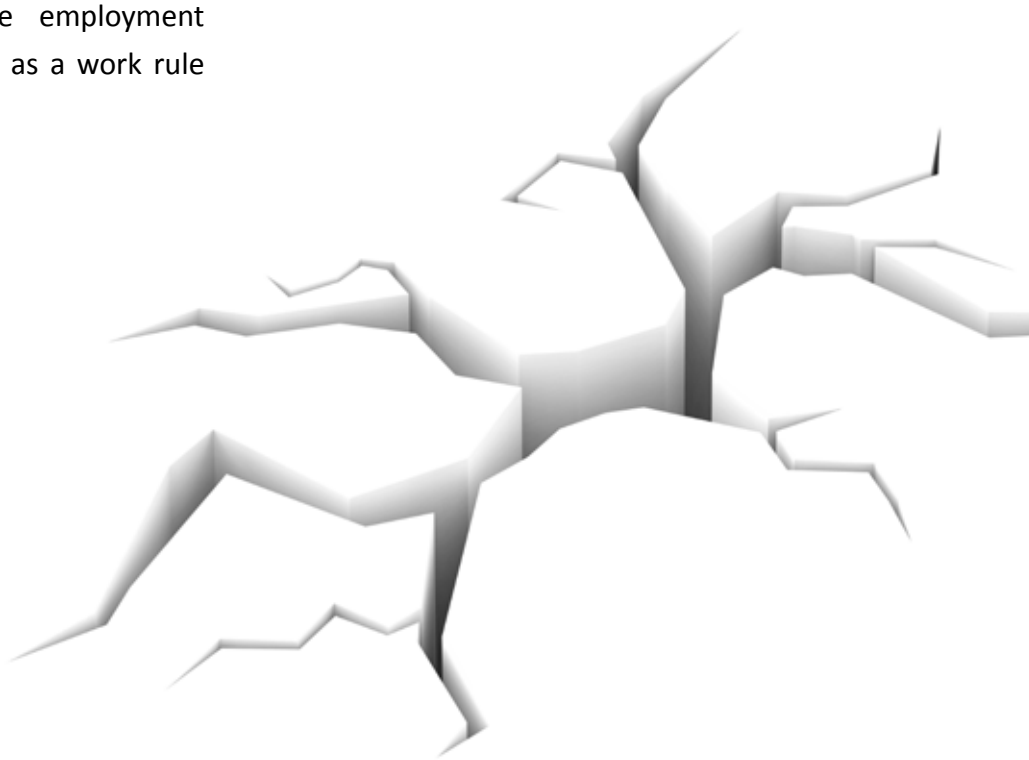
3. Protective Measures: the owner has adopted reasonable protective measures to safeguard said information.

A precedent case has generally summarized secrets in two types: commercial trade secrets and technological trade secrets. The former are client lists, distribution locations, inventory cost, bottom-line pricing, human resource management, cost analysis, etc., whereas the latter are manufacture know-how, professional process or formula, etc. that are in relation to a specific industry's research and/or innovation.[4] On the other hand, a piece of know-how that enables to optimize learning curves, reduce likelihood of errors, or improve production efficiency is supposed to possess economic value.[5]

Adoption of reasonable protective measures refers to the idea that, with the optimal human resource and financial capability, by commonly available approach or techniques, the information unknown to general public is controlled to be

2 https://www.tipo.gov.tw/tw/dl-254011-18281d43151e42208adce0fc8e3e7b23.html
3 Article 2, the Trade Secrets Act
4 2014-CivilTradeAppeal-No.5 (103年度民營上字第5號)
5 2016-CivilTradeAppealRemand(1)-No.1 (105年民營上更(一)字第1號)

classified and/or systemized in accordance with different tiers in the organizational hierarchy of business. This benchmark guidance is especially significant in handling IT data in which users are assigned with different levels of authorizations for access. The courts would factor in matters such as the type of secret, scale of business operations, general knowledge among ordinary people, case-specific circumstances in order to analyze whether the information in dispute is easily accessible by a common person availing him or herself of lawful means.[6] However, a reasonable measure does not need to be a degree of so-called "seamless impermeability."[7] Good examples include, but are not limited to, labeling a note as "CLASSIFIED" or "LIMITED ACCESS" on secured documents, providing stronger locks or passcodes, zoning restricted areas in a building, contracting in the employment agreement specifying confidentiality as a work rule or other sensible measures.[8]



6 2019-TaiAppeal-No.36 (108年台上字第36號民事判決)
7 2018-CiminalIntellectualAppealLitigation-No.24 (107年度刑智上訴字第24號)
8 2014-CivilTradeAppeal-No.5 (103年度民營上字第5號)

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