STRATEGIES TO PREVENT COUNTERFEITING PATENTS AND TRADEMARKS IN TAIWAN, REPUBLIC OF CHINA

by

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Preface

The outstanding economic achievements of Taiwan, the R.O.C. has been praised as a miracle. Because of its rapid and unceasing progress, Taiwan is now pushed to pass through an economic transitional period, strikingly marching its steps to the rank of the developed countries. It seems to be a natural tendency that infringements and unfair competition would appear in a country where the economy has undergone a transitional stage, especially the infringements in trademarks and patents. Taiwan is not exceptional. As we understand that trademark and patent protection are important to the whole commercial order and the economic development and their relations are as close as father and son in a family. For this reason, the strategies to cope with the economical impasses in the transitional period and the roles of trademark and patent interacted in this period are what this book aims to discuss. In addition, the history of trademark and patent of the Republic of China and the measures and tactics of how to prevent and stop infringements are also narrated and commented in this book.

I had been a trademark examiner in the National Bureau of Standards (Patent Office) and is now a member of Researchers of Improving Patent System in the National Bureau of Standards, the Chairman of the Taipei Inventions' Association and the president of Tai E International Patent & Law Office in which more than one hundred and fifty personnels are devoting their efforts to deal with the protection of the intellectual property rights. What I experienced from my work for my local clients is that most of them have ignored their possible involvement with the conflicts of trademark and used the foreign trademarks on the goods while exporting upon request of foreign buyers. They are always smart in making profits but they do not realize how to protect and safeguard their profits, because they have not been

educated with the importance of the protection of industrial property rights. To educate the local businessmen and manufacturers with the knowledge of protection of the rights and of how to obtain the required rights will be one of the urgent tasks which have to be accomplished. A good way to break through the trade impasses is to use self-created trademark and to do R & D (Research and Development). I do hope that this book will not only stand as a good example and a means in educating the local businessmen, but also draw the attention of the readers abroad to the trademark and patent affairs of Taiwan, the R.O.C. It is expected that fair trade would be kept and illuminated, and that imitations and infringements would no longer exist.

To the colleagues of Tai E International Patent & Law Office who have given assistance to me in the preparation of this book, I express my sincere thanks.

Lin, Chin-chang
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TABLE OF CONTENTS

LIST OF FIGURES

Figure page

LIST OF TABLE

Table

Chapter 1
INTRODUCTION

Thirty years have passed since the Republic of China set out to painstakingly reconstruct herself with virtually nothing left from the ruins of World War II. During this period, she changed from a predominately agricultural nation receiving economic aid from the United States to become a major developing nation. Today, she is still trying to upgrade herself from being predominately labor-intensive industries, to become one of the developed nations with knowledge-and capital-intensive industries--among them, the high-precision industries, as her major field of devotion.

For the past twenty years, Taiwan, the Republic of China, has been showing a high rate of economic growth of some 10 percent on the average each year, which figure is respectfully acknowledged throughout the world as an economic wonder. But actually, Taiwan, the Republic of China, is not complacent despite all these achievements.

Meanwhile, due to an increase in research and innovation in industrial and business circles, the number of cases of applications for patent rights and exclusive enjoyment of trademarks are expanding rapidly. Take the number of patent applications, for example. In 1951 there were merely fifty-eight cases, while in 1981, there were 15,034 indicating a drastic increase of 258 fold. Accordingly, service industries of related interests have mushroomed as well. As of 1981, the production value of service industries (including transportation-communication, as well as other service industries) reached a total of 717.9 billion N.T. Dollars (an equivalent of 18.89 billion U.S. Dollars), constituting 42.1 percent of the GNP. Aside from that of the transportation-communication industry, the turnovers

of other service industries related to patent and trademark services accounted for 35.6 percent of the GNP with a total amount of 606.9 billion N.T. Dollars (approximately 15.97 billion U.S. Dollars).

However, the worldwide recession caused by the second oil crisis had a severe impact on Taiwan, the Republic of China, as she was in a transitional period trying to change from a labor-intensive industrial structure. This situation weakened the competitive capacity of national external trade, for now wages had risen considerably. What is more, protectionism and anti-piracy currents dealt a serious blow to Taiwan, the Republic of China, bringing about in 1982 a negative growth in exports for the first time in the past twenty years.

For ten years, this writer had official (National Bureau of Standards MOEA) and private (Tai-E International Patent and Law Office) experience in the patent and trademark service industry, and has observed various economic situations during this transitional period.

In this connection he wishes to present you with this monograph while attempting to find out in what fields Taiwan, the Republic of China, should make efforts during such an economic transitional period. Beginning with his own experience in this field of patent and trademark services, he became aware that there was a need to prevent counterfeiting of patents and trademarks if Taiwan was to promote herself to the status of being a highly industrial nation-which is what she seeks to do.

Purpose of this Monograph

This purposes of this monograph are as follows:

(1) Investigate the present economic situation in Taiwan, the Republic of China, and find out in which respects

she must make efforts.

(2) Examine the importance of patents and rights for the exclusive enjoyment of trademarks, as well as their interconnection and application.

(3) Look into the progress of patents and trademarks in Taiwan, the Republic of China.

(4) Present a summary of efforts made by Taiwan, the Republic of China for the prevention of counterfeiting and infringement on patent and trademark rights.

Chapter 2
A BRIEF INTRODUCTION TO THE PRESENT ECONOMIC SITUATION IN TAIWAN

The Economic Wonders Accomplished by the Republic of China

The economy of Taiwan, the Republic of China, is a typical model of making something from nothing. It is an example of successful, effective use being made of economic aid from the United States. It can also serve as a model to other underdeveloped nations.

In 1945, immediately after Taiwan was again under the jurisdiction of the Republic of China, there was nothing left but chaos and poverty. The economic intra-structure had been severely damaged in the war and there was virtually no traffic facilities and vehicles available. The countryside was drained of most of its manpower, with only the aged, the weak, the women, and the children left. As a result, despite all the economic aid from the U.S. before 1951, the government of the Republic of China, as she began to exercise jurisdiction over Taiwan, still had to face up to a deficit finance of as high as 1.14 billion N.T. Dollars. Among the small amount of exports (the total amount of export and import trade was merely 4 billion N.T. Dollars, an equivalent of 0.3 billion U.S. Dollars, with an unfavorable balance of trade of 170 million U.S. Dollars), the export of farm products and the processed farm products formed 91.9 percent of the total. The amount of GNP in those days was only 17.247 billion N.T. Dollars (approximately 1.3 billion U.S. Dollars) according to 1952 census, an equivalent of 1.716 N.T. Dollars per capita GNP on the average (about 130 U.S. Dollars).

As of 1982, the GNP of Taiwan, the Republic of China had reached a high of 1,824.2 billion N.T. Dollars (Approximately 48 billion U.S. Dollars) with a real economic growth rate of 3.76 percent. In the same period, the growth rate of Japan was 2.5 percent, that of the U.S.-1.8 percent, and those of the major industrial nations in western Europe were all below 1.5 percent (Table 1). From this, we can see that even under the severe impact of recession, Taiwan,

Unit: %

nation	year 1982	* 1983	nation	year 1982	* 1983
The Republic of China	3.76	5.5	Korea	6.0	7.5
The United States	-1.8	2.0	Hongkong	3.5	5.3
Japan	2.5	3.5	Singapore	5.5	7.5
West Germany	-1.2	1.0	Philippines	2.5	2.5
Canada	-5.0	1.25	Thailand	4.5	5.5
United Kingdom	0.5	1.0	Malaysia	4.0	4.5
France	1.5	0.5	Indonesia	4.5	4.7
Italy	0.8	0.3			

Table 1
Economic Growth Rates of Some Nations

Remark: Economic Growth Rate for 1983 is a prediction value
Source: OECD Economic Outlook and others

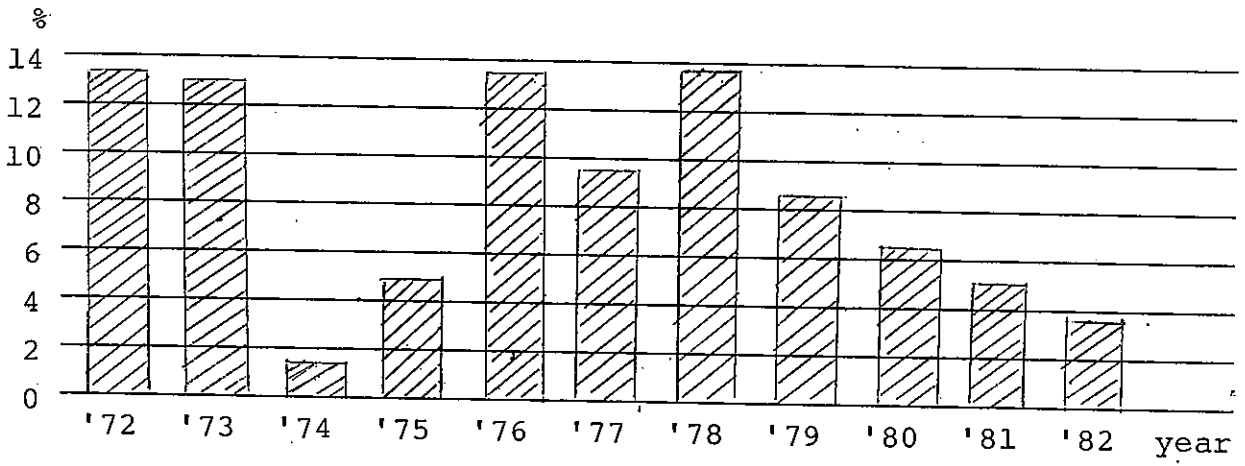

Figure 1

Trend Diagram of Economic Growth of R.O.C.

Information Source: Income of R.O.C. published by Department of Audit, Executive Yuan.

the Republic of China still maintained a relatively high economic growth rate.

However, for Taiwan, the Republic of China, the growth rate of 3.76 percent was one of the lowest. In fact, with the exception of 1.1 percent in 1974, the year stricken by the first oil crisis, in all other years, the figure was higher than 3.76 percent.

In foreign trade, the total amount of export/import trade in 1982 added up to 41.087 billion U.S. Dollars with a trade surplus of 1.3 billion U.S. Dollars. Industrial products made up 50.6 percent of the total amount; the service industries 42.1 percent, while the farm group formed a mere 7.3 percent. Compared with 1952, the difference was significant and the growth was remarkable.

Goals for Future Development--Four-year Economic Construction Plan

Obviously, the Republic of China is not complacent for all her present achievement. The four-year economic construction plan drafted in 1981 set up an average annual economic growth rate of 8 percent for the 4 years from 1982 to 1985. It is anticipated that in 1985 the unemployment rate will be 1.3 percent and the average per capital GNP will be 4,303 U.S. Dollars. The amount of exports in commodities and services will be growing at a rate of 10.9 percent annually so as to reach a final amount of 1380.2 billion N.T. Dollars, in terms of 1981 N.T. Dollars. This is equivalent to 36.3 billion U.S. Dollars based on the exchange rate of U.S. Dollars to N.T. Dollars prevailing in 1981.

(Unit : 100 million N. T. dollars in terms of the value 1981)

Field	1981 (Estimated Real Sum)		1985		Average annual increase rate 1982-1985(%)
	Amount	(%) Percentage	Amount	(%) percentage	
Domestic GNP	17,064	100.0	23,215	100.0	8.0
Agriculture	1,255	7.3	1,379	5.9	2.4
Industries	8,629	50.6	11,943	51.5	8.5
a. Mining industry	165	1.0	197	0.9	4.6
b. Manufacturing industries	6,772	39.7 (100.0)	9,365	40.3 (100.0)	8.4
1. Major manufacturing industries	1,801	10.6 (26.6)	3,080	13.2 (32.9)	14.4
2. Other manufacturing industries	4,970	29.1 (73.4)	6,285	27.1 (67.1)	6.1
c. Building industries	1,072	6.3	1,541	6.6	9.5
d. Electric-power industry	621	3.6	840	3.6	7.9
Service industries	7,179	42.1	9,893	42.6	8.3
a. Transportation-communication industry	1,111	6.5	1,628	7.0	10.0
b. Other service industries	6,069	35.6	8,265	35.6	8.0

Table 2

Growth Goals in Various Fields and the Changes in the Industrial Structure 1982-1985

Information Source: The 4-Year economic construction plan drafted by the Executive Yuan

In imports, an average annual growth rate of 11.3 percent is expected, which will raise the total amount to 1361.1 billion N.T. Dollars (approximately 35.88 billion U.S. Dollars) in exports at the end of the plan, with a trade surplus of 450 million U.S. Dollars.

What is even more remarkable is the change in the industrial structure. We will note from Table 2 that according to the plan, the transportation-communication and other industries will grow at a relatively higher rate. Here, transportation-communication is one of the fundamental items for economic development, while industries have been the pivotal concern in the economic development of the government of the Republic of China. From Table 3--a comparison of

Classification	1952	1982
Agriculture	35.7	7.3
Industries	17.9	50.6
Mining industry	2.1	1.0
Manufacturing industry	10.8	39.7
Building industries	4.4	6.3
Electric-power industry and other public facilities	0.6	3.6
Service industry	46.5	42.1

Table 3

Comparison of the Industrial Structures in 1952 and 1982

industrial structures of commodity value in the various sections, we can see the fruit of efforts made by Taiwan, the Republic of China to advance from an agricultural to an industrial economy. But so far the labor-intensive light industries have been the major components in the whole industrial system. Therefore, the new goal of the Republic is the advancement into new knowledge, capital, and technological intensive industrial sectors, i.e., in the four years from 1981 to 1985, an average annual growth rate of 14.4 percent is envisioned in the pivotal manufacturing industries including basic metals, hardware (metal goods), machinery, electronics, electrical appliances and transportation, and the weight is expected to increase from 10.6 percent to 13.2 percent.

In other words, as guided by practical needs, the government of the Republic of China is determined to guide the economy over this new transitional period.

The Types of Industrial Structures in Taiwan

On the whole, from World War II to the end of the 1950s, the economic policy of Taiwan was centered on the enhancement of agricultural productivity and the development of import-substitute industries. After the 1960s, on account of the rapid increases in foreign trade, the role of exports in economic development gained more importance. Economic policy was heavily dependent on low technology and intensive labor, taking advantage of the merit of low wages to strengthen competitive export power.

In recent years, emphasis has been given to the development of heavy industries, technology-intensive industries as well as industries with high attendant values. Nevertheless, the industrial structure still showed a noticeable unbalance as shown in Figure 2. Take

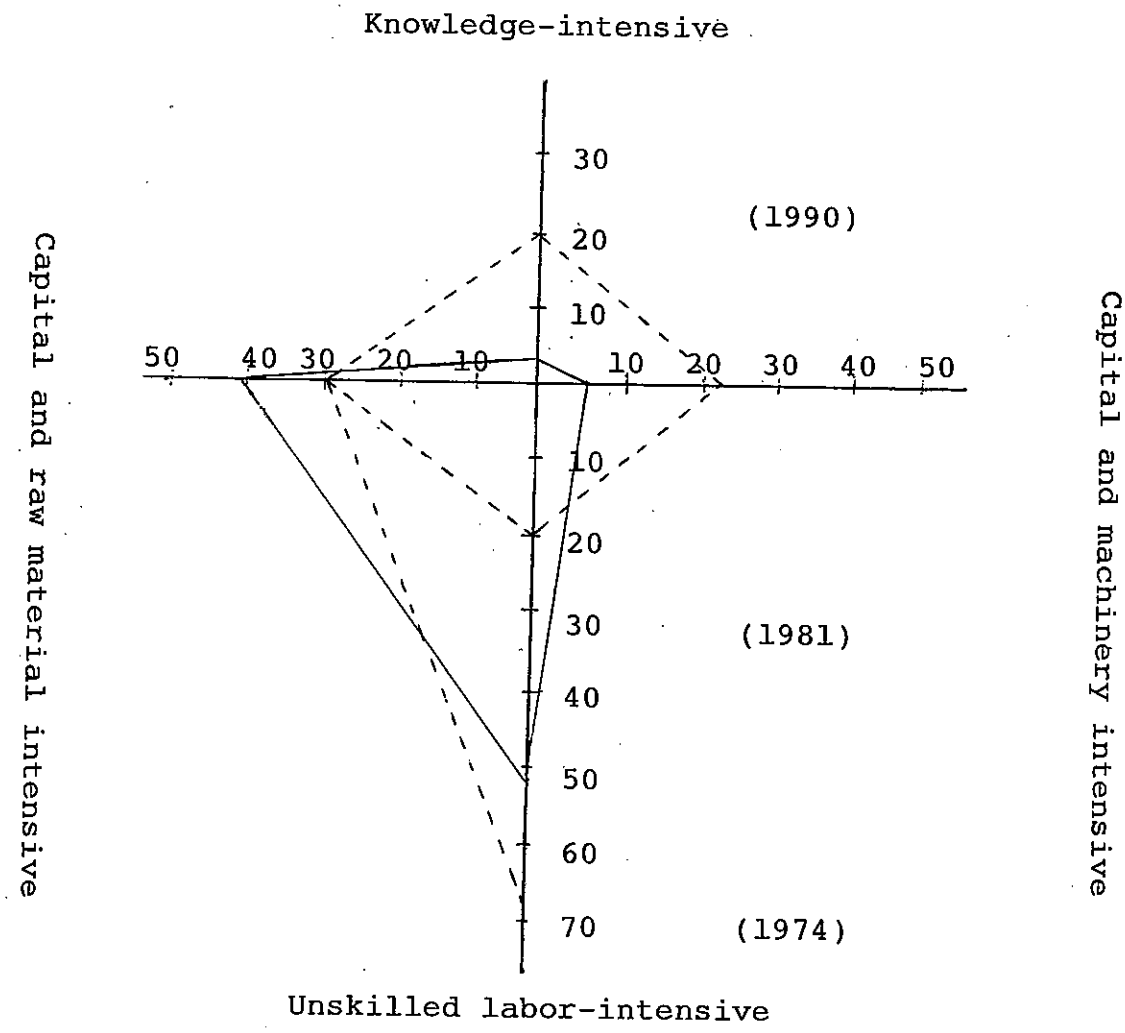

Figure 2

Various Industrial Structures
Diagram of R.O.C.

Information Source: Calculated by Lin Chai-mei, Department Head of International Trade, Tamkang University.

the amount of exports in 1981 as an example, labor-intensive products occupied a high 53 percent of the total, technology-intensive products accounted for 41 percent, material-intensive products formed a small 4 percent, and knowledge-intensive products registered a mere 2 percent. The rigidity of the industrial structure, decreasing competitiveness in exports resulting from the rise in imported material costs and wages from a serious problem that will be discussed in later chapters.

These factors made Taiwan, the Republic of China, encounter in 1982 the bitter experience of a negative 1.6 percent growth rate in exports for the first time. Furthermore, the decreasing competitive power of the labor-intensive products has aggravated the urgent need to change the industrial structure, i.e., Taiwan, the Republic of China, has a pressing need to tide itself over the transitional period--the major concern of which is the alteration of its industrial structure.

Chapter 3
THE WORLD ECONOMIC SITUATION AND THE PROBLEMS CONFRONTED BY TAIWAN

Generalities of the World Economic Situation

Since 1981, all countries have been struggling with an economic recession. In the middle of 1981, some economists estimated that economic conditions would get better in the last half of 1982--but in fact, all economic conjuctures were still covered by a grey, depressive gloom; and most of the industrial countries experienced negative growth. Using America as an example, the growth rate for all of 1982 was -1.8 percent, the unemployment rate reached a high 10.8 percent, and the unemployed reach a high of about 12 million persons.

If we use American economic performance as an index of 1983 economic prospects, we can see U.S. production rising by 3.6 percent since January, 1983. However, the oil prices of the petroleum producing countries have been starting to fall. The general prediction is that the world economy will be still unable to completely recover in 1983, but all the industrial countries can expect to obtain the higher economic growth than that of last year.

In 1982, another major economic development was the gradual rise of trade protectionism, as shown in Figure 3. At present, it is many countries' principle to adopt quotas, restrictions, and anti-dumping regulations, in the name of infracting fair transaction laws and others, even under the pretext of rigid and restraining regulations of non-tariff barriers to lay down product specifications, descriptive brochures for products, or to perform quarantine examinations. For instance, Japan

specifies even the petal numbers and the size of the imported seasoned garlics, and maintains a strict quarantine of farm products--the latter being like the French import law stating that all the brochures and instructions for imported products shall be in French. All are obvious examples of the non-tarrif trade barriers.

Under the double impact of economic recession and trade protectionism, the growth rate (of total trade amount) of world exports has fallen yearly down as shown in Figure 4. If the situation does not improve in 1983, it would appear that growth would be negative. The GATT (Tariff & Trade General Agreement) was even convened in November of 1982, but it did not bring into effect any restraint agreement.

It seems that only after the economic situation turns for the better and the domestic market absorption capacity of the world becomes strengthened, can trade protection measures be expected to diminish.

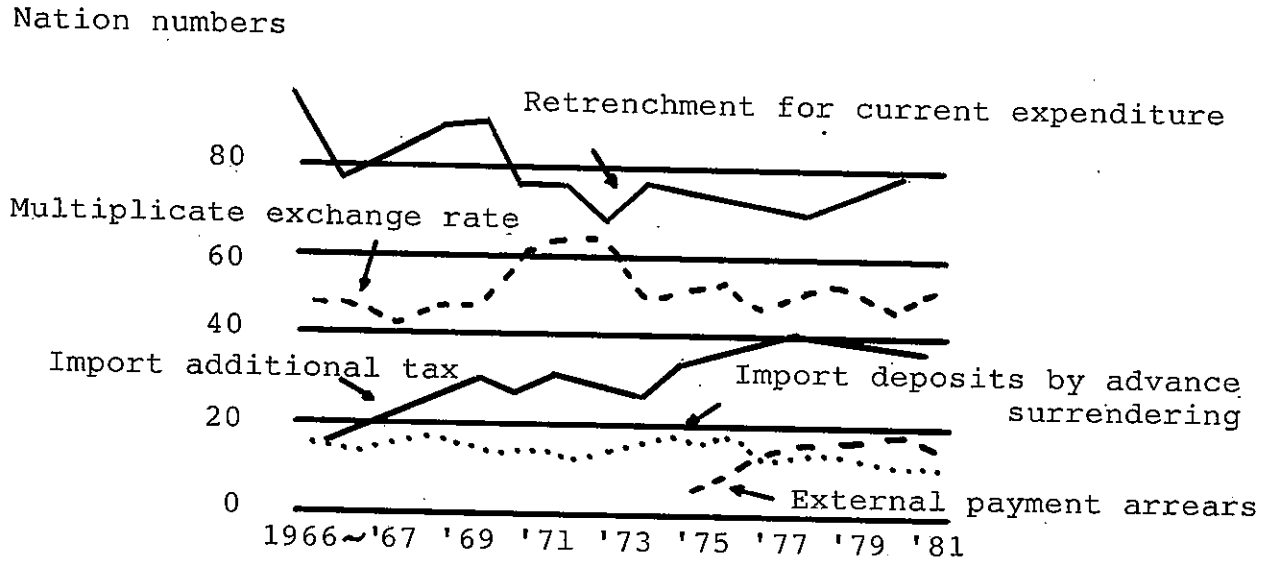

Figure 3

Trend Diagram of Trade Restrictive Measures
Adopted by Member Nations of IMF

Information Source: IMF Survey, August 16, 1982

The Problems Faced by Taiwan

The present trade problems faced by Taiwan are generally as follows:

1. The Taiwan economy is too dependent on external trade, and is thus too easily influenced by inflation in other economics--That is, the export dependence for 1982 was at 52.06 percent, import dependence at 46.11 percent, and international trade dependence up to 98.17 percent; all of these show an influence from the economic recession and an obvious deterioration in external trade. In 1981, its export dependence was set at 53.67 percent, import dependence at 51.39 percent, and its dependence on comprehensive international trade was at 105.06 percent, not only indicating that the R.O.C. is an economy directed by external trade, but also disclosing its fragility in the face of alterations in the world economic situation. (Table 4)

2. The trade market is over-concentrated--Only two markets, America and Japan, share a 50.2 percent of Taiwan's export value, and 49.5 percent of its import value. This narrow market makes the R.O.C. over-sensitive to economic and political changes in a few countries, which condition is a considerable prejudice to the economy of Taiwan.

3. The mitigation of its export competitive capacity-Due to a rise in relative labor costs and raw material prices, the price competitive capacity of Taiwan has been gradually falling as shown in Table 5. The developing countries, such as the Philippines, Indonesia, and others are, by means of cheap labor costs, gaining a competitive advantage, further eroding the price competition capacity of Taiwan. According to the survey report

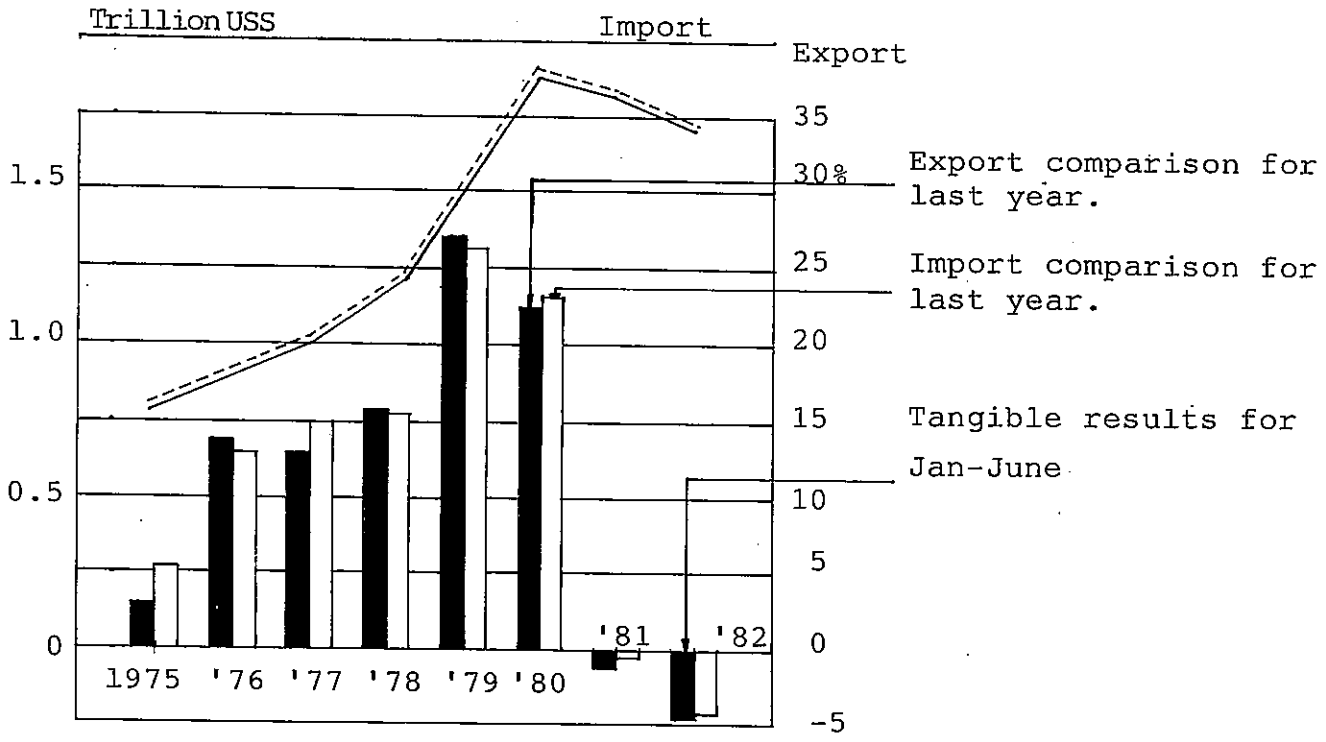

Figure 4

Trend Diagram of World Trade Growth Trade

Information Source: Economic Daily News, January 4, 1983

Year	Season	Competitive capacity index of Exp. price
1970	1	132.39
	2	137.34
	3	141.23
	4	138.56
1971	1	138.26
	2	135.4
	3	135.59
	4	133.06
1972	1	129.99
	2	134.97
	3	133.62
	4	129.03
1973	1	112.13
	2	124.16
	3	129.58
	4	139.57
1974	1	118.34
	2	112.57
	3	103.43
	4	104.08
1975	1	97.71
	2	101.78
	3	100.43
	4	102.62
1976	1	98.44
	2	99.14
	3	95.73
	4	93.76
1977	1	88.32
	2	94.46
	3	87.12
	4	90.07
1978	1	88.51
	2	91.28
	3	85.22
	4	85.68
1979	1	81.60
	2	92.49
	3	87.93
	4	90.80
1980	1	83.27
	2	91.84

Table 4
Trade Value of R.O.C. Versus
Trade Countries and Areas
for 1982

Amount unit: Million U.S. Dollars

Country & area	Export value	Rate(%)	Import value	Rate(%)	Favorable trade balance(+) or unfavorable(-)
U.S.A.	8,739.3	39.3	4,363.4	24.2	(+) 4,196.1
JAPAN	2,379.3	10.7	4,780.2	25.3	(-) 2,400.7
HK	1,565.3	7.1	307.4	1.6	(+) 1,237.9
West Germany	788.2	3.6	788.3	4.2	(-) 0.1
Saudi Arabia	719.8	3.2	1,968.3	10.4	(-) 1,248.7
AUSTR.	643.3	2.4	643.2	3.4	0.0
SINGAPORE	574.3	2.6	152.1	0.8	(+) 422.2
UK	528.1	2.4	270.3	1.4	(+) 237.6
CANADA	510.0	2.3	316.4	1.7	(+) 193.6
INDON.	422.4	1.9	239.6	1.4	(+) 162.8

Table 5

Comparison Table for Export Price Competitive Capacity of R.O.C.

Information Source: Statistic data of Department of Audit, Executive Yuan

Item \ Country	R.O.C.	JAPAN	KOREA	HK	SINGAPORE	RED CHINA
1. Price	2	6	3	4	5	1
2. Quality	5	1	2	3	4	6
3. After service	2	1	5	3	4	6
4. Design & Packing	5	1	4	2	3	6
5. Marketing credit	2	1	5	3	4	6
6. Development new Products	4	1	5	2	3	6
7. Payment term	4	1	5	2	3	6
8. Special example of import restriction	4	5	6	2	3	1
9. Small order	2	4	6	1	3	5
10. Sample offering speed	3	1	5	2	4	6
11. Export marketing	3	1	5	2	4	6
12. Strict delivery term	3	1	5	2	4	6
13. Complain disposal speed	2	1	5	3	4	6
General review	3	1	5	2	4	6

Table 6

Competitive Capacity Comparison for Asian Countries
in Europe Markets

Information Source: Results computed and researched by Dr. Chen Po-Chi.

(Table 6) published by the Commerce and Industry Ministry of Korea at the end of 1982 (December), Taiwan with respect to quality, product design, packing, and the development of new products, lags behind Japan, Hong Kong, and Singapore.1

4. Shortage of research and development--In general, research and development includes independently developing new technology, inventing new products, introducing new foreign technology, researching methods to lowering costs, and promoting new markets, etc. On the basis of a survey report made by the National Science Committee. Executive Yuan, in 1980, the total expenditures of the Taiwan area for applied research and development were only 0.55 percent of the GNP, in comparison with 2.4 percent for the USA, 2.3 percent for West Germany, 2 percent for Japan. Economic theorist thinks that if the technology level remains unchanged, the marginal productivity of capital will be regressive, following after the increment of investment, resulting in the ratio of return on investments approaching to zero. Therefore, society will no save any more; thus, the progression of technical levels can be said to be the major factor in economic growth. From the point of view of commodities, all commodities have their definite life cycle. If no new subsequent products are created, the life of an enterprise will terminate at the end of the product life--and cannot be expected to further and improve the upgrading of industry or the transfer of economic models. Deficiencies in research and development can be said to be the most important lurking danger and latent worry of the Taiwanese economy.

1 Digested from the 82th Edition of Universal Economy, Survey Report published by Ministry of Commerce and Industry, Korea.

5. Boycotts caused by problems of counterfeiting and patent infringement--Frankly speaking, there are some wicked makers and traders from the very beginning--who never think about engaging in research and development, but only in infringement and counterfeiting. However, an absolute majority of makers and traders do produce articles with trademarks thereupon as per request of foreign buyers. Makers and traders here are naive are generally rarely check whether the buyers hold the privilege of rights to patents or trademarks; accordingly they become unwittingly involved in infringements and counterfeiting.

In the past, due to their poor technology, the counterfeits were very easy to spot, so, they did not threaten the original products. But in recent years, due to improving technology, many products are difficult to differentiate--gravely infringing the original makers' and traders' profits and interests--therefore, causing all the world to pay more attention to this phenomenon and to consider trade sanctions. How to rebuild its image must be one of the important tasks undertaken by Taiwan.

The five issues above mentioned are, in fact, mutually correlated and causally connected. For example, due to the deficiency in research and development, the development of enterprises of high additional value, such as info-communication, electronic machines and machinery, and so on have been retarded. As a consequence, the import amount of raw materials must be increased according to the increment of the export products of low additional value, thus causing a higher degree of dependence upon trade.

Furthermore, the high degree of dependence upon trade and the narrowness of markets, makes the domestic

economic situation apt to be influenced by outside depression, thus allowing Taiwan to suffer depressions, lowering the profits of enterprises. Since the enterprises cannot expect to obtain any profit, but only hope to gain quick profits, it is only natural to neglect research and development.

The lack of innovation results in lowering the export competitive capacity, and thereby encourages infringements and counterfeiting, which partly influences the promotion of new markets, and partly causes trade boycott measures, so as to make the external trade market concentrated and narrowed. The growth rate gradually becomes laggard, the domestic economy much more depressed and dull, the enterprises gain no acceptable profits, and therefore skimp on research and development.

This vicious circle must be broken if Taiwan expects to safely pass through this crucial transition period on its way to joining the ranks of advanced industrial nations.

Chapter 4

SOME STRATEGIES TO BREAK THROUGH THE ECONOMIC TRANSITIONAL PERIOD

Research and Development

First, let us review this problem from the angle of export competition. As all know, the major factor of rapid growth in Taiwan during the past two decades has been reliance upon the expeditious increment of the external trade. We cannot help but credit Taiwan's highly competitive prices to its relatively cheap labor costs and massive labor resources available for labor-intensive enterprises. But, at present, the disappearance of price competitiveness has damaged export competitiveness. Accordingly, it is necessary for Taiwan to endeavor to improve quality, product design, and innovation. Apparently, these objectives must rely upon research and development. Generally speaking, developing countries usually engage in price competition, but industrial countries compete by means of their technology. The greatest necessity for Taiwan, R.O.C. is just to curtail the technology gap with the advanced industrialized countries, by active research and development.

Further, in view of another problem, i.e. trade restrictions by quotas influencing the growth of external trade, the basic solution is to use better research and design. Seeing that the restrictions and quotas must point at existing and over-imported products, if Taiwan exports new products developed through successive research and development, it will be able to avoid some of the restrictions because of product "newness," for the importing country will not as yet have made the same products. Besides, the products gained by research and development will be high value-added products and knowledge-intensive.

Restrictions and quotas usually point at quantity but not value; therefore, even if restricted by quota, the same quantity will result in a higher amount of trade.

In view of Taiwan's high dependence on trade, it is also necessary to emphasize research and development. The market of Taiwan area is very narrow, the domestic market is limited if Taiwan expects to maintain its economic growth, naturally, we cannot want to reduce exports. However, imported raw materials for agriculture and industry total 67.3 percent of all imports. This compares to the total value of capital equipment at 24.8 percent. Through R & D, and under the requirement of desiring to keep the same export level, the exports primarily being high value-added products must lower the demand for raw materials, and the accretion and advancement of technology will help diminish the demand for importing foreign equipment. Accordingly, we must reduce the total import value and the degree of dependence upon imports and avoid domestic economic fluctuations caused by the price alterations in the international raw material market.

Finally, though we cannot absolutely say that crimes of counterfeiting and infringement do not exist in countries emphasizing R & D, such countries which engage in R & D are not likely to be counterfeiters in comparison to those countries which do not.

Protecting the External Trade Market and Accelerating Capital Formation

The kind of products which can take advantage of the market are those which yield a good commodity value and thereby contribute to the overall amount of trade.

Besides meeting strong export competition, the most important thing for protecting the market is to avoid overseas restrictions. To accomplish this, we must rely upon the promotion of research and development as described above.

Promoting new markets can be discussed from a variety of perspectives. Speaking from the point of view of geography, a new market means a new trade area outside existing trade areas. If no domestic products are being promoted in the said area, it can be said to be a completely new market.

All the market-ready products of our country can join into the trade competition of the said area. However, since the R.O.C. already has a substantial economic relationship with more than 160 countries, it is difficult to see how the said new markets can be promoted under present conditions. Another type of new market is one where not all the existing products are being sold to the said area. At present, most of the markets of Taiwan, R.O.C., belong to this category. But, owing that other R.O.C. industries for experience promoting the said market, all human and georgraphic information of said area can be easily obtained for comparison. It is necessary for research and development to be conducted in order to learn where to actively promote marketable products. The promotion of this kind of market will help enhance and broaden the dispersion of external trade while it also discovers if products are truly acceptable in other countries.

The third type of new market is to promote completely new products. Thus, regardless the so-called new and old geographical markets; all are new market. But the promotion of this kind of new market will require research and development studies more than other markets.

To a country completely imitating, plagiarizing and only knowing how to inherit traditional products, this kind of market does not exist at all, but to the country emphasizing R & D, wide advantage can be taken of such markets while selling older products. Then, the full market can be fully occupied with the strong power of the new products.

Though the various kinds of market categories mentioned above the different one from another, they still have the prime function to supply customers/consumers with products. If in the life cycle of the previous products we can partly stabilize the existing markets, and partly promote new markets by successively presenting new products to the markets; then, the continuous growth of trade will activate and promote the growth of domestic enterprises. On the other hand, this process will assist the acquisition of profits to accelerate capital accretion and further accelerate the upgrading of equipment and promote R & D operation. Thus, the growth of trade, and accretion of technology and knowledge will help and complement each other reciprocally and make markets stable and profitable.

Chapter 5

COORDINATION AND APPLICATION OF PATENTS AND TRADEMARKS DURING THE ECONOMIC TRANSITIONAL PERIOD

Many people may well already know about the patent protective war over the patent right of inventor of the telephone, Alexander Graham Bell, which lasted for ten years. When the telephone was first introduced to the market, it was introduced as the small toy for adults; but after being understood, if it were not for the protection of patent rights, Bell Telephone Company might not have grown to such greatness.

One kind of small Chinese invention--the universal pencil needing no sharpening, is also dependent upon the protection of patent rights for success in the world market. Obviously, in the transitional period, the results of research and development can be protected only by patent rights. Meanwhile, the exclusive profits of patent rights gives the enterprise contributing to R & D considerable encouragement. Only thus will enterprises be interested in continuously engaging in R & D. Further, looking at market promotion, owing that the patent rights also translate into high competition capacity derived from the factors of specialty, new functions, low cost, and other product differentials, all of which favor the promotion of products into new markets, to form an advantageous link - that is, R & D helps the enterprises to easily obtain full protection, to create higher profits, and to engage with more efforts in the Research and Development (R & D). This is why General Motors Company, Nissan, Toyota and other large companies have always been promoters of research and development because the money for R & D is well spent, for it will be realized later via profits.

In fact, all industrialized countries and large corporations/enterprises have to strengthen their R & D in the face of tough competition. The numbers of patent rights have been considered as a kind of symbol for the power of respective national scientific technologies. In this severely competitive world, it is necessary for companies to be prepared.

Besides, due to the protection of patent rights, the inventor will then share it with others and will devote more research seeking for new ways to break through and overpower the competitors who may be presenting the same product(s). Research and development keeps enterprises constantly improving their products, and also comes up with better products.

So it becomes apparent that patent rights play an important role in acceleration of technologies. Further, due to the opening and enforcement of patent rights, in the process of establishment and production, they will be capable to nurture a considerable number of skillful technicians for deeply consolidated efforts. From this, we can see that the existence of a patent system holds an active and reciprocally complemental function to R & D operation.

Further, in view of trademarks, at the present time, products are continuously improved and modified; and it is hardly possible for a consumer to pick up a preferred product distinguishable from the diversified and arresting products with a remembrance to the product's appearance and size. In various types of advertisements, all the features referred to by symbol, sound, and figure, are entrusted to a simple and prominent symbol--the Trademark. The consumers usually also do not know the actual name of the producer of the products, but they bestow their

trust and loyalty toward a noted trademark as a means for selecting among many equal but differentiated products.

Actually trademarks are the result of research and development because this is a good way to promote quality of certain selected commodities. When a trademark has been properly and duly registered, no one else is allowed to use it. In the event that others disturb the market with a smiliar trademark (or sometimes the same one slightly altered), this confuses the impression of consumers and also damages the reputation of that company which has registered a proper trademark. Thus, not only the producers but also the consumers will accordingly suffer losses. This is also the reason why the rights of exclusive use of trademarks must exist.

We can also be confident that the existence of the exclusive right of trademarks will be helpful for the development and maintenance of markets. Professor Wang Chi-Kang of the Graduate School of Commercial Science, National Taiwan University, had even researched and proved that when an American goes to purchase a product, if two kinds are the same in quality, price, appearance and other conditions, the impression of the said American to the said producing country will be the final factor in determining whether to purchase that kind of product.

We can all understand that ordinary consumers, in fact, are rather poor in discriminating quality, especially at the present time when packaging is so much emphasized. Therefore, if the prices are close, the consumers would go by evaluating the impressions made by two kinds of product marks (namely trademark). Only if there are no difference in the preference of these two trademarks, will one further evaluate the impression made by the country of origin. Therefore, if a trademark is well-designed, it will bring the consumers into a positive, pleasing

and comfortable free-association, and will allow the said product to rapidly win in the competition.

If the literal meanings of the trademark cannot yield a corresponding free-association with the said product, then, the consumers will be forced to rely upon their evaluation at the country of that trademark for selection. The reason is that, generally, the trademark is a symbol of commodities, and the indication of country or place of origin is always rather small, not very arresting, because the consumers usually make their first glimpse at the trademark, but rarely check deliberately the indication of country of origin.

Kennex tennis rackets are very successfully exported from Taiwan, R.O.C. But there are many people who consider that Kennex is a trademark of Canada, Japan or Italy, very few know it is purely a Taiwanese product. This fact promotes Kennex sales.

The trademark, due to its function of protecting acquired markets and assisting the promotion of new markets at the same time by means of a trusted image, is therefore applied rather vividly. Owing that this book does not teach how to apply for patents or trademarks, the characteristics of their importance cannot be overlooked.

Until now, this writer has not mentioned the sixth problem faced by Taiwan, R.O.C.--the problem of counterfeiting and infringement. By expanding the aforesaid research results made by Professor Wang Chi-Kang, we discover that once the infamy of counterfeiting associated with Taiwan, R.O.C, it will exercise a considerable bad influence on the competition capacity of Taiwan products, because the counterfeiters always give the consumers an impression of cheapness, gaudiness, and poor quality.

Therefore, as long as worldwide consumers mistake Taiwan for "a counterfeiting kingdom,"--then there can be no substantial difference in quality and price while comparing the impression of the exporting country, the Taiwanese products will be rejected and thus keep Taiwan behind instead of promoting her status as a worldwide maker.

To make everything right will take time and is not an easy task. Further to see its profound impact, suppose that the governments of importing countries experience pressure from special interest groups or public opinion, and adopt boycott measures on trade with Taiwan. This will be a heavy attack and will impede the reputation of Taiwan.

It must be admitted that there is counterfeiting of trademarks and patents going on in Taiwan at the present time; however, these problems have existed also in many of the developed countries. All of Europe, the United States of America, and even Japan have suffered from counterfeiting problems shocking both domestic and foreign consumers. But now during the recession, some international publications and magazines have made a bias coverage and have given a mistaken impression that the government of Taiwan, R.O.C., connives and even encourages counterfeiting. For this, the government of R.O.C. can be said to be injustly accused, but it cannot right it. Any reasonably intelligent person would know well that the R.O.C. would not willfully neglect the fact of its high dependence upon external trade, and just sit and look at these happenings passively. Therefore, the author considers it necessary to describe the efforts of anti-counterfeiting on patents and trademarks made by Taiwan, R.O.C.

Chapter 6

THE DEVELOPMENT OF PATENT AND TRADEMARK IN R.O.C.

History of Patent and Trademark Laws and Ordinances and the Competent Authorities

The trademark legal system of China was initiated by the Sino-UK renewal agreement of commerce in 1902. Afterwards it experienced several revisions, until 1923, when the government of Peking enacted and declared its first complete law of trademarks; and in 1925, the National government of the south declared its ordinance on trademarks. Both adopted the principle of registration; thereunder the interests of the registered owner of trademark and the consumers accordingly have the necessary protection. By 1983, another revision was made. The government has ever been revising and annotating the existing laws and improving upon them.

At present, the trademarks affairs are charged to the trademark department of the National Bureau of Standards, Ministry of Economic Affairs. The trademark law in use follows and is inherited from the new law of trademark declared in 1931, separately revised three times in 1935, 1958 and 1972. In 1940, clauses were added, and the latest revision was enacted in January, 1983, to make an active revision with respects to improving the basic trademark system, consolidating the right situation of the right of exclusive use of trademarks and improving the registration procedure, opposition and invalidation of trademarks, and reinforcing the protection of trademark rights and the prohibition on counterfeiting and infringement as shown in Table 7.

Table 7

Chronicles of Trade Mark of China

Year	Important events	Competent authority for trade mark
1902	Renewal of Sino-British Commercial agreement, Clause 7, China agreed to protect trade mark rights in Chinese territory.	Custom house
1903	Sino-USA commercial agreement, clause 9 : For American trade mark examined by and paid fair fee it, Chinese officers in Registry Bureau of China, and obeying relevant justice bylaws Chinese government permits to prohibit from counterfeiting. permits to prohibit from counterfeiting. In same year, Sino-Japan commercial agreement stipulated similar regulation.	
1904	Drafted "Bylaws of Trade mark", in June, proclaimed Probational Bylaws on trade mark registry, but not performed due to objection of all nations.	Contemplated to be charged by trade mark registry Bureau, Ministry of Commerce.
1913	Ministry of Agriculture and Commerce drafted 53 clauses of new bylaws, and set up preparatory office on trade mark registry, but put aside due to brokenout of European war.	Ministry of Agriculture & Commerce.
1922	Recovered to set up Preparatory office on trade mark registry, drafted Law of trade mark, totaling 44 clauses.	Ministry of Agriculture & Commerce.

Year	Important events	Competent authority
1923	Peking government enacted Law of Trade Mark, totaling 44 clauses, and Enforcement rules for Law of Trade Mark, 37 clauses, and set up Trade Mark Bureau.	Trade Mark Bureau
1925	National Government published Trade Mark ordinance and Enforcement rules for Trade Mark ordinance.	
1927	Published Registry ordinance for National Registration Bureau, 13 clauses.	National Registration Bureau
1928	Published Organization Ordinance for Trade Mark Bureau, and Bylaws for examination of trade mark registry, reorganized National Registration Bureau into Trade Mark Bureau, Ministry of Industry and Commerce.	Trade Mark Bureau, Ministry of Industry and Commerce
1930	Published new "Law of Trade Mark" for 40 clauses, and Enforcement rules for new law of trade mark, 40 clauses.	Trade Mark Bureau, Ministry of Industry
1931	Enforced new Law of Trade Mark and Enforcement rules for Law of Trade Mark.	Trade Mark Bureau, Ministry of Industry
1932-1948	Revised, supplemented clauses of Law of Trade Mark for 3 times, Enforcement rules for Law of trade mark for 5 times.	Trade Mark Bureau, Ministry of Economic Affairs
1951	Government moved to Taiwan, temporarily entrusted Department of Reconstruction, Provincial Government of Taiwan, for handling trade mark registration and proclaimed ordinance for 8 clauses.	Department of Reconstruction, Provincial Government of Taiwan
1952	Changed to entrust Department of Finance, Provincial Government of Taiwan, for handling trade mark registration. Revised again Enforcement rules for Law of Trade Mark.	Department of Finance, Taiwan Provincial Government
1953	Recovered to entrust Department of Reconstruction for handling trade mark registration.	Department of Reconstruction, Taiwan Provincial Government

Year	Important events	Competent Authority for trade mark
1954	Published "Provisory methods for Ministry of Economic Affairs appointing National Bureau of Standards to handle trade mark registration for 8 clauses, changed to be handled by National Bureau of Standards for trade mark operations.	National Bureau of Standards, Ministry of Economic Affairs.
1955	Redacted "Rules for sanction of counterfeited trade mark"	- do -
1956	Revised Law of Trade mark for 37 clauses.	- do -
1958	Adopted Revision bill of Law of Trade Mark, enacted in same year. Ministry of Economic Affairs revised and published Enforcement rules for Law of Trade Mark.	- do -
1959	Revised and published Enforcement rules for Law of Trade Mark.	- do -
1960	- do -	- do -
1970	Executive Yuan conference adopted Revision bill for Law of Trade Mark.	- do -
1972	Legistrative Yuan adopted Revision bill for Law of Trade Mark, and enacted by President, totaling 6 chapters, 69 clauses.	
1973	Revised and published Enforcement rules for Law of Trade Mark.	
1983	Adopted Revision bill for partial clauses of Law of Trade Mark, and enacted by President.	

Information source: Arranged as per "Law, Ordinances, and Practice of Trade Mark" written by HO Lieng-Kuo.

Table 8

Chronicles of Patent of China

Year	Important events	Competent authority for Patent
1912	Enacted "Provisory bylaws for promotion of handicrafts" for 13 clauses, to grant invented products 5-year patent, and improved products a citation.	
1923	Revised "Provisory bylaws for promotion of handicrafts" into "bylaws for promotion of handicrafts:, and classified the patent into two kinds of 30 years and 5 years.	Ministry of Agriculture and Commerce
1928	National government built up the capital in Naking, and set up Registration Bureau to concurrently dispose cases of patent and trade mark.	Registration Bureau
1928	Afterwards, established Ministry of Industry and Commerce, all proclaimed "Provisory ordinance for promoting industrial products".	Ministry of Industry
1929	Published "Promotion rules for special kinds of industries".	Ministry of Industry and Commerce
1932	Published "Provisional Ordinance for promoting industrial technique for 29 clauses, and its Enforcement rules of 27 clauses".	Ministry of Economic Affairs
1939	Revised and enacted "Provisional Ordinance for promoting industrial technique" to grant patent for creations of utility model and new design, and prescribed invention patent to be 10 years, utility model 5 years, new design 3 years.	Ministry of Economic Affairs
1941	Revised again the "Provisional Ordinance for promoting industrial technique" and its Enforcement rules.	Ministry of Economic Affairs
1944	Published Law of Patent, classified into 4 chapters 8 sections, totaling 133 clauses.	Ministry of Economic Affairs

Information Source: Arranged as per "Laws and Ordinances, and Practices" written by Ho Lieng-Kuo

Year	Important events	Competent authority for Patent
1946	Ministry of Economic Affairs instructed Bureau of Trade Mark to prepare for concurrently disposing patent cases.	Trademark Bureau, Ministry of Economic Affairs.
1947	Published Enforcement rules for patent 51 clauses.	- do -
1949	Enacted Law of Patent, and its Enforcement rules.	- do -
1950	Ministry of Economic Affairs instructed National Bureau of Standard for handling concurrently.	National Bureau of Standard, MOEA.
1953	Published "Regulations for Patent Agents". National Bureau of Standard set up Patent department for disposing patent operations.	- do - - do -
1959	Revised Law of Patent.	- do -
1960	- do -	- do -
1979	Revised Organization ordinance of National Bureau of Standards, Ministry of Economic Affairs, to list the patent operations into its legal competence.	- do -
1979	Revised and published Law of Patent.	- do -

The patent laws and ordinances of China originated in the early 1900s. The provisional by-law on promotion of handicrafts, though being revised several times, is still limited to promoting inventions only. The 1939 provision ordinance on the promotion of industrial technology first listed new types and new shapes into the range of patents. In 1944, there was enacted the "Law of Patents" to make the first completely patent legal requirements for patenting.

The Patent Law originally had a view toward establishing a patent office to be in charge of it, but, because the demobilization operations of the post-war period had to be rapidly carried out, patent affairs were concurrently charged to the Trade Mark Bureau, after the government moved to Taiwan, concurrently charged to the National Bureau of Standards of the Ministry of Economic Affairs. At present, the said bureau establishing the patent department is in charge of relevant patent affairs.

Being limited to this organization establishment, the National Bureau of Standards usually gives patent application cases to be examined in the "External Examination System" namely, the said bureau appoints professors of various universities and colleges and specialists of various industries to be in charge of the examination work.

This is all rather different from the examination administered by the specifically established examiners appointed and employed by the Patent Offices of other countries.

For convenience of inquiry and application for information on patents, trademarks and techniques, the National

Bureau of Standards built up the Standards And Patent Information Center covering more than 1,000 sq.m., having collected the patent information of 17 countries, such as China (Taiwan), U.S.A., Japan, Germany, etc., and the trademark information of ten countries--besides the books and periodicals on scientific techniques, laws, ordinances, and regulations--all of which are in the lines of its collection.

Regarding the number of applications and approvals on patents and trademarks, due to the progress of the economy and the gradual popularization of the concept of patents and trademarks, their numbers have a considerable growth as will be set forth in Tables 9 and 10.

General Situation of Patent/Trademark Service Industry

In the 1950s, there were already comprehensive patent/trademark and law firms (offices) established in Taiwan. Among these, the International Invention Patent Service Company Ltd., established in 1954 was the biggest one, but its staff consisted of only twenty persons. In 1959, it was estimated that patent agents totalled approximately 180 persons, but there were only about ten comprehensive law offices which were dealing directly with patents. By 1977, the patent agents had increased to more than six hundred. By comparison, there were about ten thousand patent agents in the U.S.A., and two thousand in Japan, therefore, Taiwan, R.O.C. had more agents of patents than the U.S.A. or Japan, based on the rate of population.

Year	1957	1962	1967	1972	1977	1982
Application numbers	1856	2072	4926	5539	12543	46896
Approval numbers	1669	1786	4169	4536	8731	34315

Table 9

Simple Table of Application and Approval Numbers for Trade Marks in the Past Years

Information Source: Subject to the statistics of Trade Mark Gazette.

Year	1957	1962	1967	1972	1977	1981
Application numbers	657	750	1705	4457	7632	15034
Approval numbers	179	247	540	1861	1205	6265

Table 10
Simple Table of Application and Approval
Numbers for Patents in the Past Years

Information Source : Subject to the statistics information complied by National Bureau of Standards

At present, there are more than 70 comprehensive patent law offices in Taipei, Tai-E International Patent and Law Office is presided over and managed by this writer, and has 160 employees, being one of the largest patent offices in Taiwan.

Contributions Offered by the Patent/ Trademark Service Industry

Generally speaking, patent/trademark agents offer their professional knowledge for serving applicants and to review and check applications in advance, with their wide-range capacity in laws and ordinances, and professional knowledge, etc. Our counselors may suggest that applicants modify their case early, so that, consequently, this will mitigate the burden of the concerned authorities. This also bridges the gap between government and applicants.

In short, the so-called "agent" is the one who earns remuneration by means of offering knowledge and labor service to assist the applicants in submitting their applications, and also enhances the chance for approval. But the role played by the patent/trademark agents in the Republic of China is much more positive:

1. To propagandize and instruct relevant knowledge and concepts: The nature of Chinese society always emphasizes human relations more than formal law. This allows the Chinese to be seen as the most race with the most human-touch, yet this quality also makes the Chinese neglect laws and ordinances deeply related to one's own interests. Quite a few manufacturers have no idea of the reasons why they must register trademarks and their importance. Needless to say the manufacturers have no idea about the strategic application of associated trade-

mark or defensive trademark. Therefore, only during the past few years, and after this writer entered into the patent/trademark service industry, has the advocation and propagation of the trademark concept been given major direction. The task of this writer to endeavor by means of symposia, circuit lectures, published popular and easy-to-understand writings in various kinds of newspapers, printing law regulation manuals, and instructions offered free of charge, and dispatching by DM and so on. As a matter of fact, the rate of service opportunities occuring from the above mentioned activities is not high. If we calculate its costs--it can be said that the income cannot cover the costs. But still, most of the faculties for this industry are silently engaged in the job of sowing seeds for the future.

2. The promotion of inventions: For the time being, there are three inventors' organizations in Taiwan, R.O.C., for developing brain sources, accelerating technical innovations and promoting inventions and creations as their main assignments. Many of those who established business come from the patent/trademark offices, and most of them are in charge of service cadre positions, practically contributing their brains and efforts.

3. To establish publicity publications: The earlier issues of Inventors' Paradise, Invention Magazine, Tai-E Patent/Trademark Magazine (founded by the writer) Formosa Magazine, Managers' magazines and others are all publications which promoting and popularize patents, inventions and trademarks. Since such kinds of publications obtain advertisements with difficulty, every issue is being published at a loss. What supports the continuous publication of such kinds of organs is nothing other than enthusiasm to serve society.

4. To hold exhibitions: For encouraging inventions and developing intercourse between managers and inventors, many agents have held various kinds of exhibitions at their own expense. The writer has even held latest products exhibitions several times between 1980 and 1981. Especially Mr. Chen Tsan-Hsei and also others held "The Natinoal First Invention Exhibition" in 1969, at their own costs under private financial sponsorship, which required considerable courage.

5. To suggest various kinds of proposals for development and reform: For several years, the patent/trademark agents have often gathered for discussing various kinds of defects in the laws and ordinances systems and operations, in order to present to the government for reference to abolish defects. In 1960, there were only 520 patent applications made by people in Taiwan, but this figure reached 10,132 applications in 1981. In 1960, there were 1,376 patent applications approved, but by 1981 this had been raised to 26, 258.

Although we can assume that the results of economic prosperity finally paid off--yet the efforts made by service industries through various kinds of approaches and courses cannot be denied.

The Necessary Concepts of Managers in Service Industries

In 1960, not only were patent/trademark law offices few, but the main clients were mostly American, Japanese and West Germany manufacturers. Relatively, the domestic manufacturers had a rather poor knowledge of patents, trademarks and had rare chances to enjoy the services rendered by patent/trademark law offices. Therefore, after the writer completed his academic education, he immediately entered into the National Bureau of Standards,

to build a basis of for serving society afterwards. The writer later founded Saint Island International Patent Law Union Office and Tai-E International Patent and Trademark Law Office. At that time, the writer deeply felt that if sitting in an individual type of law offices, he could not offer wider services to the entire society, and even could not have the right side effects on economic developments.

Therefore, the writer at first built up the business, profession and administration departments to operate business respectively and the management system combined with administrative ideas and professional knowledge for Tai-E International Patent and Law Office.

Finally, in a short period of only six years, the original five establishments have been expanded to consist of 160 persons, with a chain of offices all over five major cities in Taiwan. The management ideas based on service are really the basis for communicating with all the members of the office, as well as the spirit of continuous contributions to society.

However, the prime departure and principle initially expressed by Tai-E International Patent and Trademark Law Office remains "To provide more valuable service than that requested by domestic society."

Moreover, depending on the foundation of this principle, the mutual combinations with interests of customers, employees and shareholders can be then considered, and further to progress into wide-expansion aspects of service lines.

Chapter 7

STRATEGIES TO PREVENT COUNTERFEITING PATENTS & TRADEMARKS IN TAIWAN, THE R.O.C.

TRADEMARK

The current laws protecting industrial properties are patent law, trademark law and other related provisions of civil law and criminal law. There is no unfair competition law in the Republic of China now; therefore, actions against unfair competitions shall not be taken. Nevertheless, the government has paid much attention to those unfair activities and the Fair Trade Law has been drafted now.

As the economic achievement in the R.O.C. is accredited as a world economic miracle, many foreign businessmen are confident that their investment in this country would be safe and profitable. In addition, the R.O.C. achievement also draws many buyers' attention and, orders from those buyers have never stopped. While giving orders, most buyers like to designate particular trademarks to be used on the products. Should the local manufacturers intend to accept the orders, they must put the designated mark on the products or packagings or containers thereof in accordance with the terms and conditions, shown on the letter of credit; otherwise, the orders might go to other countries such as Korea or Hong Kong. Regretfully, many trademarks which are designated to be used in connection with the products by the buyers are often not owned by the buyers themselves. Under such circumstances, when the products are exported from Taiwan, the R.O.C. to other countries, the real owners of the trademarks always showed up and condemned the R.O.C. manufacturers for their illegal or false use of the trade-

marks. The foreigners even describe in magazines that the R.O.C. is the kingdom of counterfeiting.

People understand that there exists counterfeiting activities in every country. So, it is unfair and it hurts so much to the Republic of China that only the R.O.C. is regarded as the kingdom of counterfeiting, especially considering that the designations of use of trademarks are often given in the purchasing or agreements by the foreign buyers who are not the real registered owners of the trademarks. Though we feel regretful to the shameless conducts of those buyers who have intention to infringe other's trademark rights, we still should condemn the local exporters and/or manufacturers for their collusion because of ignorance.

There are various types of the alleged "infringement" some activities are in the domain of infringing registered trademark, while the others are classified as unfair competition or passing off. As there is no unfair competition law in the Republic of China, the registered owner or licensee of trademark can not take legal action against those conducting the acts of unfair competition or passing off. Regretfully, most of the foreign complainants (i.e. trademark owner) didn't register their trademarks in the R.O.C.; under such circumstances they can neither claim to the so-called "infringers" in the R.O.C., nor can they sue the "infringers" because of unfair competition or passing off. Even the complainants do register their trademark in Taiwan, their right will not be perfectly protected if they do not "properly" register their trademarks. For example, there are 34 commodity classes according to the international commodity classification; but there are 103 commodity classes according to the classification of commodity under the Trademark Law of the Re-

public of China. It is probable that the commodities in one international class will fall under more than 2 or 3 classes in the R.O.C.. Therefore, a complainant's right is limited to the class under which his trademark is registered in this country. In other words, a trademark can be registered under the relevant classes in which different but related goods are classified. If the registered owner of a trademark would concult his attorney for appropriate ways of protecting his trademark before he registered, we believe that the infringing activities would decrease or even vanish.

(Policy & Priority)

The registration of trademark in the Republic of China is optional. If a person intends to exclusively use a trademark on certain goods in Taiwan, the R.O.C., he should have it registered. Reference may be made to Article 2 of the Trademark Law, which reads "Any person who wants the exclusive use of a trademark to distinguish the commodity produced, manufactured, processed, selected, wholesaled or dealt by himself, shall apply for registration." From this provision, one may understand that registration of trademark is optional and that no protection will be given to unregistered trademark.

Before July 14, 1972, the Trademark Law adopted "first-to-use" policy, which means the first user of a trademark is entitled to registration. Thereafter, the Trademark Law adopts "first-to-file" policy, which means that the first applicant who files an application for registration of trademark is entitled to registration thereof. We understand that many countries have adopued

the "first-to-use" policy in respect of the registration of trademark; and therefore, the applicants from those foreign countries often claim their prior use of trademark when they try to have their trademarks registered in Taiwan, the R.O.C. However, we would like to point out that such a claim is useless. Instead of claiming priority for their Taiwan applications, we suggest that they file trademark applications in Taiwan as early as possible.

Many foreign companies didn't register their trademarks in Taiwan before they exported products to Taiwan agents. One of the reasons which causes their trademarks unregistered in this country is that they are not sure of their business outlook. To many companies, it is unwise to spend money on such an intangible right before their business brings profit. However, to those local agents who are actually selling the products in Taiwan, it is possible that they would infringe other's trademark right in this country if the trademarks used on those products are not registered in the R.O.C. In order to protect their own rights, the local agents would probably apply for registration of the trademarks which belong to the foreign companies or, apply for registration of word marks in Chinese characters which pronunciations sound like that of the foreign word marks. If the foreign companies intend to change their Taiwan agents or to obtain the trademark right, under the circumstances, it would be difficult or even impossible.

In conclusion, our suggestions to the foreign companies in respect of trademark protection are as follows:

(1) select or adopt distinctive word marks or device marks and register the marks in the Republic of China as soon as possible. In case the trademarked pro-

ducts will be sold in this country, the (word) trademark in Chinese characters should be registered, too;

(2) properly register trademarks in the R.O.C.. As mentioned above, most foreign countries adopt the international classification (34 classes), but the R.O.C. has her own classification (103 classes). It is possible that the commodities in one international classes will fit in more than 2 classes in the R.O.C. If one registers his trademark under one class only in this country, his right is limited to the class under which the trademark is registered. For example, both clothes and shoes are classified under international class 25; whereas, according to the R.O.C. classification, they fall under classes 44 and 48 respectively. If a foreign company registers its trademarks under international class 25 in his home country, then he should register his trademarks under both classes 44 and 48 in this country; otherwise, his trademark right on shoes and clothes will not be properly protected. As a matter of fact, if the foreign company engages in a broad line of products, he may consider to use the systems of registration of principal trademark, associated trademark and defensive trademark. The advantages of the systems will be discussed below.

(3) publish an advertisement in local newspaper or registered magazine to promote your products. The advertisement should bear the trademark concerned. Such an advertisement not only may promote the popularity of your products, but also may serve as an evidence of use of the trademark, which would keep your registered trademark from being cancelled because of non-use within 2 years.

The advantages of Registering Principal Trademark, Associated Trademark and Defensive Trademark

In many western countries, such as the U.K., the register of trademark is divided into two parts respectively called Part A and Part B. In the United States of America, there are principal register and supplemental register. In the Republic of China, we have only one register which covers various registrations of principal trademark, associated trademark, defensive trademark and service trademark.

According to Article 22 of the Trademark Law, if a person has already registered his trademark or his application of registration for the trdemark is still pending, and he will apply for registration of another/other trademark(s) similar to the former one and all of the trademarks are used or to be used on the same products or products in the same class, the similar subsequently-filed trademark should be registered as associated trademark. Likewise, the same person may apply for registration of a trademark identical with the former one to be used on the products of different class but of the same or similar nature as defensive trademark.

In applying for registration of the trademarks referred to in the two preceeding paragraphs, the registered trademark or the mark which bears the earliest effective filing date for registration shall be the principal trademark; when applying at the same time, one of the trademarks shall be designated as the principal trademark.

Usually, if a trademark is granted registration, it is an independent trademark. In case a similar trademark is filed for registration in the same class, these two applications or registrations should be associated.

One would become a principal trademark, while the other would be an associated trademark. Likewise, in case an identical trademark is filed for registration under different class covering the products of same or similar nature, the trademark in this application would be a defensive one to the idenpendent trademark which, of course, would be regarded as the principal trademark.

Take clothings as an example. According to our classification, clothings would fall under the following classes:

Class 43: Hats and Caps;

Class 44: Clotnes and other apparels not included in other classes;

Class 45: Neckties;

Class 46: Gloves;

Class 47: Hosiery;

Class 48: Shoes and Boots

If a company registers its trademark "polly" under class 44 covering clothes, he can also registers a similar trademark "polly pety" under the same class as an associated trademark. However, the right of such registrations is limited to the goods in class 44. In order to keep other companies from passing off, he can apply for registrations of the same trademark "polly" in classes 43, 45, 46, 47 or 48 as defensive trademarks. Such systems will give the trademark owner broader protection. Moreover, according to Article 31-1-2 of the Trademark Law, a registered trademark should be cancelled if without justifiable reason the trademark has never been used for two consecutive years, but such regulation shall not apply if one of its defensive or associated trademarks is still in use.

In addition to the advantages mentioned above regarding the registration of trademark in Taiwan, the R.O.C., we also find the following advantages:

(1) Among the principal trademarks, associated trademarks and defensive trademarks, if the registered owner uses any of them, all of them will not be cancelled because of non-use clause (Article 31-1-2);

(2) Any application for registration of trademark which is similar to or identical with any of other's principal trademark, associated trademark and defensive trademark can obtain broader and more serious protection by trademark registration.

(3) According to Article 62-1 of the Trademark Law, a person who uses a trademark which is identical with or similar to another person's registered trademark on the same goods or the goods in the same class shall be punished with imprisonment for not more than 5 years or detention; in lieu thereof, or in addition thereto, a fine of not more than 50,000 Yuan (equivalent to NT$150,000.00). In other words, if the person using a trademark which is identical with or similar to that of another person's registered trademark on the goods in different classes, he would not infringe another person's trademark right and would not be punished, but no one can deny the possibility that the use of the trademark by the person will cause confusion to the consumers or will damage the reputation of the owner of another registered trademark. Under such circumstances, in addition to registering a trademark in one class, if the trademark owner also registers his mark under other classes covering the goods with identical or similar nature as defensive trademarks, then the possibility of confusion or passing off or being damaged in reputation would decrease to the minimum, even to the void.

(4) As regulated in Article 63, where a person using the name of another person's trademark mala fide as a specific portion of the name of his own company or trade firm and conducting business in connection with the same goods or goods in the same class fails to apply for change of the name on the register despite a request for such a change has been made by an interested party, he shall be punished with imprisonment for not more than one year or detention, in lieu thereof a fine of not more than 2,000 Yuan (equivalent to NT$6,000.00). In other words, if you register your trademark in the R.O.C., another person can not use the name of the trademark as a specific portion of the name of his own company or trade firm and conducting business in connection with the same goods or goods in the same class. This is the extension of protection to the registered trademark.

The only drawback of such system to the trademark owner is that the registration of duration of associatd trademark and defensive trademark shall expire with that of its principal trademark. Once the principal retgistered trademark is cancelled or becomes invalid, its associated trademarks or defensive trademarks will be cancelled or invalid simultaneously.

PATENT

The government of the R.O.C. (Taiwan) adopts the same policy in patent and trademark laws, i.e. "no registration, no protection". Many foreign people complain that their inventions are being counterfeited in Taiwan and they just can do nothing, but are anxious or mad at the counterfeiters because they have no patent here. A foreigner even described that the inventors or the owners of inventions are like the dogs that can only bark at counterfeiters, but cannot bite. Such simile clearly shows the importance of registering inventions in Taiwan, the R.O.C.

In order to explore the market in Taiwan, many foreign people show their inventions to local traders before they have the inventions patented in this country. MOreover, those foreign people even produce detailed manual or specification of their invention for local traders. Such offers usually give the local traders chances to have the inventions patented in Taiwan earlier than the foreign people themselves. To obtain a patent in the home country is not enough, one should further consider to get more patents in the countries where the products shall be sold. In case one gets a patent for his invention in his home country and also gets patents in foreign countries to which the patented products would be exported or sold, then the counterfeiting or infringing activities would decrease to the minimum, or even to the void.

Article 2 of the Patent Law reads:
The term "new invention" as used herein refers to an invention other than one:

1. Which, prior to applying for patent, has been published or put to public use, thereby rendering it possible for imitation by others; provided that this restriction shall not apply where such publication or use has been made for research or experimental purposes and application for patent is made within 6 months from the date of such publication or use;
2. Which is preceeded by a similar invention already patented;
3. Which has been displayed in a government-sponsored or government-approved exhibition and in respect of which no application for patent has been filed within six months from the opening date of such exhibition;
4. Which, prior to applying for patent, has been utilized for mass production other than for experimental purpose; or
5. Which utilizes conventional know-how and technical knowledge known prior to applying for patent, and is obvious and makes no imporvement in effectiveness.

Article 2 is very important to patent application. In case an invention falls into one of the above restrictions, it becomes unpatentable. Many foreign people file patent applications in this country after the letters patent of the corresponding home applilcations are issued, which is against Article 2(1) of the Patent Law because the home patent applications normally will be laid open or published for opposition before the Letters Patent is issued. Our experiences also reveal that many foreign people disclose their inventions to local traders when their home patent applications are still pending, which probably would cause the loss of novelty of their inventions and therefore, causing the inventions unpatentable in this country. In conclusion, one must pay much more attention to Article 2 if he plans to have his inventions patented in this country.

According to the Patent Law, we have new inventions, new utility models and new design, all of them can be patented with different terms of protection. In principle, the brand-new things or method of manufacturing the same can be applied for invention patent with 15 years' protection (see Article 2), the objects with improvement in respect of the form, structure or fitting can be applied for utility model (patent) with 10 years' protection (see Article 95) and, a new design originally created in respect of the shape, pattern, or color of any object to cause a sense of beauty may be applied for "new design" patent with 5 years' protection (see Article 111). In practice, the objects with improvement in high level of technology in structure thereof may be applied for invention patent with 15 years' protection. Accordingly, it is possible that the inventor may apply for invention or utility patent to protect the method or structure thereof on the one hand, and apply for new design (patent) to protect the appearance thereof on the other hand, which give the inventors broader protection.

Moreover, Article 8 of the Patent Law reads "If a patentee produces a reinvention during the validity of his patent, he may apply for a patent-of-addition." Such an application of patent-of-addition will be granted more easily than others and may give more protection, though the patent-of-addition shall terminate simultaneously on the expiration date of the original patent. Article 8 shall apply mutatis mutandis in respect of utility model (patent).

As to the protection of new design, a new design similar to the patented one created by the same person

can be patented as an associated new design. For this reason, the patentee may apply for many designs which are similar to the original patented design. The associated design applications are normally granted more easily than others. This system gives the patentee more defensive power against the possible counterfeiting. The only drawback is that the associated designs will terminate simultaneously on the expiration date or cancellation date of the original patent.

CONCULSION

In principle, the registration of patent is not renewable, while the registration of trademark is renewable. Another advantage of registering one's trademark is that the registration of trademark may support the patentee to keep or control the market which has been held during the life of the patent. For example, company AAA explores a new product which is patented in this country; furthermore, the company also owns a registered trademark here and the trademark is used on the products. When the brand-new products are placed in markets, consumers always distinguish the patented products by the trademark used thereupon. When the life of patent expires, the renewable registered trademark may help the patentee to keep the market, because consumers have been accustomed to using the trademarked products for years.

In addition to the above ways on prevention of counterfeiting, the following effective suggestions may be considered:

(1) using watching service. Most of the large law offices render such services. The patentee or trademark owner may request his attorney in Taiwan to regularly watch the Patent Gazettes or Trademark Gazettes to find whether any similar subsequently-registered trademark or similar subsequently-patented invention exists. If it does, the trademark owner or the patentee may take

action to revoke the subsequent similar or identical registration, which may get rid of the possible conflict. The trademark owner or the patentee may also learn from the watching services the situation of his competitors in patent and trademark progress.

(2) to put a cautionary notice in local newspapers or popular magazines. If one gets a patent or one's trademark is registered in this country, he may announce such registration in newspapers so that people would become alert not to counterfeit or infringe his rights.

(3) requesting an agent in Taiwan to watch the situation of local markets. It may help the patentee or the trademark owner find the counterfeiting activities and promptly attack counterfeiters before the situation goes worse.

(4) watching foreign markets and taking prompt actions against the importers of the counterfeits by using the services of governmental agencies, such as the International Trade Commission (ITC) of U.S.A. In case the importers have been attacked, the origin would stop manufacturing and exporting the same.

Finally, we would like to draw readers' attention to the status in Taiwan of foreign companies. According to the laws of the R.O.C., a foreign company itself is not entitled to raise a lawsuit at its own initiative if the foreign company is not registered (recognized) by the competent authority in charge of company registration in the Republic of China, unless the country of the foreign company have concluded a reciprocal agreement or treaty with the Republic of China in respect of the status and protection of company or any organization other than national of the concluded countries. For this reason,

we suggest that the patentee or the registered trademark owner license an individual the right to use his patent or trademark in this country if the patentee or the registered trademark owner is not an individuals, because an individual including foreign people or local people has right to raise lawsuit against the counterfeiter at its own initiative.

Chapter 8

Protection of Foreign Trademark and Patent Rights and Means of Dealing with Their Infringement

Section 1: Prevention of counterfeiting

When we talk about protection, the major premise is the existence of the rights, i.e., to acquisition of the right of exclusive use of trademark or the patent right. Based on a collective analysis of our patent and trademark laws, the so-called "the right of exclusive use of trademark" refers to that the registered owner of trademark has right from the date of registration, forbidding others the use of the same of similar trademarks on the identical or same kinds of products or the packagings or containers thereof for sale in the market, or to engage in any sales promotional activities (such as advertisement, exhibitions etc.); and forbidding others the use of the registered trademark as the name of the company or the specific portion of its business name; whereas patent right refers to that the patentee has right from the date of approved publication, to prohibit others from manufacturing, selling or using the patentee's creation (Note: The patent right of new design does not forbid others the right to use). Any unlawful infringement within the scope of the above-mentioned rights, can be deprived of with compensation claimed.

As to the question on the prevention of counterfeiting, and in addition to the means discussed in last chapter by reinforcing the associated and defensive trademark and patent-of-addition and associated new design to broaden the scope under protection, the following means can also be adopted:

1. Entrust a local agent to search through the official gazettes any applications filed by others using the same or similar trademark or similar patent. If any of the above is detected, then an opposition, invalidation or nullification should be filed to revoke the intended trademark or patent registration and leave the opportunist nothing to rely upon.

2. Entrust an agent or any other commercial agents to put up advertisement to notify the industry and consumers about the sole ownership of the subject trademark or patent. As long as the effect of propaganda can be attained, either product advertisement or cautionary notice is advisable.

3. Entrust an agent or other specialists to undertake a market research to realize the market potential of the product or whether there are any products in the same field similar to the subject patented or trademarked products, so that any counterfeiting can be identified at a glance.

Foreign manufacturers not only can use the above means in our country to prevent counterfeiting, but also can certainly apply it to their own countries to observe the market development, and in compliance with the government policies, cooperate closely with the distributors. The adoption of above measures is effective to a certain degree.

Section 2: Measures to be taken after the infringement

What are the actions that should be adopted if your trademark or patent rights have been infringed upon? We set forth below the measures we have adopted at this moment:

1. Collect the evidences to determine whether there is actual infringement: At first you could seek the assistance of the distributors in your own country to look for the counterfeit products, including the price lists, operation manuals, catalogues, circulars, advertisements, proofs of sale that can serve as evidences to confirm the source of the subject product or to request the bureau of trade or customs of your country to examine the import documents. If the product is manufactured in our country, then a market research can be conducted through the agent or credit services in our country to collect relevant evidences in preparation for the court action, since any offense must be substantiated with evidences according to the common principle in criminal procedures. After obtaining evidences on the alleged counterfeit, the next step you should follow is to make sure the subject product does constitute infringement upon your rights, e.g., whether the trademark is the same or similar to your own registered trademark and whether the patent applied for is the same as your own patent, for which technical study procedure is required.

2. Dispatch warning letters or notices:

After the collection of considerable evidences, you can request your agent to dispatch a nation-wide (in the Republic of China) notice and send out warning letters to the infringers, at the same time, urging them to terminate the infringing activity immediately or even demanding explanation, settlement, and compensation for damages thus caused. This measure, however, may alert the infringers and prompt them to destroy the evidences, but this also serves the purpose of intimidating the infringers, and gradually reach the objective of stopping the counterfeit action. On the other hand, the manufacturers may after receiving the warning, hold responsible the counterfeit and try to negotiate with your company

to reach a settlement or even pay you the due compensation and stop counterfeiting quickly, which save both time, effort and a considerable amount of litigation expenses. The Chinese saying that "courtesy comes before arms" explains such reaction. If the expected response cannot be attained, the alternative is to resort to legal actions. Such warning letter can also serve another purpose, to aggravate the penalty on counterfeiting if the manufacturer is caught after the issuance of notice because criminal intention can then be proved.

3. Notify the customs or our delegations abroad (including the semi-official commercial attaches) or the Board of Foreign Trade/Ministry of Economic Affairs.

If your efforts in the above-described manners become fruitless, you may directly contact our governmental delegation or semi-official agencies in your country or the governmental agency of our country, such as the Board of Foreign Trade/Ministry of Economic Affairs, Anti-Counterfeiting Committee or the Customs with a letter of notice. Of course, in our country you can entrust your agent in such undertakings in connection with the counterfeit products in which case provision of sound evidences is an absolute requirement. You can also request the authorities in your own country for confiscation, which is not something of our concern but our government will always take care of it if a notice is served thereto.

Upon receiving the notice, our government usually refers the case to the Anti-Counterfeiting Committee/Ministry of Economic Affairs to proceed with the investigation, i.e. to request the Customs and Board of Foreign Trade to provide the export documents of the subject manufacturer or even conduct an on-the-site investigation in conjunction

with the police at the factory of the subject manufacturer. If counterfeiting is actually committed, the case will be transferred to the court for trial. This is the ultimate effort rendered by our government agencies.

Please note that if you have not obtained any trademark or patent rights in our country, then our government will not transfer the case to the court as it will be treated as ungrounded according to laws; but the counterfeiting manufacturer will be notified to stop such activity, and the customs will also be notified. The manufacturer will be investigated in order to find out if there is any violation of laws or regulations besides the above, and legal procedures will be pursued if the result turn out to be positive.

4. Pursue legal actions through the agent

In the event that counterfeiting activity still persists, despite the application of all the above measures, legal actions both civil and criminal may be initiated. Their repective procedures are summarized as follows:

A. Criminal action:

1) Report to the police administration

Under circumstances such as lacking of supportive evidences or restraining the infringers from selling any more, you may authorize your local agent to inform the local police agency above of the infringer. The police agency will then apply for the issuance of search warrant with the prosecutor upon acceptance of the case. After obtaining the search warrant, the police will go with the agent to the infringer's place to investigate and search. (under urgent circumstances, investigation can be undertaken without the warrant). Counterfeited products can be seized immediately if discovered on the site which

will serve as the evidence for criminal offense. When the above procedures are completed, the policy agency will promptly transfer the whole case to the procuratorate of the district court for investigation of the criminal offense. If the criminal offense of the suspected infringer (defendant) is considered to be significant, a public prosecution will be instituted and the judge of the district court will take over the trial. Investigation will be underway during the trial by the judge, and if the defendant is found to be guilty, then imprisonment terms or fines will be imposed. If the evidences are not justified to prove the defendant's offense then the defendant will be sentenced to be not guilty.

During the course of investigation by the prosecutor, however, if the infringer has not been found to have committed any offense, then the case will be dismissed, the whole case will then depend upon the request for reconsideration of ruling by the superior prosecutor, i.e., the procuratorate of the high court will take over the case. If the evidences for criminal offenses are still found to be lacking or the application is not in order, the request for reconsideration of ruling will be rejected and the case will be finalized. Unless new facts or new evidences are discovered, no information or indictment shall be filed. If the reconsideration of ruling is found to be justified, then the case will be returned to the original procuratorate for continued investigation, the procedure this time is the same as that prior to original not-to-indication.

The defendant may directly file an appeal against the decision of the first instance court with the second instance court (high court), but the victim (the holder(s) of right(s)) may only submit request to the prosecutor, the prosecutor will normally file an appeal unless under

obviously ungrounded circumstances; the prosecutor may also file an appeal in his own capacity without waiting for the vistim's request. The procedure at the second instance court is approximately the same as the first instance court after its acceptance of the case. The investigation procedure will be performed to determine whether the defendant is guilty or not before a decision is made.

As to whether or not an appeal can be filed against the decision of the second instance court depends upon the criminal provision stipulated in the laws quoted by the second trial court. In our country, based upon economic principle in litigations, no appeal in respect of misdemeanours, subject to a maximum three years' imprisonment sentence, or the cases as stipulated in Article 61 of our Criminal Code, should be filed to the third instance court according to the stipulation under Article 376 of the Code of Criminal Procedures. The penal provisions on counterfeiting in our Patent Law, Criminal Code or Trademark Law excluding the recently amended (Jan. 1983) Article 62 of the Trademark Law on trademark infringement which provides a maximum five years' imprisonment, Article 89 of the Patent Law on an offense of counterfeiting patented new invention (not more than three years' imprisonment), Article 90 on counterfeiting of patented new invention or stealing patented method (not more than two years' imprisonment), Article 91 on intentional selling, displaying, importing counterfeited new invention (not more than one years' imprisonment), Article 106 on counterfeiting of products under the protection of patented utility model (not more than two years' imprisonment), Article 107 on imitating the products under the protection of patented utility model (not more than one years' imprisonment), Article 108 on intentional selling, displaying, importing counterfeited or imitated the products of patented utility

model (not more than six months' imprisonment), Article 125 on counterfeiting new design of patented product (not more than one years' imprisonment), Article 126 on imitating of new design of patented product (not more than six months' imprisonment), Article 127 on intentional selling, displaying, importing counterfeited, imitated new design patented products, Article 62-1 of the Trademark Law on infringing foreign trademark (not more than three years' imprisonment), Article 62-2 on selling of products bearing counterfeited trademark (not more than one years' imprisonment), Article 63 on malicious use of the trademark of others (not more than one years' imprisonment) and Article 253 of the Criminal Code on the offense of imitating, counterfeiting trademark, trade name (not more than two years), Article 254 on the offense of selling, displaying, importing products bearing counterfeited, imitated trademark and trade name (not more than one year) all fall under the misdemeanours as provided under Article 61 of the Criminal Code and are all applicable to Article 376 of the Code of Criminal Procedures as mentioned above and no appeal should be filed to the third instance court. Therefore unless the decisions of the first instance court or the second instance court defy the laws and regulations, any appeal filed for the above cases to the third instance court will be rejected by the court by reason of being ungrounded or unlawful. Therefore the restrictions are rather stringent.

2) Complaint filed with the procuratorate of the district court.

As mentioned above, when the right holder has obtained considerable evidences to prove that the defendant is suspected of counterfeiting, then a complaint can be filed with the procuratorate. The procedures of the prosecutor's acceptance of the complaint is the same as stated above and repetitious statement is omitted herewith.

3) Self-complaint filed with the district court.

Self-complaint is the statement filed by the victim to the court directly to request a verdict on the defendant, (Article 319 of our Code of Criminal Procedures) which effect is both efficient and economical, but the complainant shall bear the burden of proof.

The above illustrates the outline of the cirminal procedure in dealing with counterfeiting. Due to the restrictions embodied in the relevant laws and regulations, however, foreigners do not have the right to file criminal complaint and private prosecution (self-complaint). The power of complaint or private prosecution concerns with the issue of whether the court will accept the complaint or private prosecution. A complaint or private prosecution instituted without the power thereof is lacking the capacity to be a party and is not eligible to institute such action in law and will be considered as unlawful if filed as stipulated in the criminal procedure and the court will not accept it for prosecution.

Criminal cases in our country can be classified into: offense of prosecution upon complaint, offense of public prosecution upon request, offense of private prosecution and offense of public prosecution according to the objective claimed by the infringed party. Although Article 240 of the Code of Criminal Procedure provides that any one may file report (information) about the criminal suspect; but apart from the offense of public prosecution that the infringed interests thereof concerned with the society or the country in general, the remaining offenses are concerned with lesser scale or just to specified individuals (including juridical persons). Therefore prosecution upon complaint, prosecution upon request, private prosecution will not be accepted by the court even if reported by someone but without the injured party's expression of an intent to complain.

The provisions showing that the injured party of a criminal offense may institute complaint or private prosecution are provided under Article 232, 319 or the Code of Criminal Procedure respectively and the so-called injured party certainly includes both natural person and juridical person; but the juridical person has to

be a registered one with approval granted, such as a company juridical person established according to the Company Law or the juridical person established according to other laws. But foreign juridical persons unless recognized according to Chapter 7 of the Company Law regarding foreign companies and Articles 11, 12 of the Enforcement Rules of the General Principles of the Civil Code, are not entitled to any legal capability in our country. In other words, such juridical persons will not have the qualification as an entity entitled to the power in law (but if there is a treaty entered between the foreign country and our country which provides reciprocal recognition and the company is established under the laws of the foreign country and is acknowledged to enjoy the power and rights in that country, such foreign companies are qualified to enjoy the rights and bear obligations in our country). Under such restrictions, no complaint or private prosecution may be instituted either for the offenses of public prosecution or prosecution upon complaint. Even if a complaint is instituted, the same shall be deemed as an information only. Even though the prosecutor may accept the offense of public prosecution in the form of an information, if a written ruling not to prosecute is rendered, the right to apply for reconsideration is vanished and the prosecutor may not be able to prosecute the offense of prosecution upon complaint in the light of lacking the elements to prosecute. Even if a private prosecution is instituted, a judgement of "case not entertained" will be pronounced.

The Trademark Law of our country adopts the principle of public prosecution but the Patent Law adopts the principle of prosecution upon complaint, therefore apart from the foreign companies which have been recognized in our country, it is difficult to institute criminal proceeding in our country. At present, only the United

the General Principles of the Civil Code clearly stipulates that foreigners have legal capacity within the stipulations of laws and regulations. And according to paragraph 2, Article 1 of the Law Applicable to Civil Affairs Involving Foreign Elements, foreigners who have disposing capacity according to the laws of the Republic of China are deemed as having disposing capacity. It is not difficult to note that the above-stated restrictions are imposed upon juridical persons only and not on natural persons. Therefore, if the trademark right or patent right is owned by foreign natural persons, complaint or private prosecution may be instituted in principle and the problem that whether the party concerned has the power will not arise.

In order to solve the above problem, we feel it is advisable to adopt a different alternative. For example, a foreign juridical person may establish a branch company in our country. Once the branch company is established and recognized, it may enjoy to the same extent the rights and power as a juridical person of the Republic of China within the juridication of laws and regulations. In other words, the problem that the party concerned is not qualified to file complaint will no longer exist.

Article 66 of our Trademark Law stipulates that the trademark licensee may also exercise its right in curbing infringement. Since foreign natural person may also exercise the right of filing complaint, private prosecution and Chinese companies or natural persons are also entitled to such rights, it would be the best alternative if the foreign trademark is granted to be used by the representative individual of foreign companies or the company juridical person or natural person of our country through the means of licensing. That is, at the time when an infringement occurs, the representa-

tive of the subject foreign company may file a complaint as an individual or to have the lawsuit filed by the local company then the problem of qualification will no longer exist.

The patent right can be exercised by the same way. Since it is stipulated in Article 81 of our Patent Law that the lessee or licensee has the right to request others desist from the infringement; hence by licensing foreign natural persons or local companies, your patent can be protected as well, this is another benefit for licensing patent rights to local companies as mentioned in last Chapter.

B. Civil action:

Infringement upon the trademark and patent rights can be curbed through criminal procedures with criminal sentence imposed upon the infringers, and civil actions can certainly be taken also to prohibit the activity of infringement on the one hand and request compensation for damages on the other so as to minimize the degree of injury.

Both patent and trademark rights are intangible properties, protection thereof is stipulated in the Patent Law and Trademark Law respectively. The Patent Law stipulates that: "At the time the patent right is infringed upon, the patentee or licensee or the lessee may request the infringer to cease and desist from such infringement, request compensation for damages or institute court actions." (Article 81), "The action by those who, with all necessary preparation made, intend to counterfeit, imitate or steal the invention of others whose patent right has been granted may be requested by the patentee, licensee or lessee to be stopped by force." (Article 84), the stipulation regarding trademark is: "The owner

of the right of exclusive use of a trademark may request the person who infringes upon his right to cease and desist from the infringement. If the trademark owner suffers any damages, he may ask the infringer to pay for such damages." (pragraph 1, Article 61 of the Trademark Law), "The provisions of the foregoing five Articles (including Article 61) shall apply mutatis mutandis in case of infringement upon the right of the use of a trademark under license in accordance with the provisions of Article 26." Therefore the rights vested in law to the right holders in case of infringement of patent and trademark rights shall be exercised according to laws. Unlawful infringement upon the rights of others by intention or negligence shall be liable to compensation which is stipulated in our Civil Code (Article 184 of the Civil Code), that is, the right holder may request the infringer for the damages incurred.

It was mentioned in the criminal section above that foreign juridical persons are not entitled to the rights and obligations unless recognized by our country but in the Code of Civil Procedures, it is clearly stipulated with respect to the party concerned that "corporate body having no juristic personality that have appointed representatives or administrators, have the capacity as the party concerned." (paragraph 3, Article 40). Therefore unrecognized foreign juridical persons are deemed as the corporate body having no juristic personality in the civil cases and are vested with the capacity of the party concerned and may institute civil actions without the restrictions as provided under the criminal procedures which can be cited from a precedent in our Supreme Court. Precedent No. 1961-Taiwan-Appeal-1898 of the Supreme Court stated that: "Although unrecognized foreign juridical persons can not be deemed as juridical persons, they are nevertheless the corporate body having no juristic person-

ality, if such foreign corporate body have appointed representatives or administrators, they then have the capacity to be a party according to the stipulation under paragraph 3, Article 40 of the Code of Civil Procedure and it does not matter whether they have set up business offices or management sites or not." Therefore as long as foreign corporate body (juridical persons) have appointed administrators or representatives, civil actions can be instituted by them without encountering any hindrances.

The civil action can be instituted to request: I. Prohibition of the infringing activity by the counterfeiter; II. Destruction of the counterfeits: III. Compensation for damages; IV. Announcement in the newspaper about the court decision. Joint and several liability for compensation can be claimed if common infringers are involved. The above are all clearly stipulated in our Civil Code, Patent Law, and Trademark Law, compensation for losses include passive loss and active loss which refer to the actual damages incurred, for example, in the case that goods are returned after being sold. A request can also be made for the damage incurred on goodwill, but the request for compensation of damages shall be supported by evidence, which is rather difficult. The injured party, however, may request the court to order the counterfeiter to submit its accounting, financial data and can also request the court to demand for the export documents of the infringer via the agencies concerned, such as the Board of Foreign Trade, etc.

The civil court in our country is a three-instance system. When an indictment is filed with the first instance court, a court expense equivalent to one percent of the value of subject matter of the lawsuit and stamp charges should be paid. Such charges should be borne by the party who losses the case. When an appeal is filed,

the appeal charges should be 1.5 percent of the value of subject matter of the lawsuit. An attorney can be retained to appear at the various courts. However, the attorney should be retained for each instance and can not be retained once for all instances.

During the proceeding of the above lawsuits, in order to secure the right of claim or to prevent the infringement from continuing, our Code of Criminal Procedure is enacted with the precautionary proceedings, i.e., the provisional seizure and the provisional measures.

Provisional seizure is a special proceeding that seizes the property of the debtor prohibiting it from being disposed in the cases that the request is for money or the claim can be converted into money by the creditor so as to secure the creditor's claim for compensation, which is stipulated under Article 522 of the Code of Civil Procedure, a special requirement is that the object under seizure has to be something which can not be taken hold of or is difficult to be taken hold of afterwards. A provisional measures is a special proceeding to request for things other than money and to impose certain compulsory measures (such as feasance or non-feasance) or to affix a temporary status quo for the legal relations in dispute so as to secure the compulsory execution. (Articles 532, 538) which special requirement is about the same as the provisional seizure.

Explanation for the causes have to be made for the provisional seizure or provisional measures, but it can be undertaken without causes explained if the creditor is willing to provide the security. Generally, the court will order the creditor to provide the security for undertaking provisional seizure or provisional measures. It

is advisable to implement provisional seizure in the cases of counterfeiting, since the counterfeits can be detained, including the production equipment for making the counterfeits, hence the counterfeiter's infringing activity can be stopped.

C. Supplementary Civil Proceeding

During the criminal proceeding, the injured party may, after the defendant is indicted, institute supplementary civil proceeding to request the defendant to compensate for its losses and others, but the above has to be filed before tne conclusion of oral proceedings. The same can be filed to the court of second instance, but it has to be done before the conclusion of oral proceedings otherwise the proceedings will be in violation of the law and will not be accepted. Such proceeding is a special provision in our Code of Criminal Procedure (Article 487) which purpose is in economizing the proceeding, which is to try the civil action at the same time of criminal proceeding, and also to avoid discrepency in opinions that may occur in civil and criminal proceedings. Such proceeding does not require any additional court charges and alleviates the burden of the injured person which is also one of the merits thereof. Its proceeding is more or less the same as the civil procedure in principle so that it is simple and convenient. But if the case is complicated, the criminal court may rule it to be transferred to the civil court for trial, proceeding for which will be exactly the same as an independent civil procedure. If the supplementary civil procedure is not transferred to the civil court then judgement will be made at the same time as the criminal court. Appeal for the supplementary civil

procedures, however, can not be filed if the criminal portion has not filed an appeal. The capacity to be a party in supplementary civil procedure may apply mutatis mutanois to the stipulation under the independent civil procedure therefore even if the foreign juridical persons that are unrecognized by our country may still file supplementary civil proceeding so long as their patent and trademark infringement cases have been accepted and under trial at the court without subject to any restrictions. The supplementary civil proceeding can be instituted by the retained attorney-at-law also.

This section provides an easily understandable explanation regarding the means for dealing with and the procedures for handling infringement cases in our country. Since this is an introductory article, in-depth discussion is omitted herewith, the readers' understanding is therefore requested.

Chapter 9

THE ROC'S EFFORT ON PREVENTING INFRINGEMENTS AND COUNTERFEITING OF PATENTS AND TRADEMARKS

Governmental Measures

As we know, the problem of counterfeiting could happen in any country. It is human nature for some individuals to seek gains through crimes.

The first sanction law against counterfeiting and infringement of trademarks was enacted in 1955 in the Republic of China. It stipulated in one clause that "Trademarks are a symbol indicating certain commodities, deeply related to commercial credits." Thereafter, it condemns the counterfeiting of trademarks. The sanctions on counterfeiting in the law were:

1. The suspect of the counterfeiting shall be arraigned by the local courts in jurisdiction. If one is found in conflict with the police offenses, he shall be corrected by the police station in jurisdiction. If he still does not improve, he shall be punished subject to the ordinance for punishment of police offenses.

2. All the counterfeiting findings, including manufacturing and selling, shall be open to the news for sanction by public opinion.

3. Transferring the counterfeiters to the Deliberation Committee on foreign exchanges and trades of the Executive Yuan and the Department of Reconstruction of Taiwan Provincial Government to prohibit their negotiations and L/C

issuings and cancelling their foreign exchange quota of industrial raw materials.

Chinese people like to "save face." No one is willing to let their bad reputations be exposed in newspapers. Besides that, the measures of controlling foreign exchange and raw materials, the above two clauses (2 and 3) of the measures, appear much more important. The criminal punishment seems subordinate to them. But because the internal economic conditions turned better, there was no need for strict control, and because the related laws and ordinances were revised, the measures were revoked in 1973.

For the fundamental laws--trademark laws and patent laws, the nearest revision of Trademark Law was in 1972, and Patent Law in 1979. The heaviest punishment for counterfeiting and infringement were up to a three-year imprisonment. Thus, in 1979 when counterfeiting was not so prevalent, the Ministry of Economic Affairs founded a special subcommittee to engage in revising the trademark law and decided to encourage the firms to make creative and good trademarks, to strictly prohibit the counterfeiting, and to increase the term of imprisonment for counterfeiters. These revisions were not adopted until 1983- which seems to be a little late, but as the decision to halt counterfeiting occurred early in 1978, it is unfair to blame the ROC of connivance with the existence of counterfeiting.

A serious counterfeiting incident took place in November of 1980, when a parliamentarian of England visited the ROC. When he visited a large textile factory, he

found there was a sign "Made in England" on the product. Then, that factory was blamed at home and abroad, and the counterfeitings in ROC gradually attracted foreigner's attention. In the meantime, another counterfeiting on the parts of automobiles and motorcycles exported to Europe was found out. The ROC government made a quick response. In January, 1981, the Ministry of Economic Affairs founded an anti-counterfeiting subcommittee whose tasks were: to strictly examine the trademarks of exported products, to enact a law of fair trade to complement the deficiency of the existing laws, to encourage firms to actively make their own trade marks, to urge the judicial agencies to punish heavier cases of counterfeiting, and to connect with the overseas units to collect the practical facts and information on the counterfeiting of trademarks.

Then, the anti-counterfeiting subcommittee of the Ministry of Economic Affairs was founded to collect related information, follow up anti-counterfeiting information and coordinate the related units and agencies to prevent counterfeiting. These are its basic tasks. In the meantime, the Board of Foreign Trade made the punishment of counterfeiters a suspension of export applications or cancellation of the trader licenses. These punishments may seem relatively severe to the thousands of trademark in Taiwan. In 1981, the measures governing the prevention of trademarks counterfeiting and false marking of place of origin, initiated by the committee was issued. It prescribed "goods applying for export, regardless of the trademarks, all must be marked with trademarks on their export licenses. If no trademarks are present, they must be indicated. Otherwise, they shall not be permitted to be exported." So, this article reduces the opportunity for counterfeiting. It functions as a deterrence. Besides, it also regulates that the goods using foreign trademarks

registered in a foreign country must be attached with agreements and certficates and the Board of Foreign Trade can demand the applicant bring the copy of the registration certificate for the said registered trademark, and the agreement showing that the owners agree the applicant may use those trademarks. This article prevents buyers abroad from attempting to order by appointing the trademarks and to resell to others. It prevents the possibilities of the counterfeiting falling on ROC firms. These regulations were effected on August 1, 1981.

In addition to the enaction of the measures governing prevention of trademark counterfeiting and false marking of place of origin and the foundation of the anti-counterfeiting subcommittee, the ROC government also has made other efforts to prevent counterfeiting.

In February of 1982, a revision of the trademark law was initiated, and in June, examined. In April of 1982, the draft of the fair trade law was finished and then opened to the public. The officials also called for self-control on the part of the traders and for them to make their own trademarks. The foreign trade agencies also tried to find the active counterfeiters, by ordering the Commodities Examination Bureau and Customs to intensify their examinations and inspections. In statistics, since the anti-counterfeiting subcommittee was founded in 1981, to March 1982, it has received 366 cases of counterfeiting and disposed of 145 cases.

Unfortunately, these efforts, made by ROC government haven't been well understood yet by other countries. Maybe it is the conservative nature of the Chinese, not liking publicity, that makes it so. These efforts are

not known to other countries. Most unfortunately, because the punishments are up to 3-year imprisonment, most of the counterfeiters are only sentenced to imprisonments under 6 months, the punishments are often commuted into fines. For private interests and profits, the counterfeitings continue to happen. When added to exaggerated reports, they tend to stimulate boycotts.

In June of 1982, the vice president of the Reader's Digest (McHenry) visited Taiwan. He expected our country to counter book piracy. Then, Senator Goldwater wrote to the related agencies to prevent such piracy. In August 1982, the Overseas American Chamber of Commerce held a show of Taiwan's counterfeit goods. In November 1982, Newsweek's article "Taiwan: Disgraceful Pirates" criticized the counterferiting in Taiwan. Time Magazine and Wall Street Journal also wrote articles to criticize these acts. Taiwan's hardwares for boats and ships, heavy staplers, and so on, one by one were charged with counterfeiting in violation of U.S. Customs Law (Article 377). The wideranging effects of counterfeiting were almost uncontrollable.

As in 1981, ROC government immediately made known its attempt to prevent such counterfeitings. On September 2, Premier Sun of the Executive Yuan ordered a prompt revision in the laws and regulations to prevent the counterfeitings of trademarks and patents and to maintain the good name and honor of goods.

On September 8th, the Executive Yuan visited the Ministry of the Interior Affairs, the Ministry of Finance, the Ministry of Justice and the Ministry of Economic Affairs

to consult over the problems of counterfeitings. They made ten substantial conclusions, informing the related agencies to inforce them. They are summarized as follows:

- Any goods found with counterfeited trademarks and patent rights and false marking of place of origin must be halted from export.

- Intensifying the organizations and functions of anti-counterfeiting, positively revealing the underground factories and illegal firms.

- Promptly finishing the revision of the Patent Law and the Trademarks Law, increasing the punishment up to 5-year imprisonment.

- Immediately investigating participation in the international trademark and patent organization, and protecting patent rights to maintain international reputation and honor.

- Asking the judicial agencies to punish adequately counterfeiters with six-month imprisonment, not permitting these to be commuted into fines.

- Coordinating the Judicial Yuan for undertaking to establish a special trademark and patent court for the purpose of shortening the period of trial.

- Actively helping the entrepreneurs to technically cooperate with the foreign firms, and making their own marks.

- Making a list of counterfeiting firms for financial agencies to examine their loan list.

- Through the Ministry of the Interior, informing the police agencies to reveal counterfeitings and asking the Investigation Bureau of the Ministry of Judicial Affairs to help.

- Revising the current examining standards of trademarks and patents.

On November 17, 1982, the chairman of the Kuomintang (Nationalist Party), Mr. Chiang Ching-Kuo instructed his comrades in government to watch the counterfeiting of some firms and to inflict severe punishments to maintain the international reputation, honor and image of the ROC. Then, the higher court and its subordinate courts, one by one convened symposia. They resolved to make more severe punishment for counterfeiting of trademarks and patents to prevent economic crimes.

Thus, all executives and judicial measures matched well. The only remained unfinished one was the revision of the related laws on protection of trademarks.

Revision of Trademark Law

The revision draft of trademark law initiated by the Ministry of Economic Affairs was adopted in a meeting of the Executive Yuan on December 9, 1982, and then was presented to the Legislative Yuan on December 23, 1982. In this draft, besides the revision of the basic system of trademarks and the consolidation of trademarks and patent rights, one stated the punishments for counterfeiting. Article 62 prescribes that the counterfeiters shall be punished with imprisonment or detention for not more than five years. In lieu thereof, or in addition thereto, they will be assessed a fine of not more than 50,000 Yuan (equivalent to 150,000 NT Dollars). The punishment is more severe than the original three years imprisonment. Because the imprisonments cannot be commuted into fines, they intensify the effects of deterrence and punishment. Article 62-1 also safeguards foreign trademarks registered

in ROC. It stipulates that one who, with intent to deceive others, uses a trademark which is identical with or similar to a well-known foreign trademark not registered with the trademark authority, shall be punished with imprisonment for not more than three years. In lieu thereof, or in addition thereto, a fine of not more than 30,000 Yuan (equivalent to 90,000 NT Dollars) can be assessed.

Another article stipulates that all the goods manufactured, sold,displayed, exported or imported in the commission of an offense of counterfeiting shall be confiscated should it belong to the offender (Article 62-3). As the original law does not specify this, it thus intensifies the deterrence.

The Economic and Judicial Committee of the Legislative Yuan long debated the terms of imprisonment. Some even suggested more than five-year terms. Finally, in the second reading, the resolution of not more than five years imprisonment was passed. On trademarks not registered in the ROC, it added the limit of a reciprocal agreement with the ROC, and the words "well-known foreign" trademark were defined.

This revision of the bill of trademark was passed on the third reading, on January 14, 1983, and enacted and issued on January 26, 1983, and effected on January 28, 1983. It is a definite footnote of the Republic of China's resolution to prevent counterfeitings.

Continuous efforts after the revision of the Trademark Law

The efforts of the ROC government did not end with the revision of the Trademark Law. In 1983, the anti-counterfeiting committee was subordinated to the Board of Foreign Trade to coordinate better with foreign trade. It continued to publicize and examine counterfeiting. In February of 1983, the government issued a measure on prosecutors in judging cases in violation of the trademark law, thus complementing the law. The Committee also undertook to collect various cases of the counterfeiting of goods. In referring to those cases, the Committee tried to initiate a proceeding to settle counterfeiting disputes effectively and rationally.

In addition, the ROC also tried to rebuild its international honor, create its own good marks and develop its technology. The "Promotion Measure for Development of New Products" has already been enacted. The promotion measures on creating new marks and new trademarks will surely be enacted in the foreseeable future.

Publicity for patent and trademark services

Earlier in this book, I mentioned that people engaging in the patent and trademark fields served not only for money in publicizing of the concept of patents and trademarks, but also called for curbing counterfeitings in various methods in the earlier period. For example, in June, 1981, the Industrial and Commercial Education Association held a symposium. This author presented some suggestions on the "measures governing prevention of trademark counterfeiting and false marking of place of origin" and gained the agreement in the symposium. In August, 1981,

the ROC Consumers' Cultural and Educational Foundation held a consumer's class on "How to prevent counterfeit goods." The writer made a speech on "The Firm's Measures to Prevent of Counterfeiting." His [the writer's] office printed quite a lot of suggestions on possible new articles and items of new laws or revisions so that the public and the entrepreneurs might understand them. About the prevention of patent counterfeiting and the exertion of trade marks, he has often held the symposiums to discuss.

Many trademarks and patent servers also voluntarily take on the job of publicizing the importance of this work. To the people who are willing to serve, this inexpensive activity is solely a method of social service. The Chinese have an old saying: "A state can be easily changed, but human nature--never." (A fox can grow grey, but never good). We must publicize legal knowledge and seek legislation and services to protect rights and interests. To correct a potential counterfeiter's personality in another important task, if indeed possible. The personality (human nature) is difficult to change as per the old and wise sayings. However, this writer believes that with education, concepts can change--acts can change customs, and at last, the customs can change habits. With this in mind, we intend to do our very best.

Cooperation of Private Enterprises

As the patent and trademark servers, private enterprises must also cooperate with the government. In January of 1981, 37 members of a group of ROC National Industrial Union initiated the "Self-discipline campaign against the counterfeiting of trademarks" symposium and made a

declaration demanding enterprises cultivate self-discipline, abandon acts of counterfeiting, reinforce the study and development, and use their own marks in international markets to establish their new images. In the second National Economic Conference, all the convocators agreed that counterfeiting was immoral, and should be punished.

In 1982, the enterprises proposed to create their own marks, not to counterfeit other's trademarks. They all expressed the determination of the enterprises to give up counterfeiting, for those counterfeitings were only done in a few wicked firms.

Another pleasing phenomenon is that the enterprises in Taiwan are not silent in the face of charges of counterfeiting. In the past, there were many disadvantageous judgments against our manufacturers, because of the high suit costs and retainers on one hand, and a Chinese nature disliking involvement in law cases on the other hand.

In fact, only a few of them are actually involved in counterfeiting. For example, in 1978, the Chu-Shieh Company, a manufacturer of plastic cloths was accused of infringement on a technique patent. Then it was inspected and verified to be non-counterfeiting, and the accusation was dropped. Many cases like that were clarified. Among those were many cases deriving from business competition. From now on, the efforts of private enterprises will emphasize study and development, the creation of their own marks, and presentation of rational and legal debates and grounds in the accusations. At last, they aim to restore their classifications.

Chapter 10

CONCLUSION

This book attempts to analyze the problems of current economic development in Taiwan, R.O.C., from the position of patent and trademark servers. It contains 10 chapters. Chapter one points out the framework and purpose of the book from the growth of economic development and patent applications in Taiwan. Chapter two explicitly expresses that the ROC is situated in an economic transitional period going from labor intensive industry, from the discussion on the achievements of economic development and the aims of future four-year economic construction in Taiwan. Chapter three surveys the problems of the economic recession and trade protectionism, such as the high interdependence on foreign trade, highly centralized trade patterns, the recession of export competitions, lack of study of development, and counterfeiting. Through the survey in Chapter four, it presents two simple strategies with which to settle the problems--the study of development and the protection of markets. Chapter five deals with the legal knowledge and a thorough understanding of patents and trademarks, and the author suggests enforcement of the aforementioned strategies.

Because problem of counterfeiting needs special emphasis, Chapter six described the development process of patent and trademarks: Chapter seven provides with the strategies to prevent counterfeiting; Chapter eight deals with the procedures of taking actions against counterfeiters; Chapter nine surveys the efforts of the ROC to

prevent counterfeiting. This Chapter (Chapter 10) makes a brief conclusion for this book.

From Chapters one through nine, the writer offers the following conclusions:

1. The strategies to pass the economic transitional period for the ROC, Taiwan, should be the enforcement of study and development, making efforts to keep foreign trade markets, and quickening the formation of capital.

2. The exercise and protection of trademark rights and patent rights has a positive significance for us to successfully pass through the economic transitional period.

3. On the task of combating counterfeiting of patents and trademarks, the ROC, Taiwan, has done its very best, and we believe that very soon the problem of counterfeiting will be solved, once and for all. By the way, the author would like to draw readers' attention to the establishment of a civil anti-counterfeiting committee--National Anti-counterfeiting Committee of Industry & Commerce. Such civil committee was established on March 20, 1984. The governmental agency--Anti Counterfeiting Committee was established in 1981, which is now very active in this country. It is expected that the civil and official anti-counterfeiting committees may cooperate and do their best to curb counterfeiting.

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Contents of PATENT LAW

(Articles *amended on April 16, 1979)

Chapter 1 Invention

Section 1 General Provisions

Article 1

Any new invention having industrial value is patentable upon application in accordance with this Law.

*Article 2

The term 'new invention' as used herein refers to an invention other than one:

1. which, prior to applying for patent, has been published in any periodical or put to public use thereby rendering it liable to be imitated but this shall not apply where such publication or use has been made for research or experimental purposes and application for patent is made within six months from the date of such publication or use; or
2. which is preceded by a same invention already patented; or
3. which has been displayed in a government sponsored or government-approved exhibition and in respect of which no application for patent has been filed within six months from the opening date of such exhibition; or
4. which, prior to applying for patent, has been utilized for mass production other than for experimental purposed; or
5. which applies easily apprehensive prior art, common practic or knowledge without improving the efficiency and function.

*Article 3

The term "industrial value" as used herein applies to an invention other than one:

1. which is unfit for practical use; or
2. which has not yet been so developed as to reach the stage of industrial utilization.

*Article 4

The following are not patentable:

1. Chemicals
2. Drinks, foods, and habit-foming articles;
3. Medicines and their concoctions;
4. Any invention the use of which is contrary to law;
5. Any invention detrimental to public order, good morals or sanitation.
6. New forms or varieties of food.

Article 5

Where an invention need be kept as a military secret, the patent right therein may be requisitioned by the Government upon payment of an appropriate compensation.

*Article 6

When an invention under patent application has been found patentable upon examination and finalization, the applicant shall be granted patent right therein and issued with a patent certificate

A patent right shall endure for a term of fifteen years from the date of publication, yet its endurance should not exceed 18 years from the date of application.

Article 7

The right of patent application and the patent right are both assignable and inheritable.

Article 8

If a patentee produces a reinvention during the validity of his patent, he may apply for additional patent; provided, however, that such additional patent shall terminal simultaneously with the expiration of the original patent.

Article 9

A reinvention made on the basis of a patented invention or new model of another person during the validity of his patent is patentable upon application; **provided**, however, that the reinventor shall pay the patentee an appropriate compensation or obtain his agreement for joint manufacture, and that the patentee may not refuse without good cause.

*Article 10

There shall be established a Patent Office under the Ministry of Economic Affairs to administer patent matters. Before the establishment of a Patent Office, the Ministry of Economic Affairs should appoint its suboffice to administer this job.

The organization of the Patent Office shall be separately prescribed by Law.

Article 11

The Patent Office may, ex officio or upon request, grant time extension beyond the statutory time limit for any person residing aborad or in a distant border region or a place difficult of access to proceed with any requisite procedure with the Patent Office.

Section 2 Application

Article 12

Application for patent shall be made by the inventor or his assignee or heir by submitting to the Patent Office a written application accompanied by a detailed description, drawings, model or specimen and affidavit.

A patent application, if filed by the inventor's assignee or heir, shall state the name of the inventor and be accompanied by documentary evidence of the assignment or inheritance.

Article 13

The inventor may authorize an agent to act for him in connection with application for patent and other patent matters.

Article 14

An application for patent may be refused acceptance if it is filed by a national of a foreign country which has not concluded with the Republic of China a treaty or agreement for reciprocal protection of patent rights or which, by its national law, does not admit of patent applications by nationals of the Republic of China.

Article 15

When two or more inventors of the same invention severally apply for patent, the applicant whose application was first filed shall be granted patent. If two or more applicant for the same invention are filed on the same date, the applicants shall be ordered to agree upon a compromise among themselves. In case that no such agreement has been reached, none of the applications shall be granted.

Article 16

When the original inventor and another person severally apply for patent in respect of one and the same reinvention, the applicant who is the original inventor shall be granted patent.

Article 17

When two or more persons jointly apply for a patent or when joint-owners of a patent right proceed with any procedure in connection therewith, all applications therefor shall be signed jointly by all of them unless there is a representative designated upon mutual agreement.

Article 18

Where a patent application right is of joint-ownership, no joint-owner thereof may, without the consent of the other joint-owners, assign his share therein to another person.

Article 19

In case of an assignment of patent application right, the assignee may not set up any defences against a third party unless the application for patent was made at the very time of application in the name of the assignee or has been made thereafter to the Patent Office for a change of the applicant's name.

Any such application as referred to in the preceding paragraph, whether made by an assignee or a heir, shall be accompanied by pertinent documentary evidence.

Article 20

Unless heir to patent right, no person, while in the service of the Patent Office, may apply for or accept, directly or indirectly, any right of interest in a patent.

Article 21

An applicant for a patent shall make separate application for each invention, provided that if two or more inventions are inseparable in use, this provision shall not apply.

Article 22

Where an invention for which patent application is made involves substantially two or more inventions, the application may, as directed by the Patent Office, or as stated by the applicant, be replaced by separate application for individual patents.

Article 23

For inventions with respect of which separate appli-

cations were made pursuant to the preceding article, the date of the original application shall be taken as the date of the applications. The same shall apply where an application for an additional patent is replaced by an application for an independent patent, or where an application for an independent patent is replaced by an application for an additional patent.

Article 24

When a patent application filed by a person other than the one entitled thereto has been rejected upon objection, if patent application in later filed by the person entitled thereto within sixty days from the date when the objection was sustained, the date of the former application shall be taken as the date of the latter application.

Article 25

When a patent which has been granted upon application filed by a person other than the one entitled thereto is annulled, if a patent application is later filed by the person entitled thereto within sixty days from the date of the annulment and within two years from the date of approval of the former application, the date of the former application shall be taken as the date of the later application.

Article 26

When a person proceeding with application or any other procedure in connection with a patent right has made delay beyond the statutory or any specified period or has made default in payment of any fee, all his proceeding shall be rendered void; provided that if it has been shown to the satisfaction of the Patent Office that some obstacles existed, this provision shall not apply.

If the obstacle has been verified as a justifiable cause, the procedure may be made up within thirty days from

the date when the obstacle ceased to operate and within one year after the expiration of the statutory period.

The provision of the preceding paragraph shall not apply to the case of an objection.

Section 3 Examination and Re-examination

Article 27

The Director of the Patent Office shall designate an examiner or examiners to examine each application for a patent.

Article 28

In any of the following events, an examiner shall refrain from undertaking the examination:

1. If his spouse or former spouse or the person betrothed to him is the applicant or the authorized agent in the present case;

2. If the examiner is relatd by consanguinity within the seventh degree or has been so related to the applicant or to the authorized agent in the present case;

3. If the examiner's spouse or former spouse or the person betrothed to him stands in relation to the applicant in the present case as a joint obligee, as a joint obligor, or as a debtor;

4. If the examiner is or has been the legal representative, or head or member of the family of the applicant in the present case;

5. If the examiner is or has been an attorney or assistant in the present case.

6. If the examiner is or has been a witness, or an expert witness, or an opposer, or an informer in the present case.

Article 29

Upon completion of examination of an application, a written decision shall be rendered with reasons therefore.

Article 30

When an invention is found patentable upon examination the written decision, together with the description and/or the drawings, shall be published, and the applicant shall be notified of the decision. In case of a denial of the application, the applicant shall be notified by a copy of the written decision.

*Article 31

In case of an exception against a denial of an application, the applicant may, within thirty days immediately following the date of receipt of the decision, apply for re-examination, by submitting a statement of reasons. In case, the application is rejected due to the informality of the application or the illegality of the applicantship, the applicant may submit appeal and administrative proceedings directly.

*Article 32

Any person who deems an invention made public in the publication as having violated any of the provisions of Article 1 to 4 inclusive of this Law or the interested party deems it as not in accordance with the provisions of Article 12 may within three months from the date of publication, institute an objection with the Patent Office by submitting a written application, together with supporting evidence, for re-examination.

Article 33

Upon receipt of a written objection, the Patent Office shall send a duplicate copy thereof to the patent applicant requiring him to file an answer within one month. Failure

to so comply within the specified time shall render the patent application void; provided that this provision shall not apply of a time extension has been granted upon a prior statement of proper reason.

Article 34

For re-examination, the Director of the Patent Office shall designate an examiner who has not participated in the examination of the original application, and a written decision with reasons shall be rendered.

Article 35

The Patent Office may, for the purpose of examination, order the applicant to appear at the Office for inquiry or for the conduct of experiment, or to submit detailed or complete description, or model or specimen within six months.

Article 36

The Patent Office may, on its own initiative, or as a result of objection, order the applicant to make corrections to the description an/or drawings in such a manner as may be deemed necessary.

Article 37

In case of exception against the decision rendered upon re-examination, the applicant may submit an appeal and "Administrative proceedings" within thirty days immediately following the date of receipt of the decision.

Article 38

An examination decision shall be deemed to be final if no objection is filed or sustained before the expiration of the period of publication.

Any denial of the application shall be deemed to be final in case the applicant does not apply for re-examination, or the application is still rejected by the decision rendered upon re-examination. However, it can be re-applied for patent after having revised the claims, specification, drawings models, or specimen insomuch that it may fit the requirement of a patent.

The competent authority shall inform the applicant to supply or amend the application within ten days after having received it in case it is deemed not in accordance with the legal procedure; the items to be suplied or amended should be informed once and for all. The disposal of both examination and re-exmination by the competent authority shall not exceed one year from the date of examination. This period shall not include the duration of supplement, amendment, interview and experiment.

Article 39

For a patent case under publication, the written decision and the description and/or the model or the specimen shall be exhibited at the Patent Office or any other suitable place for a period of six months.

Article 40

An invention having bearing on national defense shall not be published and all documents and articles submitted for patent application shall be withheld from exhibition.

Article 41

A patent application made in pursuance of Article 24 or Article 25 of this Law by the person entitled thereto is not subject to further publication.

Section 4 Patent Right

Article 42

Patent right is the exclusive right of the patentee to manufacture or sell or otherwise utilize his invention, including, if the invention be a process, any product manufactured directly by use of such process.

*Article 43

The proceeding article shall not apply in any of the following cases:

1. Where the invention is put to practical use for research or experimental purposes without any act of profit seeking nature.
2. Where, prior to applying for a patent, the invention has been put to use in this country, or where all necessary preparations have been completed for such purpose; provided, however, that this restriction shall not apply where knowledge of the manufacturing process was obtained from the patent applicant within six months prior to the date of the application where the patent applicant has made a statement concerning the reservation of his patent right therein.
3. Where the article has already been in existence in this country prior to the application.
4. Means of transportation or any equipment thereon passing through the territory of this country only for transit.
5. Where, in the case of an annulment of a patent right which was acquired by a person other than the person entitled to patent application, upon the information of the person entitled thereto, the licensee has, in good faith, prior to the bringing of the information, made use of the invention in this country or has completed all necessary preparations for such use.

6. Where the article imported from foreign countries if licenced to or assigned to another party by the original inventor to produce or make.

The user referred to in subparagraphs 2 and 5 of this Article shall confine his continued use of the invention within the enterprise in which it has been used.

Article 44

After publication, a patent application shall have the effect of an ad interim patent right.

The ad interim patent right referred to in the preceding paragraph shall be void if the application procedure is later found to be not in order and shall be deemed to be non-existent ab initio if the patent is finally denied due to objection.

Article 45

The patentee may assign his invention in whole or in part to others or license the same to others for putting to use, with or without limitation.

Article 46

An assignment or license of patent right shall be of no effect if the contract thereof contains any of the following terms or conditions:

1. To prohibit or restrict the assignee or licensee* from using any specific article or any process not furnished by the assignor or licensor.
2. To require the assignee to purchase from the assignor any product or raw material not protected by the patent.
3. To call for a compensation for the assignment or a royalty for the licensing at an excessive level so that the person entitled to put the patent to

practical use cannot perform the operation at a reasonable profit.

Article 47

Except to be put to practical use by the jointowners themselves, a patent right of joint-ownership shall not without the consent of all the jointowners, be assigned or licensed to others for practical use; provided, however, that in case of an agreement to the contrary, such agreement shall govern.

Article 48

No joint-owner of a patent right may assign his share thereof to another person without the consent of the other joint-owner or joint-owners.

Article 49

In case of an assignment of a patent right, an application, signed by the parties concerned and accompanied by a deed of assignment, should be submitted to the Patent Office for the reissuance of a patent certificate.

Article 50

In case of an inheritance of a patent right, an application accompanied by documentary evidence should be submitted to the Patent Office for the reissuance of a patent certificate.

Article 51

Where an invention is made by an employee in the performance of his duties, the patent right therein shall be vested in his employer; provided, however, that the matter is provided for by an agreement, such agreement shall govern.

Article 52

Where an invention is made by an employee in connection with the performance of his duties, the patent right therein shall be vested jointly in both the employer and the employee.

Article 53

Where an invention is made by an employee in no way connected with the performance of his duties, the patent right therein shall be vested in the employee; provided, however, that if such invention is made through utilization of the employer's resources and/or experience, the employer may, by agreement with the employee, make practical use of the invention for the enterprise concerned.

Article 54

A contract between employer and employee by the terms of which the terms of which the employee is prevented from enjoying the right and interest in his invention shall be void.

Article 55

A patentee who has suffered losses as a result of war between the Republic of China and any foreign country may apply for a time extension of his patent for five or ten years, and only one such extension may be permitted; provided that if the patentee is a national of the belligerent country, this provision shall not apply.

Article 56

If any of the following circumstances exists, the patentee may apply to the Patent Office to make correction in the approved description and/or drawings, provided that no such correct shall cause any substantive change in the invention:

1. Reduction of the scope of the application;
2. Misstatement of fact;
3. Obscurity in the statement.

Any such correction as referred to in the preceding paragraph shall, after approval by the Patent Office, be published.

Article 57

A patentee who has, by mistake, made one application for two or more inventions and has acquired a patent right herein may request the Patent Office for separation of it into individual patent rights.

Article 58

A patentee shall not abandon his patent right or make any such request as provided for in the preceding two articles without the consent of the assignee, or the licensee, or the person entitled to the practical use of the patent, who has acquired a limited right of putting the invention to practical use.

Article 59

A patent right shall extinguish ipso facto in any of the following events;

1. In case of expiration of the patent term, on the day immediately following the date of its expiration
2. In case of death of the patentee without an heir, on the date of his death;
3. In case of the patentee has made further default within the allowance period for payment of patent fee, on the date of expiration of the statutory period for such payment;
4. In case of voluntary abandonment of his patent right, on the date of the patentee's written declaration to such effect.

Article 60

In any of the following events, the patent right shall be revoked and the patent certificate recalled:

1. If the patented article is found to be contrary to the provisions of Articles 1 to 4 inclusive of this Law;

2. If the patentee is found to be other than the person entitled to the patent application;
3. If omission is intentionally made in the description and/or the drawings of any particulars essential to practice, or if wilful mention is made therein of any unnecessary particulars, thus renders it impracticable or difficult to put the invention to practical use;
4. If the description is found to be different in content from the one accompanying the patent application for the same invention filed in a foreign country.
5. If the content of the description is found to be not truly indicating the actual process invented by the patentee.

*Article 61

Information relating to subparagraph 2 of the preceding article shall be brought to a Patent Office only by the person entitled to a patent application. Information relating to any of the events specified in other subparagraphs thereof may be brought by any person upon submission of pertinent documentary evidence; provided, however, that in case an objection or revocation filed by an informer has not been sustained, anyone may not bring any further information based on the same facts and reasons.

Article 62

The re-examination provisions of this Law shall apply mutatis mutandis to cases of information brought under the preceding article.

Article 63

The effect of a revoked patent right shall be non-subsisting ab initio.

Article 64

When an additional patent right has not been revoked along with the revocation of the patent to which it attaches, such additional right shall be deemed to be an independent patent right, for which another certificate shall be issued, to be valid until the expiration of the original patent.

Article 65

Upon the granting, extinguishment or revocation of a patent right, the Patent Office shall cause such case to be published.

Article 66

The Patent Office shall establish and maintain a register of patents to record the name of each patented invention, the term of the patent, the name and address of the patentee and/or of the authorized agent, if any, and other rights relating to the patent, as well as such other particulars as may be prescribd by law or regulation.

Section 5 Practice

Article 67

Where, in the absence of proper reasons, a patented invention has not been put into practice, or has not been properly put into practice, in this country within three years from the date of granting of the patent, the Patent Office may, upon the request of any interested party, grant special permission to such party for putting it into practice; the licensee shall make compensation, to the patentee. In case of any dispute over the amount of such compensation, it shall be decided by the Patent Office. The Patent Office shall deliver the copy of the application of special permission to the patentee after receiving it and set a three-month period for response; in case no response is filed

the Patent Office may, ex officio, dispose of the application.

*Article 68

An invention shall be deemed not to have been properly put into practice in any of the following cases:

1. If the patentee has caused the whole or a great his invented article to be manufactured abroad and the product imported to this county;
2. If, in the case of a reinvention, which cannot be put to practical use without putting the original invention to practical use, the patentee of the original invention has, under reasonable terms and conditions, refused to license the reinventor for such purpose;
3. If all the component parts of the manufactured article are imported from abroad, leaving only the assembling work to be done in this country.

*Article 69

Where the manufactured product of a patented invention, capable of replacing an article most needed in this country, has not been in sufficient supply although it has been properly put into practice, the Patent Office may order an expansion of its production within a specified time, or upon the request of any interested party, grant a special permission to such party for putting it into practice in case the patentee does not expand its production within the specified time. The special licensee shall make compensation to the patentee. In case of any dispute over the amount of such compensation, it shall be decided by the Patent Office.

*Article 70

If the person granted special permission for putting

a patented invention into practice as provided for in Article 67 and Article 69 of this Law has not properly put it into practice, the Patent Office may, upon the request of any interested party, or on its own initiative, revoke such special permission.

*Article 71

In case of exception against the granting of a spcial permission as provided for in Article 67, and Article 69, and the right of special permission as provided for in Article 70, the party concerned in any such case may submit appeal and administrative proceedings as provided for in this Law.

Article 72

The Government may restrict or requisition any patent right in whole or in part to make it available for military utilization or for the need of any state operated enterprise; provided that the patentee shall be given due compensation.

Article 73

A patentee shall affix to each reproduction of his patented article or to the packing thereof marks or symbols and the number of the patent certificate, and may require the person entitled to put the invention to practical use to do the same. In case of failure to affix such marks or symbols to the patented article, the patentee may not claim any compensation for the damages resulting from an infringement of patent by another person because of the unawareness of the patent right subsisting therin.

Article 74

Any advertisement for a patented article shall not go beyond the approved scope of the patent application. No article other than patented or manufactured by use of a patented process may be affixed with any word indicating

being patented or with any mark or symbol capable of causing others ot misunderstand it as being patented.

Section 6 Fees

***Article 75**

For each application of patent, the applicant shall pay application fee when applying for the patent.

For a granted patent, the patentee shall pay certificate fee and annual fee. For each extended patent, annual fee shall still be paid during the extension period. The amount of application fee, certificate fee and annual fee shall be decided by Administrative Yuan.

***Article 76**

For each patented invention, the annual fee shall be counted from the date of publication. The first annual fee should be paid when applying for the Leters Patent; for each of the follwing annual fees, before the expiration of the previous year.

***Article 77** Eliminated

***Article 78**

In case of default in payment of any annual fee within the specified period, the patentee may make such payment within 6 months after the expiration thereof; provided that the payment shall be made twice as much as any of the annual fees prescribed.

Article 79

When an inventor or his heir is considered financially unable to pay the annual fee, the Patent Office may, upon request, grant a time extension of two years for such payment or grant a reduction or exemption thereof.

*Article 80 Eliminated

Section 7 Compensation and Litigation

Article 81

In the event of an infringement of patent, the patentee, or the person entitled to put the invention to practical use, or the licensee may claim for an injuction to restrain such infringement and claim damages therefor or bring a suit.

Article 82

The court may request the Patent Office to make an evaluation of the damages provided for in the preceding article.

Article 83

Any article or articles used in an act of patent infringement or produced by such act may, upon the application of the injured party, be provisionally seized to serve as the whole or a part of the damages as may be awarded upon a judgement duly entered therein.

Article 84

In the event of an unauthorized use of a patented invention with intent to counterfeit or imitate, and if all necessary preparations therefor have been made, the patentee, or the person entitled to put the invention into practice may request to restrain such act.

Article 85

In a patent infringement suit, the court may inquire the Patent Office to give an opinion, or to examine the pertinent file, or to notify the Patent Office to assign its staff to make an explanation before the court.

Article 86

When judgment has been made on a patent infringement case, the court shall send a duplicate copy of the judgment to the Patent Office.

Article 87

The injured party may, after judgment, request the court to publish in a newspaper the whole or a part of the judgment at the expense of the losing party.

Article 88

In a civil or criminal action on a patent right, the court shall discontinue its proceedings until a final decision has been make on the patent application, or objection, or revocation involved in such case.

Section 8 Penal Provisions

*Article 89

Any person who counterfeits a patented article of invention shall be punished with imprisonment for not more than three years or detention; in lieu thereof, or in addition thereto, a fine of not more than forty thousand yuan may be imposed.

Article 90

Any person who imitates a patented article of invention or make unauthorized use of a patented process shall be punished with imprisonment for not more than two years, or detention; in lieu thereof, or in addition thereto, a fine not more than ten thousand yuan may be imposed.

Article 91

Any person who knowingly sells, or exhibits or imports with intent to sell, any counterfeited or imitated article

of a patented invention shall be punished with imprisonment for not more than one year, detention; in lieu thereof, or in addition thereto, a fine not more than five thousand yuan may be imposed.

*Article 92

Any person who violates the provisions of Article 74 of this Law shall be punished with imprisonment for not more than six months, detention; in lieu thereof, or in addition thereto, a fine not more than three thousand yuan may be imposed.

Article 93

Prosecution for an offence specified in Articles 89 through 91 of this Law may be instituted only upon complaint duly brought within one year from the date when the complainant became aware of the infringement involved.

*Article 94

Any person in the service of the Patent Office who discloses any information in connection with a patentable invention or any business secret of the patent application, which comes to his knowledge because of his occupation or profession, shall be punished with imprisonment for not more than three years, detention, or in addition thereto, a fine not more than forty thousand yuan, may be imposed.

Chapter II New Model

Article 95

Any practicable new model originally created in respect of the form, construction or fitting of any object is patentable upon application in accordance with this Law.

*Article 96

The term "new model" as used herein refers to a model other than one:

1. which prior to applying for patent, has been published in any periodical or has been put to public use in this country, thereby rendering it liable to be imitated; provided that this shall not apply where such publication or use has been made for research or experimental purposes and application for patent of new model is later filed within six months from the date of such publication or use; or

2. which is preceded by a same invention or new model already patented; or

3. which has been displayed in a government-sponsored or approved exhibition and in respect of which no application for patent has been of such exhibition; or

4. which, prior to applying for patent, has been utilized for mass production other than for experimental purposes.

5. which applies easily apprehensible common practices or knowledge prior to the patent application without improving the efficiency and function.

Article 97

A new model is not patentable:

1. If its use is contrary to law; or
2. If it is detrimental to public order, good morals or sanitation; or
3. If it is of shape identical with or similar to that of the party flag, or the national flag, or the military flag, or the national emblem, or any government medal.

Article 98

Where a new model conformable to the requirements of Article 95 and 96 of this Law need be kept as a military

secret, the patent right therein may be requisitioned by the Government upon payment of an appropriate compensation.

*Article 99

When a new model under patent application is found patentable upon examination and finalization, the applicant shall be granted a patent right therein and issued with a patent certificate.

A new model patent right shall endure for a term of ten years from the date of publication, yet the endurance shall not exceed 12 years from the date of patent application.

Article 100

Where a prior patent application made for a new invention or new design is later replaced by an application for new model, the date of the prior application for invention or new design may be taken as the date of the application for a new model, provided, however, that this provision shall not apply where the new model patent application is filed later than one month from the date of receipt of the written decision on the application for invention or new design.

Article 101

Any person who deems a new model made public in a publication as being contrary to the provisions of Articles 95 to 97 inclusive of this Law, or any interested person who deems application as having violated the provision of Article 12 of this Law, may, within three months from the date of publication, institute an objection with the Patent Office by submitting a written statement, together with supporting evidence, for reexamination.

Article 102

A new model patent right is the exclusive right of the patentee to manufacture, sell, or otherwise utilize

the patented new model of his creation.

Article 103

The patentee of a new model may assign his new model to others or license the same to others for putting to use, with or without limitations.

Article 104

In any of the following events, the patent right shall be revokd and the patent certificate recalled;

1. If the new model is found to be contrary to the provisions of Article 95 to 97 of this Law;
2. If the patentee is found to be other than the person entitled to patent application:
3. If ommission is intentionally made in the description and/or the drawings of any particulars essential to practice, or if wilful mention is made therein of any unnecessary particulars, thus renders it impossible or difficult to put the new model to practical use;
4. If the description is found to be different in content from the one accompanying the patent application filed in a foreign country for the same new model.

*Article 105

For each patented new model there shall be paid annual fees counted from the date of publication.

For the first year, the annual fee shall be paid at the time when a patent cetificate is received and for each of the following years, prior to the expiration of the previous period.

*Article 106

Any person who counterfeits a patented new model shall be punished with imprisonment for not more than two years or detention; in lieu thereof, or in addition thereto, a

fine not more than ten thousand yuan may be imposed.

*Article 108

Any person who knowingly sells, or exhibits or imports with intent to sell, any counterfeited or imitated article of a patented new model shall be punished with imprisonment for not more than six months or detention; in lieu thereof, a fine not more than three thousand yuan may be imposed.

Article 109

Prosecution for an offence specified in the preceding three articles may be instituted only upon complaint duly brought within one year from the date when the complainant became aware of the infringement involved.

*Article 110

The provisions of Articles 7 to 20 inclusive, Articles 23 to 31 inclusive, Article 33 to 41 inclusive, Article 43 and 44, Article 46 to 54 inclusive, Articles 56, 58 and 59, Articles 61 to 66 inclusive, Articles 72 to 75 inclusive, Articles 78 and 79, Articles 81 to 88 inclusive, and Articles 92 and 94, of this Law, shall apply, mutatis mutandis, to new models.

Chpter III New Design

Article 111

Any new design originally created in respect of the shape, pattern, or color of any object to cause a sense of beauty is patentable upon application under this Law.

Article 112

The term 'new design' as used herein refers to a design other than one:

1. Which is preceded by an identical or similar new design already published or put to public use in this country prior to applying for patent; or
2. Which is preceded by an identical or similar new model or new design already patented.

Similar new designs created by the same person shall be an associated new design, to which subparagraph 2 of the preceding paragraph does not apply.

Article 113

A new design is not patentable:

1. If it is detrimental to public order or good morals or sanitation; or
2. If it is identical with or similar to the party flag, or the national flag, or a portrait of Dr. Sun Yat-sen, or the national emblem, any military flag, any official seal or any government medal.

*Article 114

When a new design under a patent application is found patentable upon examination and finalization, the applicant shall be granted a patent right therein and issued with a pantent certificate.

A new design patent right shall endure for a term of five years from the date of the publication, yet the endurance shall not exceed six years from the date of application.

Article 115

When a prior patent application made for a new model is later replaced by an application for a nw design, the date of the application for a new model or new design may be taken as the date of the application for a new design; provided, however, that this provision shall not apply where the new design patent application is filed later than one month from the date receipt of the written decision on the

new model patent application.

Article 116

Patent application for a new design shall be made by the creator or his assignee or heir by submitting to the Patent Office a written application, together with drawings and an affidavit.

Article 117

Patent application for a new dsign shall specify the object to which the new design is to be applied and the classification to which such object belongs.

The classification of objects as referred to in the preceding paragraph shall be prescribed by the Ministry of Ecnomic Affairs.

*Article 118

Any person who deems a new design made public in a publication as being not in accordance with the provisions of Articles 111 to 113 inclusive of this Law, or any interested person who deems the application as having violated the provisions of Article 116 of this Law, may, within three months from the date of publication, institute an objection with the Patent Office by submitting a written application together with supporting evidence, for re-examination.

Article 119

A new design patent right is the exclusive right of the patentee to manufacture or sell the article to which, designated by the patentee, the new design is to be applied.

Article 120

The provisions of the preceding article shall not apply to any of the following cases:

1. Where, prior to applying for patent, the design

has been put to use in this country or where all necessary preparations have been completed for such purpose; provided, that this restriction shall not apply where knowledge of the new design was obtained from the patent application within six months prior to the date of the application and the applicant has made a statement concerning the reservation of his patent right therein:

2. Where the object has been already in existence in this country prior to applying for patent.

The user as referred to in the preceding paragraph shall confine his continued use of the new design within the enterprise in which it has been used.

Article 121

A patentee may assign to other person his new design to be applied to the designated article; provided, however, that an associated new design shall not be separately assigned.

Article 122

In any of the following cases, the patentee of a new design may apply to the patent Office for amendment of the description and/or drawings pertaining to the patented new design:

1. Reduction of the scope of the application;
2. Misstatement.

Any such amendment shall, after approval by the Patent Office, be published.

Article 123

In any of the following events, the patent right in a new design shall be revoked and the patent certificate recalled:

1. If the new design is found to be contrary to any of the provisions of Articles 111 to 113 inclusive of this Law.

2. If the patentee is found to be other than the person entitled to patent application.

*Article 124

For each new design patent, the annual fee is counted from the date of publication.

The annual fee for the first year shall be paid at the time when the patent certificate is received, and for each of the following years, prior to the expiration of the previous period.

*Article 125

Any person who counterfeits any article of patented new design shall be punished with imprisonment for not more than one year, or detention, in lieu thereof or in addition thereto, a fine not more than five thousand yuan may be imposed.

*Article 126

Any person who imitates any article of patented new design shall be punished with imprisonment for not more than six months or detention; in lieu thereof or in addition thereto, a fine not more than two thousand yuan may by imposed.

*Article 127

Any person who knowingly sells, or exhibits or imports with intent to sell, any counterfeited or imitated article of a patented new design shall be punished with detention; in lieu thereof or in addition thereto, a fine not more than one thousand yuan.

Article 128

The prosecution of an offence specified in the preceding three articles may be instituted only upon complaint duly brought within one year from the date when the com-

plainant became aware of the infringement invloved.

*Article 129

Provisions of Articles 7, 10 and 11; paragraph 2 of Article 12; Articles 13 to 15 inclusive ; Articles 17 to 20 inclusive; Articles 24 to 31 inclusive; Articles 33, 34, 37, 38, 39, 41,; and 44, Articles 47 to 54 inclusive; Articles 58, 59, 61, 62, 63, 65, 66, 73, 74, 75, 78 and 79; Articles 81 to 88 inclusive; and Articles 92 and 94, of this Law shall apply, mutatis mutandis, to new designs.

Chapter IV Addendum

Article 130

Enforcement rules for this Law shall be prescribed by the Ministry of Ecnomic Affairs.

*Article 131

Eleiminated

*Article 132

The following procedures of the patent cases not decided upon prior to the enforcement of this revised law shall be dealt with in accordance with the revised provision.

*Article 133

This law shall be enforced from the date of promulgation.

CONTENTS OF TRADEMARK LAW

Revised and Promulgated
by the Government of the Republic of China
on the twenty-sixth of January, 1983

CHAPTER ONE: GENERAL PROVISIONS

Article 1 (Objective of the Trademark Law)

This Law is enacted for the purpose of protecting the rights to exclusive use of trademark and the interests of consumers to promote the normal development of our commercial and industrial enterprises.

Article 2 (Application for registration of trademark)

Any person who desires to use a trademark exclusively to distinguish the goods produced, manufactured, processed, selected, wholesaled or dealt by himself shall apply for registration of the trademark in accordance with this Law.

Article 3 (Conditions for reciprocal protection of foreign trademarks)

An application for trademark registration may be refused acceptance if it is filed by a national of a foreign country which has not concluded with the Republic of China a treaty or agreement for reciprocal trademark protection or which, by the law of that country, does not accept applications for trademark registration made by nationals of the Republic of China.

*Article 4 (Components of Trademark)

A trademark shall be based on its device. Any word, drawing, symbol or combination thereof used in the trademark shall be markedly distinctive. The color employed shall be indicated also.

The name of the trademark may be entered in the device.

Article 5 (Wording to be based on Chinese characters)

Words used in a trademark including the pronunciation shall be based mainly upon Chinese Characters. The Chinese national language (Mandarin) shall be the standard of the pronunciation. Wording in foreign languages may be used subsidiarily.

Foreign trademarks shall not be confined to the provision of the preceding paragraph.

*Article 6 (Definition of the use of trademark)

The use of trademark herein this Law refers to an act of applying a trademark on goods or on the package or container thereof, and selling such goods on local marketplace or abroad.

Trademark shown in television, newspaper advertisement, or an exhibition to promote the sales of the goods shall be deemed trademark in use; using the foreign language portion of the trademark on an export good shall be deemed use also.

Article 7 (The Trademark Authority)

The Trademark Authority herein this Law refers to the governmental agency designatd by the Ministry of Economic Affairs to handle trademark registration matters.

Article 8 (Appointment of agents; agents for non-residents; change of agents)

An agent may be appointed or authorized to handle such matters as the application for registration and any other in connection with trademark.

A person who has no domicile or place of business within the territory of the Republic of China shall appoint a person who has a domicile or place of business within the territory of the Republic of China as his especially authorized agent.

Where a trademark agent has acted in excess of his

power or in violation of the trademark law or regulations, the Trademark Authority may order a change of agent within a specific period. If the applicant failed to effect such change, he shall be considered not having appointed any agent at all.

Article 9 (Power of agents)

A trademark agent may, except otherwise restricted in the contract of appointment, take all necessary actions in relation to trademark matters: provided that he shall not deal with the disposal of the right to exclusive use of a trademark unless specifically authorized.

Article 10 (Recording of agents)

Any appointment or change of agent, limitation or alteration in the trademark matters authorized, or revocation of his authorization shall be invalid as against a third party unless duly approved and registered by the Trademark Authority.

Article 11 (Extension of statutory period)

The Trademark Authority may, ex officio or upon request, extend the statutory period, in favor of any person residing abroad or in a distant border region or a place difficult of access to proceed with any requisite procedure with the Trademark Authority.

Article 12 (Extension of designated period; change of designated date)

The Trademark Authoritymay, upon request of a party, extend or change the period or date designated according to this Law; Provided that where there is an opposite or interested party, such extension or change shall not, except for justifiable reasons, be granted without the consent of the opposite or interested party said.

Article 13 (Failure to observe statutory or designated period; remedy in case of force majeure)

Any trademark application made and other proceedings instituted beyond the statutory or the designated period shall be invalid; provided that this shall not apply where the delay is due to force majeure or other causes not attributable to the party concerned, and such fact has been proved true after investigation.

In the event referred to in the proviso in the preceding paragraph a written report with detailed account of the facts of delay including the dates of the event and removal of such causes shall be filed with the Trademark Authority within thirty days of the removal of such causes; the delayed procedures shall be completed at the same time also.

Article 14 (Effective date of documents submitted)

The various time limit prescribed in this Law shall be computed from the date on which related documents or articles reach the Trademark Authority. When the documents or articles are sent by mail, the time limit shall be computed from the mailing date shown on the postmark by the dispatching post office.

Article 15 (Publication of the decisions of the Trademark Authority)

All written decisions of the Trademark Authority on opposition, invalidation or cancellation proceedings shall be served to the parties concerned within ten days after such decisions have been made.

Where sevice of such documents referred to in the preceding paragraph can not be executed, the documents said shall be published in the Official Gazette of the Trademark Authority and be deemed service by publication upon the maturity of thirty days from the date of such publication.

Article 16 (Application, publication and registration fees)

When applying for registration of a trademark or any other in connection with trademark, the applicant shall pay the application, publication and registration fees at the time of filing of the application. Where an application is being rejected, the registration fee shall be refunded by the Trdemark Authority. If an application is not published, the publication fee shall be refunded also.

The amount of application, publication and registration fees shall be prescribed by the Ministry of Economic Affairs.

Article 17 (The Trademark Gazette)

The Trademark Authority shall publish and circulate an official gazette and record therein registered traemarks and necessary matters in connection with trademark.

Article 18 (The Trdemark Register; Certificate of Registration)

The Trademark Authority shall keep a register of trademarks wherein to enter the rights to exclusive use of trademark and other rights in connection with trademark and all other matters that may by prescribed by law.

A certificate of registration shall be issued for every trademark for which the registration has been granted.

*Article 19 (Recording and publication of change)

Where there is any change in the particulars approved or registered in relation to trademark, an application for approval thereof shall be made with the Trademark Authority provided that no change shall be made in relation to the device of the trademark and the goods designated.

The particulars referred to in the preceding paragraph approved for change shall be published in the Official Gazette of the Trademark Authority.

Article 20 (Request for granting of certified documents, copying of the device of a mark, reviewing, transcription of documents)

The Trademark Authority may not refuse any request in respect of issuing certified documents, copying of the device of a trademark, or reviewing or transcription of documents unless it is deemed necessary to keep the matters said confidential.

CHAPTER TWO:

RIGHT TO EXCULSIVE USE OF TRADEMARK

*Article 21 (Acquisition and scope of trademark rights)

The trademark registrant shall acquire from the date of registration the right to exclusive use of the trademark.

The right to exclusive use of a trademark shall be limited to the device of the trademark under registration and the same goods or goods in the same class designated.

*Article 22 (Application for registration of associated or defensive trademarks; designation of principal trademark)

The same person who uses a similar trademark on the same goods or goods in the same class shall apply for registration of the similar mark said as an associated trademark.

The same person who uses an identical trademark on goods not in the same class but identical or similar in nature may apply for registration of the identical trademark said as a defensive trademark.

In applying for registration of the trademarks referred to in the two preceding paragraphs, the registered trademark or the mark which bears the earliest effective filing date for registration shall be the principal trademark; when applying at the same time, one of the trademarks shall be

designated as the principal trademark.

Article 23 (Using a personal name and other descriptions on trademark)

Any person who, in an ordinary manner, uses his own personal name or trade name or indicates on his goods the name, shape, quality, function, place of origin or any other descriptions relating the goods per se shall not be confined by another person's right to exclusive use of a trademark; provided that this provision shall not apply where the personal name or trade name said is used mala fide.

Article 24 (Duration period and renewal registration of trademark)

The duration of the right to exclusive use of a trademark shall be ten years from the date of registration.

The duration period referred to in the preceding paragraph may be renewed by filing an application in accordance with this Law; provided that each renewal shall be limited to ten years.

Article 25 (Application for renewal of registration)

An application for renewal of the duration period of the right to exclusive use of a trademark shall be made within six months before the expiration of the exising period. The application shall be accompanied by the original certificate of registration and the device of the trademark.

*Article 25-1 (Conditions for application for renewal of registration)

An application for renewal of the duration period of the right to exclusive use of a trademark shall not be approved where any of the following circumstances occurs:

(1) Any act stipulated in paragraph 1, item (1) to item (6) or item (8) of Article 37;

(2) Unuse of trademark within two years prior to the

the application for renewal of registration without any justifiable reason.

Article 26 (Conditions for approval of licensed use of trademark; marking of licensed use)

The trademark proprietor may not, except by assigning his trademark, license any other person to make use of his trademark; provided that this shall not apply where the manufacturing process of the goods by the other person said is placed under the supervision and control of the trademark proprietor so that same quality standard of the goods bearing the trademark may be maintained and the use of such trademark does meet with the requirements prescribed by the Ministry of Economic Affairs based on the need for developing the national economy, and such use is approved by the Trademark Authority.

The licensed user of the trademark shall indicate on his goods the licensing of the mark.

Article 27 (Revocation of approval of licensed use)

In case of any violation of the provision of the preceding article, when using a licensed trademark the use of which has been approved, the Trademark Authority shall, ex officio or upon request of an interested party, revoke the approval of such licensed use.

Article 28 (Conditions for assignment of trademark; restriction on assignment of associated and defensive trademarks)

The assignment of the right to exclusive use of a trademark shall be effected together with the business concerned.

Associated trademark and defensive trademark shall not be assigned separately in addition to the application of the provision of the preceding paragraph.

Article 29 (Recording of assignment)

Any asignment of the right to exclusive use of a trademark shall be recorded with the Trademark Authority within one year. Before the aproval of such recording the assignment shall be invalid as against a third party.

Article 30 (Prohibition form pledging trademark right)

The right to exclusive use of a trademark shall not be made an object of a pledge.

*Article 31 (Cancellation of registration; restriction on re-registration)

The right to exclusive use of a trademark shall, in addition to being cancellable at any time upon requet of the trademark proprietor, be cancelled by the Trademark Authority, ex officio or upon request of an interested party if any of the following circumstanes occurs after registration:

(1) When a trademark proprietor uses a registered trademark which, due to any unauthorized alteration or adddition made therein, had become similar to another person's registered trademark in respect of the same goods or goods in the same class;

(2) When the trademark, without any justifiable reason, has not been put into use or the use thereof has been stopped continuously for more than two years since the date of registration;

(3) When no application for assignment of the right to exclusive use of trademark has been made of record after one year from the date of such assignment;

(4) When a person, in contravention of the provision of Article 26, has licensed another person to use his trademark or when, knowing someone who has violated the conditions for licensing of such use, he did not institute interference proceedings;

The provision of item (2) of the preceding parapraph shall not apply where either a defensive trademark or an associated trademark registered is still in use.

The Trademark Authority shall, before deciding to cancel a trademark referred to in paragraph 1 hereof notify the trademark proprietor or his trademark agent to submit a written defense within thirty days from the day of notification.

Where the decision of cancellation referred to in paragraph 1 hereof is final, the proprietor whose trademark has been cancelled shall neither, within three years from the date of cancellation, apply for registration, nor be assigned, or licensed the use of a trademark which is identical with or similar to the trademark cancelled in respect of the same goods or goods in the same class.

Article 32 (Lodging an appeal against the decision of cancellation)

Any person dissatisfied with the decision cancelling the right to exclusive use of a traemark referred to in paragraph 1 of the preceding article may lodge an administrative appeal within thirty days in accordance with law.

*Article 33 (Lapse of trademark right due to termination of business; in case of decease of trademark proprietor)

Where an application for renewal of registration has not been made before the expiration date, the right to exclusive use of the trademark shall lapse therewith; this also applies where any of the following circumstances occurs before the expiration of the duration of registration:

(1) Where the proprietor has terminated his business;

(2) Where the trademark proprietor has deceased without an heir, or the heir has failed to register the assignment of the right within one year since the decease of the trade-

mark proprietor.

*Article 34 (Indication of the name of trademark)

Where the name of the trademark has not been entered in the device, it shall not receive protection under this Law.

CHAPTER THREE: REGISTRATION

Article 35 (Classification of goods)

The application for registration of a trademark shall be made by filing with the Trademark Authority an application designating the class of the goods to be covered by the mark and indicating the name of the goods.

The classification of goods shall be prescribed in the Enforcement Rules of the Trademark Law.

Article 36 (Earliest applicant entitled to registration; in case of various applications filed on the same date)

Where two or more persons respectively file an application for registration of an identical or similar mark in respect of the same goods or goods in the same class, registration shall be granted to the applicant who holds the earliest effective filing date. If a number of applications are filed on the same date and no distinction of priority can be made, the applicants involved may come into agreement to concede the right to exclusive use of the trademark to one of the parties. Where no agreement can be reached, granting of regisration shall be determined by lot-drawing.

*Article 37 (Trademarks not registrable; evidence of registrability)

A trademark which falls under any of the following circumstances may not be applied for registration:

(1) Anything identical with or similar to the national flag, national emblem, state seal, military flags, military insignia, official seals or medals of the Republic of China or the national flag of a foreign country;

(2) Anything identical with the image or the name of Dr. Sun Yat-sen or the president of the Republic of China;

(3) Anything identical with or similar to the sign of Red Cross, or the name or emblemor insignia of a well-known international organization;

(4) Anything identical with or similar to the Chinese National Standard Certified Mark or a Trademark inspected and certified by local or other foreign country in the same nature;

(5) Anything detrimental to public order or good customs;

(6) Anything likely to deceive or to lead the public into misconception;

(7) Anything identical with or similar to other's well-known trademark and used on the same goods or goods in the same class;

(8) Anything identical with or similar to a mark customarily used on the same goods for which registration is made;

(9) Anything identical with or similar to an emblem or insignia of the governmental institution or an exhibitionliked meeting of the Republic of China, or a medal or testimonial awarded thereby or thereat;

(10) Any word, drawing, symbol or combination thereof which is illustrative of the designated goods for which registration is applied, or is customarily used to indicate the name , shape, quality or function of the goods per se;

(11) Any image or personal name of another individual, name of a body corporate, organization or trade firm nation

widely well-known unless the consent of the proprietor is secured; provided that this shall not apply if the goods which belong to the business scope of the trade firm or body corporate are not similar to or identical with the goods of the trademark for which registration is applied;

(12) Anything identical with or similar to other's trademark registered in respect of the same goods or goods in the same class, or any trademark the registration of which has become, after the expiration date, invalid for not more than two years; provided that this shall not apply if the trademark had not been used for more than two years before the invalidation of the registration;

(13) Any trademark of which a portion of it has been adopted from a registered trademark of another person and the trademark said is used on the same goods or goods in the same class.

When filing an application for registration of a trademark which falls under the provisions in item (11) or item (12) of the preceding paragraphs, the applicant shall set forth the evidence on which the trademark is entitled to registration in accordance with the provisions of the respective items.

The standards for identifying a well-known trademark referred to in item (7) of paragraph 1 will be submitted to the Executive Yuan for approval by the Ministry of Economic Affairs.

Article 38 (Assignment of right together with the business concerned; change of applicant's name)

The right deriving from an application for registration of a trademark may be assigned to another person together with the business conerned.

The right of the assignee referred to in the preceding paragraph shall be invalid as against a third party unless an application for change of the original applicant's name

has been approved.

Article 39 (Examination of applications; appointment of examiners; regulations for examination)

The Trademark Authority shall appoint examiners to examine the applications for registration of trademark.

Regulating measures relating to examination referred to in the preceding paragraph shall be made by the Trademark Authority and enforced upon approval by the Ministry of Economic Affairs.

Article 40 (Withdrawal from undertaking examination of the examiners)

An examiner shall withdraw from undertaking the examination where:

(1)his spouse, ex-spouse or fiance/fiancee is the applicant or the trademark agent in the case;

(2) he is presently related by consanguinity within the fifth degree or by affinity within the third degree of the applicant, or he was once so related to the applicant in the case;

(3) he is or once was the statutory agent, or the head or a member of the family of the applicant in the case;

(4) he was once the trademark agent of the applicant in the case;

(5) he has any direct interests in the property of the applicant in the case.

Article 41 (Publication of application; instituting opposition proceedings; cancellation of published marks)

When an application for registration of a trademark is examined and adjudged to be in conformity with law, the Trademark Authority shall, in adition to serving a written decision of approval to the applicant, publish it in the

official Gazette of the Trademark Authority first. Registration shall be granted only if no opposition is instituted within three months by any interested party or if a decision dismissing such oppostion has become final.

When a decision sustaining the opposition to a published trademark has become final, the original decision accepting the traemark shall be revoked.

Article 42 (Cancellation of approved marks due to alteration or addition made; restriction on re-application)

Where an approved traemark is used with unauthorized alteration or adition whereby the mark is made similar to the registered trademark of another person in respect of the same goods or goods in the same class, the Trademark Authority may, ex officio or upon request of an interested party, cancel the original decision of approval.

The provision of paragraph 3 of Article 31 shall apply mutatis mutandis before the Trademark Authority cancels the original decision of approval referred to in the provision of the preceding paragraph, whereas the provision of paragraph 4 of Article 31 shall apply where the decision has become final.

Article 43 (Rejection of application for registration)

When a trademark the registration of which is applied for is examined and adjudged to be in contravention of law, a decision rejecting the application shall be made; a written decision stating the reasons therefor shall also be served to the applicant or his trademark agent.

Article 44 (Lodging an appeal against rejection of application or cancellation of approved mark)

An applicant for registration of a trademark dissatisfied with the decision rejecting the application or the decision cancelling the approved trademark referred to in

paragraph 1 of Article 42 may lodge an administrative appeal within thirty days in accordance with law.

Article 45 (Cancellation of approved mark by the examiners)

Where it is discovered during the publication period of an approved mark that the decision approving such trademark is in contravention of law, the trademark examiner shall institute cancellation proceedings of the approved trademark.

The Trademark Authority shall, before making a decision to cancel an approved trademark referred to in the provision of the preceding paragraph, notify the applicant for trademark registration or his agent to submit a statement of opinion within thirty days.

Article 46 (Instituting opposition proceedings against approved mark)

Any interested party in respect of the approved trademark may institute opposition proceedings with the Trademark Authority within the publication period.

Article 47 (Opposition proceedings and statement of defense)

Any person who institutes opposition proceedings shall submit to the Trademark Authority a written opposition stating the facts and reasons accompanied by a duplicate copy thereof.

The Trademark Authority shall then serve the duplicate copy referred to in the preceding paragraph to the applicant or his trademark agent setting a time limit for submission of a statement of defense.

Article 48 (Appointment of examiners; withdrawal of examiners from undertaking opposition case)

The provisions of Article 29 and Article 40 shall apply mutatis mutandis in the opposition proceedings.

An examiner shall withdraw if the opposition is filed against the examination case in which he previously took part.

Article 49 (Decision on opposition case)

In case of a trademark opposition the Trademark Authority shall draw up a decision on the opposition stating the reasons and then serve such decision to the applicant for registration of the trademark, the objector or their trademark agents.

Article 50 (Lodging an appeal against the decision on opposition)

When the applicant for registration of a trademark or the objector is dissatisfied with the decision on the opposition referred to in the perceding article. He may lodge an administrative appeal within thirty days in accordance with law.

Article 51 (No review on the same around when opposition dismissed)

Where a trademark is registered aftr the final dismissal of an opposition, the objector may not apply for a review on the same facts and evidence.

CHAPTER FOUR: REVIEW

*Article 52 (Invalidation review; conducting invalidation review by the examiners; review of renewed registration)

Where the registration of a trademark is in contravention of the provisions of paragraph 4 of Article 31, Article 36, paragraph 1 of Article 37 or the latter part of paragraph 2 of Article 42, an interested party may institute

invalidation proceedings requesting the Trademark Authority to conduct a review to invalidate the registration involved.

Where the registration of a trademark is in contravention of the provisions of Article 4, Article 5, Article 22, paragraph 4 of Article 31, Article 36, item (1) to item (10), item (12), item (13) of paragraph 1 of Article 37, or the latter part of paragraph 2 of Article 42, the trademark examiner may initiate a review to invalidate the registration.

Where the application for renewal of registration of the right to exclusive use of a trademark is in contravention of the provision of Article 25-1, an interested party or the trademark examiner may request a review to invalidate the registration.

*Article 53 (Time within which to apply for invalidation review)

Where the registration of a trademark is in contravention of the provisions of Article 4, Article 5 Article 22, paragraph 4 of Article 31, Article 36, item (11) of paragraph 1 of Article 37 or the latter part of paragraph 2 of Article 42, no invalidation may be instituted or requested after the lapse of two years from the publication date of the registration.

Article 54 (Applying for a review to define the scope of traemark right)

The trademark proprietor or an interested party may, for the purpose of defining the scope of the right to exclusive use of a trademark, apply for a review with the Trademark Authority.

Article 55 (Appointment of reviewers; regulations for reviewing proceedings; withdrawal from undertaking review case; decision on review)

A trademark review case shall be undertaken by three

reviewers or more designated by the chief of the Trademark Authority.

Regulating measures in connection with review referred to in the preceding paragraph shall be made by the Trademark Authority and enforced upon approval by the Ministry of Economic Affairs.

The provisions of Article 40, Article 47, paragraph 2 of Article 48 and Article 49 shall apply mutatis mutandis in review cases.

A reviewer who has any of the relationships stipulated in Article 40 with any of the parties concerned referred to in Article 57 shall withdraw from undertaking the review case.

Article 56 (Reviewing procedures; argument)

A review shall be conducted and decided upon on the basis of the documents submitted; provided that if it is deemed necessary, the parties concerned may be summoned for an argument.

A review in the case may not be suspended on account of any party's failure to observe the statutory period or designated date.

Article 57 (Institution intervention proceedings)

Any interested party in respect of the review case may, before the conclusion of such review, institute intervention proceedings to assist one of the parties.

Where the other opposite party objects to the intervention proceedings referred to in the preceding paragraph, granting or denial of such intervention proceedings shall be decided by the review panel.

any act of the intervener in contradiction to that of the assisted party shall be null and void.

Article 58 (Appeal against the decision on review)

Any party dissatisfied with the decision on a review may lodge an administrative appeal within thirty days in accordance with law.

Article 59 (Res judicata)

Where the decision on a reivew case in respect of a trademark has become final, no person shall apply for another review based on the same facts and evidence.

Article 60 (Suspending court proceedings)

Where any civil or criminal suit has been instituted in connection with the right to exclusive use of a trademark while a review case is still in progress, the former proceedings shall be suspended until the decision on the case in connection with the right to exclusive use of the trademark has become final.

CHAPTER FIVE :
PROTECTION AGAINST
TRADEMARK INFRINGEMENT

Article 61 (In case of trademark infringement)

The trademark proprietor may, when the right to exclusive use of a trademark has been infringed by another person, request such infringement be removed. If damages are sustained, he may also claim damages.

The person requesting the removal of such infringement referred to in the preceding paragraph may request that the trademark and all relevant papers used in the commission of infringement be destroyed.

*Article 62 (Trademark infringement and its punishment)

A person whose act falls under any of the following circumstances shall be punished with imprisonment for not

: ce than five years or detention; in lieu thereof, or in addition thereto, a fine of not more than 50,000 Yuan (equivalent to NTD150,000):

(1) Using the device of a trademark which is identical with or similar to that of another person's registered trademark on the same goods or goods in the same class;

(2) Applying the device of a trademark which is identical with or similar to another person's registered trademark to advertisements, labels, descriptions, quotations or any other documents in respect of the same goods or goods in the same class, and displaying or circulating the advertising materials said.

*Article 62-1 (Foreign trademark infringement case and its punishment)

A person who, with intent to deceive others, uses a trademark which is identical with or similar to a well-known foreign trademark not registered with the Trademark Authority in respect of the same goods or goods in the same class shall be punished with imprisonment for not more than three years or detention; in lieu thereof, or in addition thereto, a fine of not more than 30,000 Yuan (equivalent to NTD90,000).

The punishment stipulated in the preceding paragraph shall be applicable only where the country of the proprietor of the foreign trademark, by virtue of its law, or by conclusion of a treaty or an agreement with the Republic of China, provides reciprocal trademark protection. This shall also apply to agreement concluded between groups or institutions from both countries for reciprocal trademark protection approved by the Ministry of economic Affairs of the Republic of China.

*Article 62-2 (Trademark infringement intended and its punishment)

A person who knowingly sells, displays exports or im-

ports goods specified in the two preceding articles shall be punished with imprisonment for not more than one year or detention; in lieu thereof, or in adition thereto, a fine of not more than 10,000 Yuan (equivalent to NTD30,000).

*Article 62-3 (Trademark infringement and confiscation of goods)

Goods manufactured, sold, displayed, exported or imported in the commission of an offense stipulated in the three preceding articles shall be confiscated should it belong to the offender.

Article 63 (Using another person's trademark as trade name and its punishment)

Where a person using the name of another person's trademark malafide as a specific portion of the name of his own company or trade firm and conducting business in connection with the same goods or goods in the same class fails to apply for change of the name on the register despite a request for such change has been made by an interested party, he shall be punished with imprisonment for not more than one year or detention, inlieu thereof a fine of not more than 2,000 Yuan (equivalent to NTD6,000).

Article 64 (Presumption on damages sustained)

The following shall be presumed to be damages sustained due to infringement upon the right to exclusive use of a trademark:

(1) The amount of profits which the infringer has derived from the act of infringement;

(2) The decreased portion due to the infringement in the amount of profits which the traemark proprietor normally derives from the use of his registered trademark.

Where the goodwill of the trademark proprietor has been damaged due to the infringement, he may claim compensa-

tion for damages.

Article 65 (Publication of court decision)

Where the trademark proprietor institutes a court action based on the provisions of the four preceding articles, he may request that the contents of the court decision be published in the newspapers at the expense of the infringer.

Article 66 (Infringement upon trademark right under license)

The provisions of the five preceding articles shall apply mutatis mutandis in case of infringement upon the right to exclusive use of trademark under license in accordance with the provision of Article 26.

CHAPTER VI :
SUPPLEMENTARY PROVISIONS

Article 67 (Registration and protection of service marks)

The provisions of this Law shall apply mutatis mutandis in respect of the registration and protection of a service mark which is not used for distinguishing goods.

*Article 67-1 (Entering trademark name in its device)

When the name of a trademark is not entered in the device which has been registered prior to the revision of this Law and the name thereof has been indicated at the time of use, the trademark proprietor may apply with the Traemark Authority to enter the name in the device within two years from the date of enforcement of this revised Law.

Article 68 (Enforcement Rules of the Trademark Law)

The Enforcement Rules of this Law shall be prescribed by the Ministry of Economic Affairs.

Article 69 (Commencement)

This Law shall be enforced from the date of promulgation.