IP Factsheet: Taiwan

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SIZE of Market:
- EU exports to Taiwan: € 16.5 billion
- EU imports from Taiwan: € 22.1 billion
- Total trade in goods: € 38.6 billion

- Taiwan is the EU’s seventh largest trading partner in Asia.
- The EU is Taiwan’s fourth largest trading partner.

Key INDUSTRY SECTORS:
- EU exports to Taiwan mainly consist of semi-finished products, machinery and equipment.
- Taiwan’s key export items to the EU include office telecommunications equipment, transport equipment and chemicals.
2. IPR in Taiwan for SMEs: BACKGROUND

Intellectual Property Rights for SMEs: Why is this RELEVANT to you?

Intellectual Property (IP), as intangible assets, are a key factor in the competitiveness of your business in the global economy. IP is a primary method for securing a return on investment in innovation and is particularly relevant to Small and Medium-sized Enterprises (SMEs) as they internationalise their business to areas such as Taiwan. Although SMEs often have limited time and resources, it is important to be aware of how IP can be valuable to your business. Not only a way to help you protect your innovations from competitors, IP assets can also be an important source of cash-flow for SMEs through licensing deals or selling IP, as well as a significant pull-factor when attracting investors.

Intellectual Property Rights (IPR) infringement is one of the most common concerns for businesses when dealing with countries across Asia, and its impact on your company could be substantial. It can lead to loss of business, revenue, reputation and competitive advantage, which affects SMEs both abroad and in their core domestic markets, and the inadequate protection of inventions and creations can jeopardise prospects for maintaining a competitive advantage.

Taiwan has a comprehensive intellectual property framework (including a dedicated Intellectual Property Court) and despite not being a member of many international conventions, it does try to follow such conventions in practice.

SMEs are businesses which have fewer than 250 employees and turnover of less than EUR 50 million or balance sheet total of less than EUR 43 million.

SMEs represent 99% of all enterprises in the EU, and account for about 70% of jobs. Their flexibility and growth potential is seen as a major motor of future innovation and job creation, which is pivotal for the prosperity and economic competitiveness of Europe as a whole.

IP TIPS and WATCH-OUTS in Taiwan

- All the applications and documents shall be filed and submitted in Taiwan in Chinese language with traditional characters. Therefore foreign applicants need to provide an accurate translation of all their works.
- Taiwan has an Intellectual Property Court responsible for all intellectual property-related civil, criminal and administrative cases.

Taiwan is not a member of the World Intellectual Property Organisation (WIPO) and most WIPO-administered agreements, but Taiwan has bilateral intellectual property related agreements and memorandums of understanding with a number of countries.
3. IP Rights in Taiwan THE BASICS

A. Copyrights

WHAT are Copyrights?
Copyright means the moral and economic rights that a creator has to a literary, scientific, artistic, or other intellectual work. Works protected by copyright include: i) oral and literary works; ii) musical works; iii) dramatic and choreographic works; iv) artistic works; v) photographic works; vi) pictorial and graphical works; vii) audiovisual works; viii) sound recordings; ix) architectural works; and x) computer programs.

Copyrights in Taiwan: What you need to know
Protection for copyright under Taiwan’s Copyright Act only extends to the expression of the work in question, and not to the work’s underlying ideas, procedures, production processes, systems, methods of operation, concepts, principles or discoveries.

As in other countries, copyrights refer to a bundle of rights including economic and moral rights. The economic rights, and the ability to monetise a work can be sold or licensed by the author. On the other hand moral rights, including the rights to publication, the right of attribution (crediting the author) and the right to the integrity of the work, cannot be assigned or waived.

In practice this is important when an employee or sub-contractor creates a work on behalf of your company. You may ask an employee to sign an agreement to deem the company the author of a work rather than the employee as an individual or an agreement which states the employee agrees to not enforce their moral rights to the works against the company. You may ask a sub-contractor to assign the economic rights to your company but they will retain the moral rights.

How LONG does legal protection last?
Economic rights last for the life of the author plus 50 years after the author’s death with some exceptions:

1. where a work is first publicly released between the 40th and 50th years after the author’s death, the economic rights last for a term of 10 years beginning from the time of the first public release;
2. economic rights in a joint work last for 50 years after the death of the last surviving author;
3. economic rights in a work written under a pseudonym or an anonymous work last for 50 years from the time of public release; provided, it can be proven that the author has been deceased for over 50 years;
4. economic rights in works authored by a legally registered entity (rather than an individual) endure for 50 years after the public release of the work; if the work is not published for 50 years after creation the opportunity for it to be protected under copyright will be lost;
5. economic rights for photographic works, audiovisual works, sound recordings, and performances endure for 50 years after the public release of the work.

HOW do I register?
Taiwan no longer maintains a copyright registration system. Copyright is automatically granted on any work which falls under the scope of the Copyright Act.

⚠️ Copyrights TIPS and WATCH-OUTS in Taiwan

Works of foreign nationals that comply with the following conditions will be protected under the Copyright Act of Taiwan, unless otherwise alternately provided for by a treaty or international agreement:

1. works that are first published in Taiwan or works published in Taiwan within 30 days of their first publication in other countries. Therefore EU SMEs need to act quickly to ensure publication happens in both jurisdictions within 30 days.
2. the foreign national’s home country provides reciprocal treatment of copyright created by Taiwanese nationals. In practice this is generally the case internationally and EU SMEs are unlikely to face any problems with this condition.

Copyright protection in Taiwan is automatic and arises as soon as the work is created, without any registration requirements.
B. Patents

WHAT are Patents?
A patent in Taiwan is an intellectual property right granted by the Taiwan Intellectual Property Office (TIPO) to encourage, protect and utilise the creations of invention, utility model and design in order to promote industrial development. It grants an inventor the right, “to exclude others from making, using, offering for sale, or selling the invention throughout Taiwan” for a limited time period.

There are three types of patents in Taiwan: Invention, Utility Model, and Design. Invention Patents are granted to the creation of technical ideas. A Utility Model patent protects creations considered to have a lower degree of inventiveness than is required for invention patents such as innovations relating to shape or structure. A Design Patent is an article created, wholly or in part, for visual appeal through the use of shape, pattern, colour, or any combination thereof. This includes computer-generated icons and graphical user interfaces.

Animals, plants, and essential biological processes for the production of animals or plants, except for processes for producing microorganisms, are NOT patentable in Taiwan. Diagnostic, therapeutic and surgical methods for the treatment of humans or animals are also NOT Patentable in Taiwan.

Patents in Taiwan: What you need to know
The application process from start to finish takes approximately 24 to 36 months for Invention Patents, and 6 to 12 months for Utility Models and Design Patents to be granted in Taiwan.

In order to accelerate the patent examination process, a Utility Model patent will not go through the same rigorous substantive examination as an Invention Patent. Therefore, a Utility Model patent will generally be granted more quickly.

Taiwan uses the ‘first-to-file principle’: in a case where two or more patent applications are filed for the same invention, the earliest eligible application will be granted. However, this does not apply if the ‘priority date’ of a later application is before the filing date of the earlier one. A priority date allows for an applicant to file a subsequent application in Taiwan for an invention already filed for in another country; protection will be effective as of the date of filing the first application in the other country, provided that country is party to the Paris Convention for the Protection of Industrial Property and TRIPS. The applicant must file a subsequent patent or Utility Model application in Taiwan within 12 months of the first patent application filing date in the other country or within 6 months for a Design Patent application. Although Taiwan itself is not party to the Paris Convention, priority date claims from members of the Paris Convention are recognised in Taiwan.

Please note that Taiwan is not party to the Patent Cooperation Treaty (PCT) which supports patent applications in multiple countries. Therefore all patent applications must be made directly to the TIPO and must be translated in traditional Chinese characters.

Patents are an exclusive right granted by a government to an inventor to manufacture, use, or sell an invention for a certain number of years.

How LONG does legal protection last?
The three different patent types have different protection periods. Invention Patents are valid for 20 years from the date of filing, subject to the payment of annual maintenance fees. Utility Model patents are valid for only 10 years from the date of filing. Design Patents last 12 years from the date of filing.

HOW do I register?

It is recommended to use the services of an experienced patent attorney who can give you the best advice on making a successful application.

After the TIPO receives the application and gives the first approval (documents are correct, meets basic registration requirements), the application will be passed to the formal examination process,
which takes up to 18 months for Invention Patents and usually less time for Design Patents. Utility Models are not subject to such substantive examination and will usually be granted if the application documents are correctly filed.

Following the granting of a patent, an applicant needs to pay the first annual fee within three months to complete registration and receive certification.

Registration can be filed with:
Taiwan Intellectual Property Office
185 Hsinhai Rd., Sec. 2, 3F; Taipei 10637, Taiwan, R.O.C
(+886) 2-2738-0007
www.tipo.gov.tw/en

WHO can register?
The inventor, utility model creator, designer, or a legally appointed representative has the right to apply.

Which LANGUAGES can I use?
Applications for registration must be in Traditional Chinese. English language information may be included in the application, but that information must appear in Traditional Chinese as well.

How much does it COST?
The filing fee for an Invention Patent in Taiwan is EUR 255 and upwards. The basic filing fee for a Utility Model or Design Patent in Taiwan is EUR 75.

Patent WATCH-OUTS in Taiwan

- Taiwan uses a first to file system for patent applications.
- Patent violations do not fall under criminal prosecution which means all infringement cases should be solved through civil procedures. The patent owner has to make an infringement claim within two years after he/she becomes aware of the infringement. Patent owners should have a monitoring system in place and pursue patent infringements. Patent owners need to be especially diligent to preserve evidence for civil litigation.
- Under a new border protection provision in the Patent Act, IP holders can request Customs to detain suspected goods. Written application and placement of a bond are necessary (see Section 4).

It is recommended to use the services of an experienced patent attorney who can give you the best advice on how to make a successful application.
C. Trade Marks

WHAT are trade marks?
A trade mark refers to any sign with distinctiveness and may consist of words, devices, symbols, colours, three-dimensional shapes, motions, holograms, sounds, or any combination thereof. The term ‘distinctiveness’ means relevant consumers should be able to recognise a sign as an indication of the source of goods or services, and distinguish the goods or services of one business from those of another.

The Trademark Act provides for a number of circumstances under which a mark cannot be registered. These include, but are not limited to, identical or similar to national or military flags, emblems, insignia, and seals of Taiwan or a foreign country; identical to the portrait or name of Dr. Sun Yat-Sen (first president of the Republic of China in 1912) or of the head of state of Taiwan; or are contrary to public policy or good morals.

Trade marks in Taiwan: What you need to know
Trade marks in Taiwan are protected under the Trademark Act. A degree of protection is provided as soon as an application is made (against other parties trying to register the same trade mark) but full legal protection is only provided once the trade mark has been granted. For the best protection you should allow enough time to register your trade mark before entering the market.

Trade marks can be invalidated if they are not used within three years of registration. You should ensure that your trade mark is used in the Taiwan market through sales or marketing within three years of registration. On the other hand ‘non-use invalidation’ can be useful if you wish to pursue a previously registered trade mark. An application for invalidation must be supported by evidence.

How LONG does legal protection last?
Protection granted to a mark under Taiwan's Trademark Act is for up to a 10-year period and may be renewed for subsequent 10-year periods indefinitely. Complete protection starts from the date of issuing the trade mark certificate.

HOW do I register?
An application for trade mark registration must be filed with TIPO. A written Power of Attorney authorisation will be required where an agent or third-party files on the owner’s behalf. Approval for a trade mark is usually received within 8 to 12 months from the filing date. The applicant must pay the official registration fee within two months from the date of the approval notice. Once the registration fee has been paid then the TIPO will publish the mark in the Trademark Gazette and issue the registration certificate, allowing for a three-month opposition period.

For unregistered trade marks, Taiwan's Fair Trade Act provides for some protection. Under this act no enterprise shall use in the same or similar manner the name, trade mark, or trade appearances of another business or service, commonly known to relevant enterprises or consumers, so as to cause confusion with the facilities, activities and goods of another business; or use on the same or similar goods a mark that is identical or similar to a well-known foreign trade mark that has not been registered in Taiwan; including selling, transporting, exporting, or importing goods bearing such a trade mark.

The application form and further information in Chinese and English on the trade mark application process can also be found on the TIPO website: www.tipo.gov.tw

Taiwan Intellectual Property Office
185 Hsinhai Rd., Sec. 2, 3F, Taipei 10637, Taiwan
+886-2-2738-0007
WHO can register?
Any individual or entity may register a trade mark. The use of an attorney or trade mark agent is not required, though legal advice or handling through an attorney or trade mark agent is recommended.

Which LANGUAGES can I use?
Applications for registration must be in Traditional Chinese. English language information may be included in the application, but that information must appear in Traditional Chinese as well.

How much does it COST?
The basic filing fees (official application fee and the certificate registration fee) for trade mark registration in Taiwan are approximately EUR 140 (TWD 5,550). The official schedule of trade mark fees can be found in English and Chinese at http://www.tipo.gov.tw/ct.asp?xItem=475973&ctNode=6821&mp=2.

Protection granted to a mark under Taiwan’s Trademark Act is for up to a 10-year period and may be renewed for subsequent 10-year periods indefinitely.

Trade Marks WATCH-OUTS in Taiwan

- Taiwan follows the Nice Convention of trade mark classes but in practice TIPO often require applicants to be more specific on the type of good. For example the Nice Convention includes class 18 for ‘leather and imitations of leather’. However TIPO may require a more specific description, e.g. leather bags, purses and belts. A trade mark attorney or agent in Taiwan will be familiar with the requirements and be able to advise you accordingly.

- While Taiwan is not a member of the Paris Convention, it still allows for international extension of a trade mark application to Taiwan from Paris convention countries through a simple application. SMEs wishing to apply for a Taiwan trade mark internationally should be aware that the application must be made within six months of the original filing and state this priority filing date. Additionally, SMEs must be aware this is only a mechanism for extending the application and does not guarantee the trade mark will be granted.
D. Trade Secrets

WHAT are Trade Secrets?
The term ‘trade secret’ as used in the Taiwan Trade Secrets Act means any method, technique, process, formula, program, design, or other information that may be used in the course of production, sales, or operations. As examples, a unique recipe for a fizzy drink or client mailing lists could be considered trade secrets. Trade secrets enjoy a degree of statutory protection in Taiwan under the Trade Secrets Act, as well as general protection under the Civil and Criminal Codes.

Trade Secrets in Taiwan: What you need to know
A trade secret must also meet the following requirements for protection under the Trade Secrets Act: i) it is not publicly known, even to persons generally involved in that field of information; ii) it has actual or potential economic value due to its secretive nature; and iii) its owner has taken reasonable measures to maintain its secrecy.

Trade secrets of foreign individuals or companies are protected as long as the foreign national’s country provides reciprocal protection of trade secrets to Taiwanese individuals/companies.

How LONG does legal protection last?
Trade secrets can be protected indefinitely so long as they do not become publicly known and can meet the three requirements stated above. The Coca-Cola formula is an example of a trade secret: the exact recipe is unknown publicly or by most within the company apart from a select few employees and protection therefore continues for as long as this secrecy is maintained.

⚠️ Trade Secrets WATCH-OUTS in Taiwan

1. Following the new Trade Secrets Act enacted in 2013, anyone who acquires a trade secret by theft, fraud, coercion, bribery, unauthorised reproduction, breach of an obligation to maintain secrecy, inducement of others to breach an obligation to maintain secrecy, or any other similar means, can be subject to criminal liabilities.

2. Any person who uses trade secrets acquired by an illegal method in foreign jurisdictions (including mainland China, Hong Kong, or Macao) will be sentenced to a prison term of between 1 to 10 years, and in addition, a fine of between TWD 3 million (EUR 72,000) to TWD 50 million (EUR 1,200,000) may be imposed.

3. Any representative of a company including agents, employees or any other staff who acquires a trade secret by illegal means will also be subject to punishment.

A trade secret is a commercially valuable piece of information that is not known, or readily ascertainable, and gives the holder an economic advantage over competitors and customers.
4. Using CUSTOMS to block counterfeits

WHAT are Customs?
Customs is an authority or agency responsible for collecting and safeguarding customs duties and controlling the flow of goods in and out of a country and the scope of their powers differs from country to country. The Customs Administration of Taiwan is authorised to prevent counterfeit goods from being imported into Taiwan. Once the trade mark or copyright owner has registered their IP with the Customs Administration, Customs will detain suspicious goods to give the IP owner the opportunity to take enforcement actions. If found to be infringing, the goods will be destroyed.

Customs in Taiwan: What you need to know
Customs enforcement protection is a great way to prevent foreign pirated and counterfeit foods from being imported into Taiwan. However, Customs will only detain the suspicious goods for a period of two to three days. During this time the IP owner will need to go to Customs to verify the suspicious goods. The owner will also need to provide photos of the original goods to Customs to assist them to identify the counterfeit goods.

Unlike Mainland China, Taiwan Customs does not have the authority to detain any suspicious shipments from being exported out of the country.

WHAT can be registered?
The following items can registered with the Customs Administration:

- Trade marks registered in Taiwan;
- Copyright created in Taiwan;
- Trade marks registered in another country and in the process of being registered in Taiwan;
- Trade marks registered and copyright materials created registered in another country and which are able to be proven as famous in Taiwan.

How LONG does legal protection last?
Customs registrations must be renewed every year.

HOW do I register?
Download the application form from the Customs Administration at: http://web.customs.gov.tw/lp.asp?CtNode=14902&CtUnit=1922 &BaseDSD=7&xq_xCat=g

WHO can register?
The trade mark or copyright owner, licensee or agent of the licensee.

Which LANGUAGES can I use?
Applications must be in Traditional Chinese. English language information may be included in the application, but that information must appear in Traditional Chinese as well.

How much does it COST?
There are no fees for registration with Customs.

Customs WATCH-OUTS in Taiwan

- It is important to provide as much information as possible when applying for Customs protection, such as photos and detailed information regarding the goods.
- IP owners should authorise at least one local representative to authenticate goods detained by Customs. Since Customs will only detain suspicious goods for two to three days, it is beneficial to have a local representative who can immediately respond to any Customs’ inquiries, especially during holiday periods.
5. Enforcing your IP

EU SMEs should monitor the market, including e-commerce websites and product-relevant retail chains, to detect infringement of their rights. If infringement is detected it is recommended that you consult with a legal firm to determine the most effective course of action. In the case of your IP assets being infringed in Taiwan, there are several main avenues of enforcement which you can consider which are outlined below: administrative actions, civil litigation, criminal prosecution, and customs seizures (customs are described separately in Part 4 above). In many cases however, private mediation via legal professionals is effective and efficient and should be considered as a viable option.

Administrative actions
The Intellectual Property Court has jurisdiction over administrative complaints for IP violations. An individual or company should set out a complaint in writing to the Court. Before going to court, IP holders can request administrative actions by agencies handling specific industries. Administrative authorities have the power to impose fines and imprisonment. If the infringing party fails to cease, or repeats the infringement they might be subject to imprisonment for up to three years and/or a fine of up to TWD 100 million (EUR 2,400,000).

The appeal procedure at the TIPO in the case of rejection of a trade mark or patent application is also of an administrative nature. The procedure can take various forms, e.g. complaints to the administrative authorities, supplementary briefs within a procedure at TIPO, appeal briefs at the Taiwanese Ministry of Economic Affairs and complaints to the Intellectual Property Court.

Civil Litigation
Civil litigation may be initiated for infringement under the Patent, Copyright, Trademark, Fair Trade and Trade Secrets Acts. These should be filed at local Courts or the Intellectual Property Court. Remedies include court orders to cease activity, damages compensation, seizure of goods or capital, and destruction of goods. However, the decision about where to file a civil law suit will depend on the IP holder’s strategy and should be discussed and decided with local attorney support.

Criminal Prosecution
Criminal prosecution may be brought under the Copyright, Trademark, and Trade Secrets Acts. Prosecution may be private or public. However, infringements against all types of patents have now been decriminalised. The IP holder would need to file a criminal complaint with the police prosecution office first. After completion of the investigation the prosecution office can transfer the matter to the Criminal Court that has jurisdiction over the case.

An IP holder may also submit a supplemental civil complaint in order to receive compensation once a criminal matter has been transferred from the Prosecutors Office to the Criminal Court. The complaint will usually be transferred to a civil court for a decision following the conclusion of the criminal matter. The facts as determined by the court in the criminal matter will also be used to decide on a supplemental civil complaint. No court fee is payable for a supplemental civil complaint and the IP holder does not need to provide evidence during the civil proceeding. Thus a supplemental civil complaint can be a more cost effective way to receive compensation.

Enforcement WATCH-OUTS in Taiwan

- Filing of supplementary civil actions in a criminal procedure can be a very useful way to cut down costs and to get civil damages from the counterparty.
- Preservation of evidence relating to the original and infringing articles is of utmost importance for IP enforcement. The judicial system in Taiwan does not include the process of investigating and discovering evidence once a court case has formally started as, for example, in the UK.
6. RELATED LINKS and Additional Information

- China IPR SME Helpdesk – [www.china-iprhelpdesk.eu](http://www.china-iprhelpdesk.eu)
The China IPR SME Helpdesk provides free, confidential, business-focused advice relating to China IPR to European Small and Medium Enterprises (SMEs).

**Helpdesk Enquiry Service:** Submit further questions to the Helpdesk via phone, email (question@china-iprhelpdesk.eu) or in person and receive free and confidential first-line advice within three working days from a China IP expert.

**Training:** The Helpdesk arranges training on China IPR protection and enforcement across Europe and China, tailored to the needs of SMEs.

**Materials:** Helpdesk business-focused guides and training materials on China IPR issues are all downloadable from the online portal.

**Online Services:** Our multi-lingual online portal (www.china-iprhelpdesk.eu) provides easy access to Helpdesk guides, case studies, E-learning modules, event information and webinars.

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