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The Defense of Patent Invalidity in the Intellectual Property Litigation Special Report

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Abstract

In the past, the defendant of intellectual property (IP) litigation cannot raise the defense of patent invalidity in the civil litigation. The defendant can only file an invalidity action against the IP at issue. Such judicial system design delays the proceeding of the civil litigation of the IP infringement. The IP Court is proposed to be established in 2007. The establishment of the IP Court will change the current court proceeding of the intellectual property litigations tremendously. The core structure of establishment of IP Court is based on the "IP Court Organic Law" and "IP Trial Law." The IP Trial Law has been passed by the Legislative Yuan on January 9, 2007 and the IP Court Organic Law has been passed by the Legislative Yuan on March 5, 2007. Paragraph 1, Article 16 of the IP Trial Law states that "the Court shall determination the intellectual property invalid defense raised by the defendant." This Article will change the dual approaches of the public law and the private law in our current legal system and will create great impacts on both parties of the intellectual property litigation. This report would like to introduce and analyze this new court proceeding design and provide useful analysis and suggestions with respect to this new development.

Keywords: empirical study, patent invalidity, patent litigation, dual approaches of public law and private law