



# 經濟新訊

NEWSLETTER

## 台灣新經濟簡訊

經建會法協中心

### 法規鬆綁

#### 專利舉發改採逐項審定

經濟部智慧局公告修正《專利審查基準》，將自2013年元旦施行，未來舉發爭議案件將從「全案舉發、全案審定」改為「逐項舉發、逐項審定」，且同一專利權之多件舉發案可合併審查，將有效提升專利爭議案件之審理效率。

智慧局指出，現行專利舉發是採全案舉發方式，例如1件發明專利案中有10個請求項，在審查舉發內容的過程中，智慧局如果認為請求項1至5項有舉發成立之可能性時，將通知專利權人更正申請專利範圍，刪除1至5請求項；若專利權人不願更正，而該舉發案審定成立時，則此專利權下所有項目都將被撤銷。

為符合國際潮流，此次舉發審查基準規定修訂，智慧局將發明、新型專利之舉發爭議案件從「全案舉發、全案審定」改為「逐項舉發、逐項審定」，以兼顧專利權人及利用人權益。

此次修法另賦予審查官對於舉發爭議案件審查上之「裁量權」，未來同一專利權有多起舉發案時，審查官可依裁量權，將多起案件合併審查，避免判決矛盾並提高行政

效率。此外，雖然當事人沒有提出事證，但若出現智慧財產法院確定判決書等可明顯知悉的事證時，審查官可依「職權審查」將其納為事證，但須踐行專利權人答辯義務。

目前智慧局約有 1,200 件舉發案處理中，個案處理約需 1 至 2 年，每年可處理約 900 件；智慧局預估，修正條文實施後，應可大幅提升審理效率。

### 第三方支付鬆綁

電子商務市場蓬勃發展，行政院 11 月 1 日宣布鬆綁第三方支付服務規定，讓消費者與小型業者進行交易也可採線上刷卡付費，可望為微型商店或網拍個人賣家帶來更多商機。

目前網路個人賣家或是微型商店因經營規模小，在交易完成後，多半無法提供信用卡刷卡服務，僅能要求買方以轉帳完成交易，即使與民間第三方支付服務業者合作，受限金融機構及法令不完備，貨款須超過 1 至 2 個月的時間才能入帳，對商家來說，現金周轉的時間太長。

行政院此次針對第三方支付服務的信用卡交易部分進行鬆綁，不僅讓現有的商家可以提供信用卡刷卡服務，也解決了因資本太小而無法適用信用卡支付的微型商店或個人賣家的困境，法令鬆綁後將有助個人與個人之間（C2C）的電子商務交易成長。

未來銀行可評估風險，自行決定是否與「第三方支付服務」業者簽訂特約商店合約，具有特約商店資格的業者可依會員買家的授權，向收單銀行請款，再將貨款交付給賣家。

行政院表示，便利安全的網路支付環境是電子商務的成功關鍵，特別是以微型商店或個人賣家為主的 C2C 電子商務交易，「第三方支付服務」已成為不可或缺的安心支付工具。鬆綁第三方支付服務的交易規定，除提供更多元化的交付型態選擇，並可強化消費者對網路交易的信賴度，進而帶動電子商務市場發展。

### 來台居住定義放寬

財政部放寬海外所得納入最低稅負的相關規定，將來台居住的定義由 1 天改為 31 天，預計 2013 年 1 月 1 日實施，有利僑民回台投資、觀光。

根據現行規定，在台灣設有戶籍者，居住只要滿 1 天，其海外所得在一個課稅年度內超過新台幣 100 萬元，要課最低稅負。

財政部表示，明年 1 月 1 日後，在台設有戶籍者，全年居留天數未達 31 天，不再視為是中華民國境內居住者，除綜合所得稅率降為單一稅率 20% 外，海外所得將完全免稅；若在國內有財產，未來亦僅需就國內財產申報遺產稅，海外遺產不納入課稅。📍

# Taiwan New Economy Newsletter



## Deregulation Progress

### Handling of requests for patent invalidation changed to case-by-case determination

The Intellectual Property Office (IPO), a unit of the Ministry of Economic Affairs, has announced amendments to the Patent Examination Guidelines. The amended Guidelines, which will be implemented on January 1, 2012, will change the procedure for handling patent disputes from "request for overall invalidation, and overall determination" to "claim-by-claim request for invalidation, and claim-by-claim determination." At the same time, the amendments provide for multiple claims involving a single patent to be examined jointly, effectively enhancing efficiency in the examination of patent disputes.

The IPO points out that requests for patent invalidation are currently handled by the request for overall invalidation method. If a request for invalidation of a single patent contains 10 claims, for example, and if in the process of examining the content of the request the IPO feels there is a possibility that claims one through five may be wellgrounded, it will notify the patentee to amend the scope of the patent application and delete claims one through five; if the patentee refuses to amend the application, and the request for invalidation is found to be well-grounded, then all of the claims included in the patent will be invalidated.

The change from "request for overall invalidation, and overall determination" to "claim-by-claim request for invalidation, and claim-by-claim determination" in the handling of invention patent and utility patent disputes conforms to international trends, and protects the rights of both patent owners and users.

The revision also grants patent examiners the right of discretion in the examination of disputes. In the future, whenever there are multiple requests for invalidation of the same patent the examiner will have the discretion of examining the cases jointly, thereby avoiding contradicting judgments and upgrading administrative efficiency. In addition, if the party to the dispute

presents no evidence but if clear evidence such as a judgment by the Intellectual Property Court appears, the examiner may take it into evidence in accordance with "ex officio examination"; the examiner must, however, fulfill the responsibility of allowing the patent owner to respond.

The IPO currently has approximately 1,200 requests for invalidation in disposition. An individual case takes one to two years to resolve, and about 900 cases can be handled in a year. The IPO expects that the amendment of the procedures will greatly enhance the efficiency of examination.

### **Relaxation of third-party payment rules gives big boost to e-commerce**

In response to the burgeoning development of the e-commerce market, on November 1 the Executive Yuan announced a relaxation of the rules governing third-party payment services to allow consumers to carry out transactions with small businesses through online credit-card payment. This will bring more business opportunities to small shops and individual sellers.

Most individuals and small shops selling online are unable to offer credit-card payment services because of their small scale of operation, so that buyers have to pay through the transfer of funds. Even those sellers that cooperate with third party

Payment service providers are restricted by the inadequacy of financial institutions and laws.

Payments are received only after one or two months, and this cash turnover period is too long for the businesses involved.

The Executive Yuan has relaxed the rules for credit-card transactions using third-party merchant account services, not only enabling existing merchants to provide credit-card payment service, but also solving the difficulty of small merchants and individual sellers not being able to provide credit card service because of having too little capital. This relaxation will be conducive to the growth of consumer to consumer (C2C) e-commerce transactions.

In the future, banks will be able to evaluate the risks and make their own decisions as to whether to sign contract-store agreements with third party payment service providers. Businesses that are qualified contract shops will be able to request payment from acquiring banks under the authorization of member buyers, and then turn the funds over to the sellers.

The Executive Yuan indicates that a safe and convenient online payment environment is the key to the success of e-commerce, especially C2C ecommerce that involves small shops and individual sellers, and that third-party payment services have become an indispensable tool for secure payment. In addition to providing a greater diversity of payment options, the loosening of the rules on third party payment services will strengthen the reliance of consumers on online transactions and stimulate the further development of the e-commerce market.

## Relaxed definition of coming to Taiwan for residence

The Ministry of Finance (MOF) is relaxing the rules on taxation of overseas income by changing the definition of "Taiwan resident" from one who lives on the island for one day to one who lives on the island for 31 days or more in a year. This will encourage more overseas Taiwanese to return as investors or tourists.

Under current regulations, persons who have household registrations in Taiwan, who live on the island for one day in a year, and whose overseas income for that tax year exceeds NT\$1 million, will have the income taxed at the minimum rate.

According to the MOF, after January 1 next year people who have household registration in Taiwan but who actually live on the island for less than 31 days in a year will no longer be considered residents of the Republic of China. Their consolidated income tax rate will be lowered to a uniform 20%, and their overseas income will be completely tax-exempt. If they have property in Taiwan, only that property—and no overseas property—will be subject to Taiwan's inheritance tax. 