



一、(本題 33 分)

### **Taiwan Semiconductor Goes on Patent Offensive**

By Michael Singer

The world's largest contract semiconductor manufacturing plan to took steps over the weekend to shield itself from a potential copyright lawsuit.

Taiwan Semiconductor Manufacturing Company Friday filed a civil suit in US District Court in San Jose, California, asking for a declaratory judgment that two patents owned by Chicago-based Syndia Corp., are invalid.

The suit was filed after legal counsel for Syndia advised TSMC that it intended to file patent infringement claims based on two patents (United States Patent Nos. 4,702,808 and 5,131,941) that were filed with the US Patent Office by Jerome H. Lemelson in 1957 and 1964. The patents were finally issued in 1987 and 1992, and were allegedly assigned to Syndia through the Lemelson Medical, Educational and Research Foundation Limited Partnership (LMERF) in 2001. Fifteen related patents came from Lemelson's patent portfolio.

Since then, Syndia has earned another eighteen patents, for a total of thirty-three patents. This portfolio has broad applications in synthetic diamond and diamond like coatings, integrated circuits, flat panel displays, radiation, and laser based processes.

TSMC, its North American offices in San Jose, Calif. and subsidiary WaferTech LLC said they decided to take the preemptive position after learning that Syndia had sent letters to customers requesting the payment of a "lump-sum licensing offer."

The company said it feels like Syndia's actions are designed to interfere with TSMC's customer relationships.

TSMC makes chips for hundreds of manufacturers such as Phillips and Motorola and fables chip companies such as Broadcom and NVIDIA. The company operates one advanced 300mm wafer fab, five eight-inch fabs and one six-inch wafer fab. TSMC also has substantial capacity commitments at two joint ventures fabs (VIS and SSMC)



"We fully respect the legitimate intellectual property rights of others; however, we are committed to defending the company and its customers against Invalid claims whenever they appear. We firmly believe that TSMC does not infringe and that these Syndia patents are Invalid and unenforceable," TSMC vice president and General Counsel Dr. Dick Thurston said in a prepared statement.

Representatives with Syndia were not immediately available for comment.

In addition to rendering Syndia's patents are Invalid, the judgment would mean that the copyright is unenforceable and are not infringed by TSMC. A judge's ruling is expected soon

試就上述新聞報導論述我國的高科技產業之發展動向。

## 二、(本題 33 分)

試從你(妳)所知悉的專利法觀點論述人類基因的可專利性。

## 三、(本題 34 分)

近期「犯罪律師競賽獎」的第一名之文章：

在美國北卡羅萊納州的夏洛特市，有一位律師買了一盒極為稀有且昂貴的雪茄，還為雪茄投保了產物保險(火險)；後來他在一個月內把這些頂級雪茄 24 支都抽完了，保險費一毛也還沒繳納，卻突然提出要保險公司理賠的要求。在申訴中，律師說雪茄在「一連串的小火」(a series of sparklet)中受損。保險公司當然不願意賠償，理由是此人是以正常方式抽完雪茄。結果是律師告上法院還贏了這場官司。法官在判決時表示，他同意保險公司的說法，認為此項申訴非常荒謬，但是該律師手上的確有保險公司同意承保的保單，證明保險公司保證賠償任何火險，且保單中沒有明確指出何種類的「火」不在保險範圍內。因此，保險公司必須賠償。雖然荒唐，但在訴訟成本高昂與漫長的訴訟過程等考量因素下，保險公司決定接受這項判決，放棄上訴，並且賠償美金一萬五千元的雪茄「火險理賠金」予律師。後來律師將保險公司寄來的理賠支票兌現後，保險公司馬上報警將他逮捕，罪名是涉嫌 24 起「縱火案」！理由是依據他自己先前的申訴和證詞，這名律師已觸犯蓄意燒毀已投保之財產之罪名，法院可能判決此律師必須入獄服刑二十四個月，並罰款美金二萬四千元的罰金；試就上述文章提出評述，並闡述自己之見解。



1. 借腹型的代理孕母乃是從委託者之母親身上取出卵子，與其先生精蟲在體外受精培養，再將正在分裂當中的胚胎植入代理孕母之子宮，由於卵子與精子全來自委託者之家庭，借腹型的代理孕母形同借用子宮去懷孕。甲夫與乙婦(委託夫婦)皆是大學教授，且乙婦子宮內膜異位無法讓健康的受精卵著床，因此其被醫生判定是為不孕症之婦。該委託夫婦求子心切，只是單純為了傳宗接代，懇求同窗好友亦是大學教授之丙婦代替他們懷孕生子。雖然丙婦一開始內心掙扎不已，但是最後心軟，其與委託夫婦簽訂借腹型的代理孕母之契約。丙婦生下男嬰後，她與其丁夫皆甚愛之，因為丙丁夫婦家中尚無男丁，因而心生反悔，不願將男嬰交給委託夫婦。試回答下列問題並闡述之：

- (1) 誰為該小男嬰的父母？(10%)
- (2) 委託夫婦應該如何主張其權利，以說服法院？(20%)

2. 民事法律關係的損害賠償責任存有多元的「歸責原則」，其中：

- (1) 何謂「無過失責任」之原則？(10%)
- (2) 存在哪些的規定是採用無過失責任之原則？(20%)

3. 民事法律有漏洞時，法律漏洞的「填補方法」有那些？並請舉出相關例子說明之。(20%)

4. 人類的受精卵或胚胎之後，始為胎兒。人類的受精卵或胚胎可能的法律地位為何？不同的法律地位各會產生何種「法效果」與「批評」，並請闡述己見。(20%)