

An Empirical Study on Civil Litigation for Trade Secret Misappropriation in Taiwan from 2004 to 2013

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ABSTRACT

This article uses regression analysis to examine the remedies in cases of trade secret misappropriation in Taiwan from 2004 to 2013. The Taiwan Intellectual Property Court was established on July 1, 2008 to achieve uniform, active, and immediate resolution of cases concerning intellectual property rights. Our analysis focuses on remedies for trade secret misappropriations during the four years before and after the Intellectual Property Court was established. The objective of this article is to examine the judgments awarded in these cases in the context of existing variables of law, with the central research question being whether the number of trade secret cases correlates to the money amounts of civil damage compensation awards in Taiwanese courts between 2004 and 2013.

Based on two different independent variables, the outcomes of our regression analyses indicate that from 2004 to 2008, the number of trade secret cases filed within a given year is statistically significant in relation to whether a given judgment was reached in district courts, high courts, or the supreme court. In addition, the number of trade secret cases awarded civil damages in the year of a given case is also statistically significant to whether the judgment was reached in district courts, high courts, or the supreme court. Thus, the more often that experienced judges presided over a given case in higher courts, the fewer trade secret cases filed, and the fewer awards of civil damages were given between 2004 and 2008. We also find that civil damage compensation awarded in half of these trade secret cases was NT\$ 0. As a final note, we found that the number of trade secret cases did not vary, after the establishment of the Intellectual Property Court (between 2008 and 2013).

In answer to the research question, our findings show that the number of trade secret cases does *not* correlate to the amount of civil damage compensation awarded. From the perspective of “substantive law,” it is uncertain, and will need more empirical assessment to determine, whether higher levels of civil damage compensation or criminal liability will deter trade secret misappropriation, after criminal liability provisions are added in the Taiwanese Trade Secrets Act in 2013. The effects of this new law will need more empirical assessment. From the perspective of procedural law, the findings indicate that the more experienced judges that preside over a given case, the fewer the number of cases occurring in that year. The consequence is a rise in appeals of trade secret cases filed by enterprises, and more failures for those court actions. Our conclusion is that it does not benefit enterprises to file trade secret cases under the current Taiwanese judicial system, in which the majority of higher courts do not award greater civil damage compensation or criminal liability. On the other hand, enterprises would benefit from increasing their investment in terms of human resources (lawyers or legal counsel) who are expert in trade secret practice, and the management of trade secrets, in order to increase the chances of winning potential trade secret cases.

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1. INTRODUCTION

1.1 The Introduction of Intellectual Property Trials in Taiwan

Before the establishment of the Taiwan Intellectual Property Court on July 1, 2008, there were complex procedures in place regarding intellectual property trials. Because intellectual property trials were managed as “Binary Systems of Public and Private Litigations,”¹ they were decided by different courts.²

For example, awards and removes for patents, trademarks and other intellectual property rights were judged in administrative courts, which examined whether or not administrative sanctions were appropriate under the law.³ Infringements of intellectual property rights under civil and criminal procedure were judged by general courts.⁴ General courts had no power to examine the validity of issues concerning intellectual property rights, however, and typically would stay proceedings while awaiting the judgments from administrative litigation.⁵ Thus, because of long-term trial proceedings, it was very difficult to protect intellectual property rights.

In order to promote the efficiency of intellectual property trials and protect intellectual property rights, the *Intellectual Property Court Organization Act* and the *Intellectual Property Case Adjudication Act* were enacted on March 28, 2007, and came into effect on July 1, 2008,⁶ establishing Taiwan’s professional court for intellectual property trials, the Taiwan Intellectual Property Court.

Cases involving trade secrets, one type of intellectual property, occur frequently, and thus have played an important role in the development of intellectual property laws in Taiwan. It is helpful to evaluate civil actions involving trade secret misappropriations by means of empirical study, as there is currently very little empirical literature on trade secret cases,⁷ and because it is worth observing and comparing the development of civil litigation for trade secret cases before and after the establishment of the Intellectual Property Court. In particular, there was no provision for criminal liability before the passage of the *Trade Secrets Act Amendments* on January 11, 2013,⁸ so it is important to evaluate the effects of these amendments with the comparison of the former *Trade Secrets Act*, which contained civil liability provisions, but none for criminal liability.

1.2 The Purpose and Methodology of This Article

The purpose of this article is to determine whether or not there is a statistically

¹ Hui-Ju Tsai, *Intellectual Property Laws and Regulations* 4 (2012).

² *Id.*

³ Tsai, *supra* note 1, at 4.

⁴ *Id.*

⁵ Tsai, *supra* note 1, at 4.

⁶ *Id.*

⁷ There are few empirical researches concerning trade secret courts’ judgments in Taiwan. A empirical study that the author see is a research about the relations between non-competition and damage compensations, but this article is a conference paper. See Jung-Tsung Hung, Wei-Li Liu & Li-Yuan Huang, *An Empirical Study Regarding Courts’ Judgments on Trade Secret Misappropriations and Breach Non-Competition Agreements*, in *Trade Secret Laws* 159, 164 (Sheng-Chen Tseng ed., 2009).

⁸ Ministry of Justice – The Working Group of the R.O.C. Laws & Regulations Database, *Trade Secret Act: History*, <http://law.moj.gov.tw/LawClass/LawHistory.aspx?PCode=J0080028> (last visited Jun. 18, 2013).

significant relationship among the number of trade secret cases, number of trade secret cases awarded civil damages, and other legal factors, through the use of regression analyses; and to analyze the relationship between civil damages and the number of trade secret cases. Hence, the research question focuses on “Whether or not the number of trade secret cases correlates with the amounts of civil damage compensation for trade secret misappropriation in Taiwanese courts between 2004 and 2013?” Moreover, the answer to this question could lead to an assessment of whether the new *Trade Secrets Act*’s criminal liability provisions deter trade secret misappropriation.

The research methodology of this article is quantitative research in the form of regression analysis, and since the dependent variables used are not a “categorical variable,” but a “continuous variable,”⁹ we use linear regression.

First, however, we need to address the issue of “multicollinearity,” which is a statistic phenomenon where two or more independent variables in a multiple regression model are highly correlated, misleadingly inflating the standard errors, and thus making some variables statistically insignificant, when they would otherwise be significant.¹⁰

In order to avoid multicollinearity, we measured a “correlation coefficient” among the independent variables to be used in the regression, and eliminated some of the highly correlated variables. The outputs of correlation coefficients are listed in Appendix Table 1.1. Ten variables were used for the regression in this study: “Number of Trade Secret Cases Filed in the Year of a Given Case,” “Number of Trade Secret Cases Awarded Civil Damages in the Year of a Given Case,” “Civil Damages of a Given Judgment (10,000 NT\$),”¹¹ “Whether a Given Judgment was Decided in District, High, or Supreme Court (from 2004 to 2008)?,”¹² “Whether a Given Judgment was Decided in Supreme Court or in Intellectual Property Court (from 2008 to 2013)?,”¹³ “Whether a Given Judgment is an Appealed Case from a Lower Court,”¹⁴ “Whether a Given Judgment Revoked/Overruled, Partially Revoked and Partially Upheld, or Upheld Judgments from Former Trials, or Formerly Decided in Intellectual Property Court,”¹⁵ “Number of Judges Presiding Over Given Case,”¹⁶ “Whether Judges Decided to Award Civil

⁹ In statistics, a categorical variable is a variable that can take on one of a limited, and usually fixed, number of possible values. Categorical variables are often used to represent categorical data. *See* Wikipedia – Categorical variable, http://en.wikipedia.org/wiki/Categorical_variable (last visited Jun. 18, 2013). Continuous variables mean numerical data which can hold any value. For instance, human height is continuous. There is no set of allowable heights. It can be any number. *See* Answers.com, Wiki Answers, What is Continuous data in statistics?, http://wiki.answers.com/Q/What_is_Continuous_data_in_statistics (last visited Jun. 18, 2013).

¹⁰ Wikipedia – Multicollinearity, <http://en.wikipedia.org/wiki/Multicollinearity> (last visited Jun. 18, 2013).

¹¹ This data is drawn from the website of the Judicial Yuan of the Republic of China. *See* The Judicial Yuan of the Republic of China – Law and Regulations Retrieving System: Search for Courts’ Judgments, <http://jirs.judicial.gov.tw/Index.htm> (last visited Jun. 18, 2013).

¹² This data is drawn from the website of the Judicial Yuan of the Republic of China. *See id.*

¹³ This data is drawn from the website of the Judicial Yuan of the Republic of China. *See* The Judicial Yuan of the Republic of China – Law and Regulations Retrieving System: Search for Courts’ Judgments, *supra* note 11.

¹⁴ This data is drawn from the website of the Judicial Yuan of the Republic of China. *See id.*

¹⁵ This data is drawn from the website of the Judicial Yuan of the Republic of China. *See* The Judicial Yuan of the Republic of China – Law and Regulations Retrieving System: Search for Courts’ Judgments, *supra* note 11.

¹⁶ This data is drawn from the website of the Judicial Yuan of the Republic of China. *See id.*

Damages,”¹⁷ and “Year of a Given Trade Secret Case.”¹⁸

After measuring the “correlation coefficient” of all the variables, we eliminated some: “Whether a Given Judgment Revoked/Overruled, Partially Revoked and Partially Upheld, or Upheld Judgments from Former Trials, or Formerly Decided in Intellectual Property Court,” and “Whether or not Judges Make a Given Case Decision to Award Civil Damages?,” because they are highly correlated among others.

We considered the fact that the variable “Year of a Given Trade Secret Case” represents time series data. Use of such data for regression analyses is problematic, since future values of the predictor variables are still unknown.¹⁹ Another problem concerns residual autocorrecting — that the estimated model violates the assumption of no autocorrelation in the errors, so our forecasts may be inefficient.²⁰ In order to prevent these problems of regression analyses for time series data, we chose not to adopt the variable “Year of a Given Trade Secret Case” as an independent variable for regression analyses; instead, this article uses descriptive statistics to observe this variable.

In addition, the independent variable, “Civil Damages of a Given Judgment (10,000 NT\$)” was also dropped, since the Supreme Court only hears appeals from the High Court, to either affirm or remand to the lower court, and does not order its own judgment. Thus, more missing data exist for our regression to predict. The dependent variable and independent variables run by the regression analyses for this article are listed in Table 1.2.

Table 1.2 The Interpretations of Dependent and Independent Variables Related to the Regression Analysis of the Trade Secret Cases in Taiwan	
Dependent and Independent Variables	Meanings
Number of Trade Secret Cases Filed in the Year of a Given Case	The number of total trade secret cases in Taiwan that occurred in the same year of a given case
Number of Trade Secret Cases Awarded Civil Damages in the Year of a Given Case	The number of total trade secret cases in Taiwan that were awarded civil damages in the same year of a given case
Whether a Given Judgment was Decided in District, High, or Supreme Court (from 2004 to 2008)	The level of court that decided a given case from 2004 to 2008
Whether a Given Judgment was Decided in Supreme Court or in Intellectual Property Court (from 2008 to 2013)	Whether a given judgment between 2008 and 2013 was decided in Supreme Court or Intellectual Property Court
Whether a Given Judgment is an Appealed Case from a	Whether a given judgment was appealed from a lower court

¹⁷ This data is drawn from the website of the Judicial Yuan of the Republic of China. *See* The Judicial Yuan of the Republic of China – Law and Regulations Retrieving System: Search for Courts’ Judgments, *supra* note 11.

¹⁸ This data is drawn from the website of the Judicial Yuan of the Republic of China. *See id.*

¹⁹ Rob J Hyndman and George Athanasopoulos, *Forecasting: principles and practice*, 4/8 Regression with time series data, <http://otexts.com/fpp/4/8/> (last visited Jul. 5, 2013).

²⁰ *Id.*

Lower Court	
Number of Judges Presiding Over a Given Case	Number of judges who were responsible for deciding a given case

The dependent variables used in our regression analyses are “Number of Trade Secret Cases Filed in the Year of a Given Case” and “Number of Trade Secret Cases Awarded Civil Damages in the Year of a Given Case.” The former is important for understanding the trends regarding trade secret judgments handed down by Taiwanese courts from the period of January 1, 2004, to June 30, 2013. The latter is crucial for identifying which factors influenced courts in awarding civil damages for plaintiffs within the period of January 1, 2004, to June 30, 2013. Thus, we were able to investigate the research question of whether the number of trade secret cases correlates with the amounts of civil damage compensation for trade secret misappropriation in Taiwanese courts from 2004 to 2013. In particular, there were two key events — the establishment of the Taiwan Intellectual Property Court on July 1, 2008, and the passage of *Trade Secrets Act Amendments* on January 11, 2013— that may have impacted the results. Appendix Tables 1.3–1.4 list the data regarding trade secret cases in Taiwan from 2004 to June 30, 2013.

This article finds that there is a statistically significant relationship among these variables during 2004-2008 in Taiwan. The following sections will explain why they are statistically significant and recommend possible policy directions that could be helpful for future trade secret legislation in Taiwan.

2. REGRESSION ANALYSES ON THE “NUMBER OF TRADE SECRET CASES OCCURRING IN A GIVEN YEAR” AND CIVIL DAMAGE COMPENSATION FOR TRADE SECRET MISAPPROPRIATION IN TAIWAN: JANUARY 1, 2004-JUNE 30, 2013

2.1 Timeframe of January 1, 2004-June 30, 2008

This section discusses the regression analyses for trade secret judgments from 2004 to 2008, and the “statistical significance”²¹ of the independent variable “Whether a Given Judgment was Decided in District, High, or Supreme Court” with respect to the dependent variable “Number of Trade Secret Cases Filed in the Year of a Given Case.” A separate regression analysis indicates that the independent variable “Whether a Given Judgment was Decided in District, High, or Supreme Court” is also “statistically significant”²² with respect to the other dependent variable used in this research: “Number of Trade Secret Cases Awarded Civil Damages in the Year of a Given Case.”

Article 4, Section 1 of the *Court Organization Act* states that the “President of the court is the chief justice in a collegial panel, and the chief justice is an experienced panel if there is no president of the court or a president of the court encounters accidents.”²³

²¹ The definition of “statistically significant” is that “A result is statistically significant if the probability of its occurring, referred to as the *p*-value, is less than a predetermined threshold, conventionally 5 percent.” See Robert M. Lawless et al., *Empirical Methods in Law* 426 (2010).

²² *Id.*

²³ Ministry of Justice – The Working Group of the R.O.C. Laws & Regulations Database, *Court Organization Act*, <http://law.moj.gov.tw/LawClass/LawAll.aspx?PCode=A0010053> (last visited Jun. 18, 2013).

Similarly, Article 6, Section 2 of the *Intellectual Property Court Organization Act* holds that the “President of the court is the chief justice in a collegial panel of the intellectual property court, and the chief justice is an experienced panel of the court if there is no president of the court or a president of the court becomes disabled.”²⁴

Thus, the Chief Justice, who acts as President of the court and is an experienced member of the panel, has the important task of delivering the court’s judgments. Moreover, the statutes quoted above indicate that the role of Chief Justice may be played by an experienced panel, if there is no President of the court or a President of the court “becomes disabled.” Thus, collegial panels (collegial judges) make judgments together in the higher courts (e.g., Taiwan Supreme Court and Taiwan High Court and its branches)²⁵ and in second instance appeals; and ordinary administrative actions of the Intellectual Property Court²⁶ also consist of more than one judge than in the lower courts (i.e., district courts)²⁷ and in first instance civil action and summary administrative action of the Intellectual Property Court.²⁸ Moreover, panels in the higher courts or in second instance appeals of the Intellectual Property Court are more experienced than those in the lower courts and in first instance appeals of the Intellectual Property Court.

In theory, the more experienced judges in the higher courts would have the advantage of knowing and understanding the purposes of the *Trade Secrets Act* to protect trade secrets and attempt to balance the interests of plaintiffs and defendants in trade secret cases. Unfortunately, plaintiffs (enterprises or the owners of trade secrets) would be disappointed to learn that the outcomes of our regression analysis show the opposite is true. The regression analysis listed in Appendix Table 2.1 indicates that the variable “Whether a Given Judgment was Decided in District, High, or Supreme Court” is statistically significant²⁹ in relation to the variable of “Number of Trade Secret Cases Filed in the Year of a Given Case” ($p = 0.026$). In addition, the regression analysis in Appendix Table 2.2 shows that the variable “Whether a Given Judgment was Decided in District, High, or Supreme Court?” is also statistically significant³⁰ with the variable “Number of Trade Secret Cases Awarded Civil Damages in the Year of a Given Case” ($p=0.030$). As a result, which courts decided a given case in a particular year is

²⁴ Ministry of Justice – The Working Group of the R.O.C. Laws & Regulations Database, Intellectual Property Court Organization Act, <http://law.moj.gov.tw/LawClass/LawAll.aspx?PCode=A0010090> (last visited Jun. 18, 2013).

²⁵ Anyone who disagrees with the judgments of district courts could appeal to the Taiwan High Court and its branches. Although people could appeal to the Taiwan Supreme Court if they disagree judgments by the Taiwan High Court and its branches, there are some restrictions on appealing to the Supreme Court in criminal and civil procedures. See Ministry of Justice – The Working Group of the R.O.C. Laws & Regulations Database, Court Organization Act, *supra* note 23.

²⁶ Article 6, Section 1 of the Intellectual Property Court Organization Act regulates that “First instance civil action and summary administrative action shall be tried by one judge. Second instance appeals in civil and criminal actions, and ordinary administrative actions shall be tried by a panel of three judges.” See Ministry of Justice – The Working Group of the R.O.C. Laws & Regulations Database, Intellectual Property Court Organization Act, *supra* note 24.

²⁷ Article 3 of the Court Organization Act rules that “District courts’ actions shall be tried by one judge or collegial action shall be tried by a panel of three judges. High courts’ actions shall be tried by a panel of three judges. Supreme Court’s actions shall be tried by a panel of five judges.” See Ministry of Justice – The Working Group of the R.O.C. Laws & Regulations Database, Court Organization Act, *supra* note 23.

²⁸ District courts in Taiwan handle with the first instance trials of criminal and civil procedures. See Ministry of Justice – The Working Group of the R.O.C. Laws & Regulations Database, Court Organization Act, *supra* note 23.

²⁹ Lawless et al., *supra* note 21, at 426.

³⁰ Lawless et al., *supra* note 21, at 426.

important for determining the number of trade secret cases filed and the number of trade secret cases awarded civil damages.

While plaintiffs appeal to higher courts that involve more judges presiding over a given case, the total trade secret cases occurring in that year decreased. Plaintiffs are not willing to seek appeals for compensations regarding trade secret misappropriation given the practices of current Taiwan trade secret courts. However, plaintiffs (especially enterprises) are willing to invest more money internally, including for human resources (hiring lawyers or legal counsel who are experts in trade secret practices) and improving trade secret management procedures, as compared with spending more resources externally, such as for litigation expenses for appeals.

2.2 Timeframe of July 1, 2008-June 30, 2013

The Taiwan Intellectual Property Court was established on July 1, 2008, with the purposes of consolidating litigation within the same trial court, reaching uniform judicial opinions, promoting active judicial trials, and effecting immediate dispute resolutions under Taiwan's intellectual property laws. A new era for the development of intellectual property rights (including trade secret rights) in Taiwan has been developing since 2008.

The other major turning point for the development of Taiwanese trade secret legislation was the addition of Articles 13-1~13-4 to the *Trade Secret Act* on January 11, 2013, which added criminal liability, including punitive damages of trade secret infringements,³¹ intentional uses of misappropriated trade secrets outside Taiwan,³² punitive damages for trade secret infringements for a civil servant or a former civil servant,³³ and joint punishments for trade secret infringers and their enterprises.³⁴ Of

³¹ Section 3 of the Articles 13-1 and 13-2 of the Trade Secret Act are regulations concerning punitive damages of trade secret infringements. Section 3 of the Article 13-1 regulates that "In case a fine is to be imposed, if the gain obtained by the offender exceeds the maximum fine, such fine may be increased within the extent of 3 times of the gain." Section 3 of the Article 13-2 rules that "In case a fine is to be imposed, if the gain obtained by the offender exceeds the maximum fine, such fine may be increased within the extent of 2 to 10 times of the gain." See Ministry of Justice – The Working Group of the R.O.C. Laws & Regulations Database, Trade Secret Act, <http://law.moj.gov.tw/LawClass/LawAll.aspx?PCode=J0080028> (last visited Jun. 18, 2013).

³² Article 13-2 of the Trade Secret Act regulates that "Any person committing a crime prescribed in the first paragraph of the preceding article for the purpose of using the trade secret in foreign jurisdictions, mainland China, Hong Kong, or Macau shall be sentenced to imprisonment between 1 year and 10 years, in addition thereto, a fine between NT\$3 million and NT\$50 million may be imposed. An attempt to commit a crime specified in the preceding paragraph is punishable. In case a fine is to be imposed, if the gain obtained by the offender exceeds the maximum fine, such fine may be increased within the extent of 2 to 10 times of the gain." See *id.*

³³ Section 3 of the Article 13-3 of the Trade Secret Act regulates that "In case a civil servant or a former civil servant who knows or possesses others' trade secrets within the scope of his/her authority or employment and intentionally commits a crime prescribed in the preceding 2 articles shall be sentenced to the punishment prescribed for such an offense by increasing it up to one half." See Ministry of Justice – The Working Group of the R.O.C. Laws & Regulations Database, Trade Secret Act, *supra* note 31.

³⁴ Article 13-4 of the Trade Secret Act rules that "Where the representative of a juristic person, the agent, employee or any other staff of a juristic person or natural person commits any of the crimes prescribed in Article 13-1 or 13-2 in the course of business, not only the actor, but the juristic person or the natural person shall be punished with the fine prescribed in the Article. However, if the representative of a juristic person or natural person has done his/her utmost to prevent a crime from being committed, the juristic person or natural person shall not be punished." See Ministry of Justice – The Working Group of the

course, the new laws and their resulting trial systems appear to contain formal protections for trade secrets, but this inference is not yet statistically supported.

In order to maintain consistency in this study, we also used regression analysis to examine the variables related to trade secret litigation. The independent variables used in our regression analysis are “Whether a Given Judgment was Decided in Supreme Court or in Intellectual Property Court” and “Whether a Given Judgment is an Appealed Case from a Lower Court.” Furthermore, the dependent variables used here are, once again, “Number of Trade Secret Cases Filed in the Year of a Given Case” and “Number of Trade Secret Cases Awarded Civil Damages in the Year of a Given Case.”

Unfortunately, the outcomes of regression analysis indicate that the variables “Whether a Given Judgment was Decided in Supreme Court or in Intellectual Property Court” and “Whether a Given Judgment is an Appealed Case from a Lower Court” are not statistically significant³⁵ with respect to the variable of “Number of Trade Secret Cases Filed in the Year of a Given Case.” ($p=0.103$). Moreover, there are no outcomes regarding the regression analysis for the variables “Whether a Given Judgment was Decided in Supreme Court or in Intellectual Property Court,” “Whether a Given Judgment is an Appealed Case from a Lower Court,” or “Number of Trade Secret Cases Awarded Civil Damages in the Year of a Given Case,” because of missing data related to civil trade secret misappropriation judgments between July 1, 2008, and June 30, 2013. In other words, no variable is significantly related to the number of trade secrets that occurred and the number of trade secret cases awarded civil damages in the year of a given case during the periods of July 1, 2008, to June 30, 2013. Appendix Tables 2.3–2.4 depict the outcomes of regression analyses.

In addition to inferential statistics,³⁶ we adopted descriptive statistics³⁷ to analyze changes in trade secret judgments from 2008 to present. While we want to report a typical data point in Appendix Table 1.4, a measure of central tendency, such as mean, median, or mode,³⁸ is used in this section.

If we observe the data related to “Number of Judges Presiding Over a Given Case,” the mean is 3.8 (which means an average of 4 judges decided a given case); the median is 5 (which shows that 5 judges, a median number, decided a given case); and the mode is 3 (which indicates that 3 judges, the most common number, decided a given case). If we examine the data related to “Number of Trade Secret Cases Filed in the Year of a Given Case,” the mean is 2.73 (which means an average of 3 cases were filed in the year of a given case); the median is 3 (which shows that 3 cases, a median number, were filed in the year of a given case); and the mode is 3 (which indicates that 3 cases, the most common number, were filed in the year of a given case). If we check the data related to

R.O.C. Laws & Regulations Database, Trade Secret Act, *supra* note 31.

³⁵ Lawless et al., *supra* note 21, at 426.

³⁶ One-variable inferential statistics is the science of using data derived from a small number of individuals to make educated guesses about some characteristic of a large group from which the individuals were selected. See David Cope, *Fundamentals of Statistical Analysis* 27 (2005).

³⁷ Descriptive statistics is the discipline of quantitatively describing the main features of a collection of data, or the quantitative description itself. Descriptive statistics descriptive statistics aim to summarize a sample, rather than use the data to learn about the population that the sample of data is thought to represent. See Wikipedia – Descriptive statistics, https://en.wikipedia.org/wiki/Descriptive_statistics (last visited Jun. 18, 2013).

³⁸ *Id.*

“Number of Trade Secret Cases Awarded Civil Damages in the Year of a Given Case,” the mean is 0 (which means that there were no cases awarded civil damages in the year of a given case); the median is 0 (which shows that 0 cases, a median number, were awarded civil damages in the year of a given case); and the mode is 0 (which shows that 0 cases, the most common number, were awarded civil damages in the year of a given case). If we analyze the data of “Civil Damages of a Given Judgment,” the mean is 0 (which means that an average of civil damages, NT\$0, was awarded in a given judgment); the median is 0 (which shows that NT\$0, a median number, was awarded in a given judgment); and the mode is 0 (which indicates that NT\$0, the most common number, was awarded in a given judgment).

All considering, more trade secret cases were appealed to the Taiwan Supreme Court, when at least 3 judges, the most common number, decided a given case. Moreover, the number of cases most commonly filed in the year of a given case was 3, and there were no variations from the years 2008-2013. However, civil damages in the amount of NT\$0, were most commonly awarded in a given judgment, whether a given case was appealed or not. To sum up, there was no civil damage compensation awarded in a given case between 2008 and 2013.

3. RESEARCH FINDINGS AND POSSIBLE DIRECTIONS OF FUTURE REMEDIES FOR TRADE SECRET MISAPPROPRIATION IN TAIWAN

In the following two sections, this chapter will summarize the outcomes of our regression analyses, descriptive statistics and their arguments from Chapter 2, and make recommendations about future remedies for trade secret misappropriation in Taiwan using these findings.

3.1 Research Findings

This project involved a quantitative assessment of trade secret court judgments in Taiwan from 2004 to the present. We used regression analyses to examine the data from January 1, 2004, to June 30, 2008, to discover which variable is statistically significant with respect to the “Number of Trade Secrets Cases Occurring in the Year of a Given Case” and the “Number of Trade Secrets Cases Awarded Civil Damages in the Year of a Given Case” from various trade secret court judgments decided by different courts.

Although nearly one-third of the given judgments (29.8%) were appealed from lower courts, 63.8% of the judgments for civil damages of trade secret misappropriation for plaintiffs were NT\$0, or the higher courts either affirm or remand to the lower court and do not order their own judgments, even if plaintiffs appealed to the Taiwan Supreme Court or the Taiwan High Court and its branches. In addition, the number of trade secret cases filed declined, from 18 to 4 between 2004 and 2008. These results, also reflected in the regression analyses in Chapter 2, showed that the appealing to higher courts or second instances of the Intellectual Property Court meaning more experienced judges that preside over a given case, the fewer trade secret cases and civil damage compensations that occur and award in the year of that case.

In sum, the number of filings for trade secret cases and the number of trade secret cases awarded civil damages have no relation to the number of plaintiffs that appeal to the Taiwan Supreme Court, the Taiwan High Court and its branches, or the Intellectual

Property Court. Plaintiffs (especially enterprises) do not believe that appeals of trade secret misappropriation cases to higher courts or higher instances of the Intellectual Property Court will overrule judgments made by the lower courts or the lower instances of the Intellectual Property Court against them, much less award more civil damages. Even though the two highest civil damage judgments were NT\$99,598,000 and NT\$17,127,000, it is paradoxical that these high awards were handed down by the Taiwan High Court and the District Court, but not by the Taiwan Supreme Court. In other words, it is assumed that these high civil damages would have been dismissed or overruled by the Taiwan Supreme Court and the Taiwan High Court.

Therefore, answer of the research question of this article: “Whether or not the number of trade secret cases correlate to amounts of civil damage compensation judgments in Taiwanese courts between 2004 and 2013?” is that number of trade secret cases is not so correlated, but are statistically significant with regard to the whether a given judgment was decided in district courts, the high court, or the supreme court within the periods of 2004 and 2008, but such relationship is a “negative association.”³⁹

In the period from July 1, 2008 to June 30, 2013, there were two important events: the establishment of the Intellectual Property Court and the addition of criminal liabilities for trade secret misappropriations, as described above. Under the descriptive statistics, 100% of civil damages of given cases regarding trade secret misappropriation were NT\$0, or even no further judgments. If we observe the data related to “Number of Judges Presiding Over Given Case,” there are no differences for 1, 3, or 5 judges to decide civil damages. It is worth noting that the number of trade secret cases did not change between 2008 and 2013. In particular, the number of trade secret cases awarded civil damages did not change (0 case) within the same periods.

Based upon the above analyses for the data regarding trade secret courts’ judgments from July 1, 2008 to June 30, 2013, the research question of this article, “Whether or not the number of trade secret cases correlates with amounts of civil damage compensation in Taiwanese courts between 2004 and 2013” must be answered in the negative — trade secret cases are not related to amounts of civil damage compensations from 2008 to 2013. Table 3.1 lists the outcomes of our analysis regarding trade secret courts’ judgments in Taiwan.

³⁹ A “negative association” occurs when the variables move in opposite ways. That is, higher values of one of variables are associated with lower values of the other and vice versa. *See* Lawless et al., *supra* note 21, at 291-292.

Table 3.1 The outcomes of this article regarding trade secret courts' judgments in Taiwan between 2004 and 2013

Independent variables	Number of Judges Presiding Over Given Case		Whether a Given Judgment was Decided in District, High, Supreme Court, or Intellectual Property Court?		Whether a Given Judgment is an Appealed Case from a Lower Court?		Answer of the research question that "Whether or not the number of trade secret cases correlates with the amounts of civil damage compensation for trade secret misappropriation in Taiwanese courts between 2004 and 2013?"
	Regression analyses	Descriptive statistics	Regression analyses	Descriptive statistics	Regression analyses	Descriptive statistics	
Dependent variables	×	N/A	○	N/A	×	N/A	Number of trade secret cases do not correlate with the amounts of civil damage compensation for trade secret misappropriation in Taiwanese courts between 2004 and 2013
	×	Number of trade secret cases were not changed no matter how many judges made a given case decision (2008.0 7.01~2013.06 .30)	×	Number of trade secret cases were not changed no matter a given judgment was decided in district courts, high court, or supreme court (2008.0 7.01~2013.06 .30)	×	Number of trade secret cases were not changed no matter a given judgment was appealed from the former courts (2008.0 7.01~2013.06 .30)	

	× (2004.0 1.01~ 2008.06 .30)	N/A	○ (2004.0 1.01~ 2008.06 .30)	N/A	× (2004.0 1.01~ 2008.06 .30)	N/A	
Number of Trade Secret Cases Awarded Civil Damages in the Year of a Given Case	× (2008.0 7.01~ 2013.06 .30)	Number s of trade secret cases awarded civil damage s were not changed no matter how many judges made a given case decision (2008.0 7.01~ 2013.06 .30)	× (2008.0 7.01~ 2013.06 .30)	Number s of trade secret cases awarded civil damage s were not changed no matter a given judgme nt was decided in district courts, high court, or supreme court (2008.0 7.01~ 2013.06 .30)	× (2008.0 7.01~ 2013.06 .30)	Number s of trade secret cases awarded civil damage s were not changed no matter a given judgme nt was appeale d from the former courts (2008.0 7.01~ 2013.06 .30)	Number of trade secret cases do not correlate with the amounts of civil damage compensation for trade secret misappropriati on in Taiwanese courts between 2004 and 2013

Civil Damages of a Given Judgment (10,000 NT\$)	N/A (The dependent variable, Civil damages of a given judgment, is dropped ; 2004.01 .01~ 2008.06 .30)	The highest civil damages would be dismissed or overruled by the higher courts no matter how many judges made a given case decision (2004.01 .01~ 2008.06 .30)	N/A (The dependent variable, Civil damages of a given judgment, is dropped ; 2004.01 .01~ 2008.06 .30)	32 civil case judgments awarded civil damages by district courts and high court (2004.01 .01~ 2008.06 .30)	N/A (The dependent variable, Civil damages of a given judgment, is dropped ; 2004.01 .01~ 2008.06 .30)	63.8% of courts' judgments on civil damages of trade secret misappropriation for plaintiffs were NT\$0 or no further judgments no matter which year that a given case decision made (2004.01 .01~ 2008.06 .30)	Number of trade secret cases do not correlate with the amounts of civil damage compensation for trade secret misappropriation in Taiwanese courts between 2004 and 2013
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	N/A (The dependent variable, Civil damages of a given judgment, is dropped; 2008.07-.01~2013.06-.30)	All civil damages of given cases about trade secret misappropriation were NT\$0 or even no further judgments no matter how many judges made a given case decision (2008.07.01~2013.06-.30)	N/A (The dependent variable, Civil damages of a given judgment, is dropped; 2008.07-.01~2013.06-.30)	All civil damages of given cases about trade secret misappropriation were NT\$0 or even no further judgments no matter those cases made in district courts and high court (2008.07.01~2013.06-.30)	N/A (The dependent variable, Civil damages of a given judgment, is dropped; 2008.07-.01~2013.06-.30)	All civil damages of given cases about trade secret misappropriation were NT\$0 or even no further judgments no matter which year that a given case decision made (2008.07.01~2013.06-.30)	
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Note: The symbol of ○ means that there is statistically significant between the dependent and the independent variable in the regression analyses; the symbol of × means that there is not statistically significant between the dependent and the independent variable in the regression analyses; the symbol of N/A means that the dependent variable is dropped, so we cannot conduct regression analyses. Or regression analyses have been conducted, and there are no needs to do descriptive statistics further.

3.2 Possible Directions for Future Trade Secret Misappropriation in Taiwan

According to these research findings, this article makes the following four recommendations for future trade secret misappropriation cases in Taiwan from the perspectives of “substantive law,” “procedural law,” and “enterprise roles.”

3.2.1 The effects of adding criminal liabilities through the new 2013 *Trade Secrets Act* to deter trade secret misappropriation are not clear.

The regression analyses demonstrated the dependent variable “Number of Trade Secret Cases Filed in the Year of a Given Case” is statistically significant with respect to the independent variable “Whether a Given Judgment was Decided in District, High, or Supreme Court?.” In addition, the dependent variable “Number of Trade Secret Cases Awarded Civil Damages in the Year of a Given Case” is statistically significant in relation to the independent variable “Whether a Given Judgment was Decided in District, High, or Supreme Court?,” too. With regard to the variable “Civil Damages of a Given Judgment (10,000 NT\$),” there is no relation to variables conducted in the regression

analyses and descriptive statistics, including “Number of Trade Secret Cases Filed in the Year of a Given Case.” There were 33 trade secret cases (39.3%) awarding civil damage compensations in total 84 cases between January 1, 2004 and June 30, 2008. Within them, 6 cases (7.1%) awarding civil damage compensations were made by the Taiwan High Court and its branches, and 26 cases (31%) awarding civil damage compensations were decided by district courts.

From the perspective of “substantive law,” we pose the same question as the research question of this article: “Whether or not the number of trade secret cases correlate to amounts of civil damage compensation in Taiwanese courts.” Although the amendments to the 2013 *Trade Secrets Act* focus on criminal liability, legislators in the Legislative Yuan of the Republic of China would answer in the affirmative.

Looking to the purposes of Article 13-1 in the 2013 *Trade Secrets Act*, legislators explain that statutes of the *Criminal Code* are not enough for trade secret protection and the punishments therein cannot deter trade secret misappropriation.⁴⁰ Hence, it is necessary to add criminal liability provisions in the *Trade Secrets Act* in addition to those in the *Criminal Code*.⁴¹ Even though the empirical evidence in this study shows that the number of trade secret cases does not correlate with amounts of civil damage compensations, we cannot conclude that the effects of adding criminal liability provisions under the new Act are similar to the former situation regarding civil damage compensation for trade secret misappropriation. As a result, we must state here that the effects of new criminal liability provisions are not yet clear, and need further evaluative empirical research.

3.2.2 It is important that the standards of civil damage compensations or criminal liability regarding trade secret misappropriation be uniform.

Although regression analyses indicate that the dependent variables “Number of Trade Secret Cases Filed in the Year of a Given Case” and “Number of Trade Secret Cases Awarded Civil Damages in the Year of a Given Case” are both statistically significant with respect to the independent variable “Whether a Given Judgment was Decided in District, High, or Supreme Court,” such results imply that appeals of trade secret misappropriation cases to higher courts do not enhance trade secret protection, but they do deter plaintiffs (especially enterprises) from continuing to seek to protect their trade secret rights through courts.

Articles 369 and 368 of the *Code of Criminal Procedure* set the procedures of second instance, such that the court of second instance not only has powers of “overruling” an appeal and “reversing” the relevant portion of the original judgment, but also has the power of “adjudicating” the case if it finds such appeal meritorious (or meritless, but the original judgment improper or illegal).⁴²

⁴⁰ Library of the Legislative Yuan, Law Retrieve Systems, Trade Secret Act: History, [http://lis.ly.gov.tw/lgcgi/lglaw?@29:1804289383:f:NO%3DE01967*%20OR%20NO%3DB01967\\$\\$11\\$\\$\\$PD%2BNO](http://lis.ly.gov.tw/lgcgi/lglaw?@29:1804289383:f:NO%3DE01967*%20OR%20NO%3DB01967$$11$$$PD%2BNO) (last visited Jun. 18, 2013).

⁴¹ *Id.*

⁴² Article 369 of the Code of Criminal Procedure regulates that “The court of second instance shall reverse the relevant portion of the original judgment and adjudicate the case upon finding the appeal meritorious or upon finding an appeal meritless but the original judgment is improper or illegal; provided that where

Moreover, Articles 375-402 of the *Code of Criminal Procedure* further regulate procedures of third instance, such that a person who disagrees with a judgment of first or second instance made by a Court of appeal shall file an appeal to the Supreme Court.⁴³ However, such appeals are restricted when the judgment is in contravention of the laws and regulations, (i.e., a judgment fails to apply rules or applies rules improperly).⁴⁴

Of course, judges should conduct “free evaluation of evidence through inner conviction”⁴⁵ when they make case decisions, including trade secret cases. Under the regulations of the *Code of Criminal Procedure*, the uniform standards of civil damage compensations or criminal liabilities regarding trade secret misappropriation should necessarily result. In particular, judges of the second instance of courts have powers of “overruling” and “reversing” an appeal and judgment, and plaintiffs (especially enterprises) are limited to appeal to the third instance of court.

Thus, appeals to the second or third instances of courts do not provide plaintiffs with the means for seeking trade secret protection, and they would result in high litigation costs. Because there are no uniform standards in civil damage compensation or criminal liability regarding trade secret misappropriation, plaintiffs are not able to predict how judges will “overrule,” “reverse,” or even “adjudicate” trade secret misappropriation cases. When it comes to “adjudication” of the case, the amount of civil damage compensation or number of years of prison or amount of fines are important for judges to decide, and uniform standards are needed.

3.2.3 Enterprises should avoid “risks of conflict and dispute resolution” concerning potential trade secret misappropriations.

A definition of “risk” should focus on two points: 1) uncertain future outcomes, and 2) potential personal and property damage and benefit.⁴⁶ In this light, legal risks can be categorized as risks to state and government,⁴⁷ on one hand, but also as to uncertain future outcomes and property losses due to litigation (i.e., litigation fees and damages),

the original judgment is set aside because of the trial court’s improper ruling on jurisdiction, exempt from prosecution, or case dismissed. Where the court of second instance reverses the original judgment for the latter wrongfully pronounced mistake in jurisdiction, if the court of second instance has jurisdiction over the first instance, it shall render a judgment of first instance. Article 368 of the Code of Criminal Procedure rules that “The court of second instance shall overrule an appeal by ruling if it finds such appeal meritless.” See Ministry of Justice – The Working Group of the R.O.C. Laws & Regulations Database, Code of Criminal Procedure, <http://law.moj.gov.tw/Eng/LawClass/LawAll.aspx?PCode=C0010001> (last visited Jun. 18, 2013).

⁴³ *Id.*

⁴⁴ Article 377 of the Code of Criminal Procedure regulates reasons for appeal in the third instance that “Appeals to the court of third instance may only be filed where the judgment is in contravention of the laws and regulations.” Article 378 of the Code of Criminal Procedure defines meaning of in contravention of laws and regulations that “A judgment which fails to apply rules or applies rules improperly is in contravention of the laws and regulations.” See Ministry of Justice – The Working Group of the R.O.C. Laws & Regulations Database, Code of Criminal Procedure, *supra* note 42.

⁴⁵ The principal of “free evaluation of evidence through inner conviction” is regulated by Section 1, Article 222 of the Taiwan Code of Civil Procedure that “Except as otherwise provided, in making a judgment the court shall, taking into consideration the entire import of the oral argument and the result of evidence-taking, determine the facts by free evaluation.” See Ministry of Justice – The Working Group of the R.O.C. Laws & Regulations Database, Taiwan Code of Civil Procedure, <http://law.moj.gov.tw/Eng/LawClass/LawAll.aspx?PCode=B0010001> (last visited Jun. 18, 2013).

⁴⁶ Ku-Chu Teng, Risk Management 25 (2005).

⁴⁷ *Id.* at 6.

on the other. Therefore, an understanding of the legal risks is crucial not only for individuals, but also for businesses, especially with regard to legal risks resulting from trade secrets that are not only related to individuals' and businesses' trade secret rights but are also related to possible litigation.

One type of legal risk, “risk of conflict and dispute resolution” results from issues encountered in the process of litigation or arbitration, such as the uncertainty related to the existence of evidence, retention of adequate legal support, and the ability to persuade judges or arbitrators.⁴⁸ To employ skilled, professional legal counsel helps enterprises to manage such “procedural risks.”⁴⁹

As with the empirical evidence shown in Chapter 2, since disputes over trade secret misappropriations are commonly resolved in courts, enterprises that are owners of trade secrets need solid evidence to persuade judges that disputed “know-how” is protected as a trade secret, meeting three requirements in Article 2 of the *Trade Secrets Act*: “(1) It is not known to persons generally involved in the information of this type; 2) It has economic value, actual or potential, due to its secretive nature; and 3) Its owner has taken reasonable measures to maintain its secrecy.”⁵⁰ In particular, the third requirement is the usual reason that courts overrule disputed “know-how” as trade secrets, because enterprises did not manage their trade secrets well; thus, courts do not have the opportunity to protect their trade secrets through judgments.⁵¹

It goes without saying that enterprises should invest more in terms of human resources, since enterprises not only use experts in empirical legal studies to assist with an understanding of current court opinions for trade secret misappropriations and hire professional legal counsel whereby specialists may collaborate and provide comprehensive legal suggestions for enterprises when they encounter legal risks concerning potential trade secret misappropriations.

3.2.4 Enterprises should pay attention to trade secret management within their organization.

From the regression analyses conducted in Chapter 2, it is not difficult to find that appeals of trade secret misappropriation cases to higher courts does not grantee plaintiffs

⁴⁸ Chang-Fa Lo et al., *Management Manual of Legal Risks in Businesses* 4-5 (2001).

⁴⁹ *Id.*

⁵⁰ Article 2 of the Trade Secret Act regulates that “The term ‘trade secret’ as used in this Act shall mean any method, technique, process, formula, program, design, or other information that may be used in the course of production, sales, or operations, and also meet the following requirements: (1).It is not known to persons generally involved in the information of this type; (2).It has economic value, actual or potential, due to its secretive nature; and (3).Its owner has taken reasonable measures to maintain its secrecy.” *See* Ministry of Justice – The Working Group of the R.O.C. Laws & Regulations Database, Trade Secret Act, *supra* note 31.

⁵¹ In article “The analysis of the trade secret protection theory and cases in Taiwan” written by Professor Sheng-Chen Tseng and Wu-Chien Chen, they express that Taiwanese courts usually examine the requirement of trade secret –“taking reasonable measures to maintain its secrecy” in the first place and then examine the requirement of “it is not known to persons generally involved in the information of this type.” Finally, courts examine the requirement of “t has economic value, actual or potential, due to its secretive nature.” Therefore, current Taiwan judicial systems take more cares on “taking reasonable measures to maintain its secrecy” that is the concept of trade secret management than two other variables than other requirements. *See* Sheng-Chen Tseng & Wu-Chien Chen, *The Analysis of the Trade Secret Protection Theory and Cases in Taiwan*. 64(2) *The Law Monthly* 44, 54-57.

more trade secret protection, and could even deter the occurrence of potential trade secret case filings.

In the period from January 1, 2004 to June 30, 2008, the highest civil damages were dismissed or overruled by the higher courts, irrespective of the number of judges that decided a given case, and more than 60% of courts' judgments on civil damages of trade secret misappropriation for plaintiffs were NT\$0 (or no further judgments) irrespective of the year in which a given case was decided.

In the period from July 1, 2008 to June 30, 2013, the number of trade secret cases was not affected by the number of judges presiding and which year a given case was decided. Within the same period, civil damage awards in all 15 cases on trade secret misappropriation were NT\$0 (or even no further judgments), irrespective of the number of judges that decided a given case and which year a given case was decided.

In addition to the relationship between number of trade secret cases and number of judges on a given case, there is no strong statistical support for other variables that are statistically significant among them. In particular, the variables used in the empirical research for this article focus on civil trade secret misappropriation litigations. Therefore, plaintiffs (especially enterprises) seem hard-pressed to recover justice regarding their trade secret rights through the current Taiwan judicial system.

Of course, legislators have attempted to add higher penalties or fines for criminal liability under the new 2013 *Trade Secret Act* in order to deter trade secret misappropriations.⁵² However, the key problems here are that the laws are applied by judges who supposedly conduct "free evaluation of evidence through inner conviction," so higher penalties or fines of criminal liabilities or civil damage compensations may or may not be used in their final judgments, especially since there currently are no uniform standards of civil damage compensation or criminal liability for trade secret misappropriation.

In addition to continuous appeals of trade secret misappropriation cases to higher courts, enterprises must seek alternative ways to reduce the costs of litigation, such as better trade secret management, or taking reasonable measures to maintain secrecy of trade secrets. There are standards related to such measures adopted in current courts' judgments: 1) Employees and any persons who access trade secrets should sign non-disclosure agreements or conditions;⁵³ 2) Enterprises should establish non-disclosure mechanisms and maintain and oversee them, informing employee in writing, such as firewalls to prevent hackers from invade their internal internet, and establishing or managing a safe internet environment;⁵⁴ 3) Important zones for enterprises should be controlled and overseen, including establishing blocks or restrictions on access to factories or production lines, in order to prevent others from viewing manufacturing processes, stealing trade secrets or other proprietary information;⁵⁵ 4) Documents involved with trade secrets should be marked confidential levels (such as "Top Secret," "Secret," and "Restricted" non-disclosure levels for

⁵² See the purposes of enacting Article 13-1 in the 2013 Trade Secrets Act. See Library of the Legislative Yuan, Law Retrieve Systems, Trade Secret Act: History, *supra* note 40.

⁵³ Chou-Fu Lin, Cases of Trade Secrets and Non-Competition 18 (2012).

⁵⁴ *Id.*

⁵⁵ Lin, *supra* note 53, at 18.

archives) in order to enhance employee attention to the need to safeguard them. Lending or returning documents should be registered, or signed in or out, and there should be strict requirements for lending important materials. Moreover, photocopying important materials should be restricted and tracked;⁵⁶ 5) Research and development (R&D) employees should be asked to write work diaries to prove their independent invention processes and distinguish trade secrets owned by enterprises and general knowledge skills owned by employee;⁵⁷ 6) “Exit interview” systems should be established for resigning employees, to remind employees of their obligations to protect secrets after they resign;⁵⁸ 7) Enterprises should agree on rational “non-competition clauses” with employee in order to prevent resigned employees from using information or work experiences obtained from their former employer in competition with former employer.⁵⁹

According to the empirical studies described in Chapter 2 and the above arguments, these standards of trade secret management seem to be the most important among the three other recommendations made herein. From January 1, 2004 to June 30, 2013, there were more trade secret misappropriation cases where civil damage compensation was NT\$0 (or even no further judgments), irrespective of the number of judges that decided a given case and which year a given case was decided. Thus, enterprises would be faced with the extra costs of litigation, if they insisted on continuously appealing trade secret misappropriation cases to higher courts.⁶⁰ Instead, enterprises should pay attention to trade secret management within their organization. They should also invest more in terms of human resources (e.g., lawyers or legal counsel) who are expert in trade secret practice.

4. CONCLUSIONS

After the establishment of the Taiwan Intellectual Property Court on July 1, 2008, intellectual property trials were changed from “Binary Systems of Public and Private Litigation” to a system of uniform, active, and immediate resolution. Of course, trade secret trials would benefit from the establishment of the Intellectual Property Court. Moreover, statutes in the 2013 *Trade Secrets Act* were added to put criminal liabilities into place, with Article 13-1 of the *Trade Secrets Act* explaining that statutes of the *Criminal Code* are not sufficient for trade secret protection (in other words, they do not deter trade secret misappropriation). For these reasons, we asked in our research question “Whether or not the number of trade secret cases correlate to amounts of civil damage compensation in Taiwanese courts between 2004 and 2013?”

Chapter 2 explains our regression analyses and descriptive statistics in order to examine this research question. To conclude these quantitative studies, the outcomes of

⁵⁶ *Id.*

⁵⁷ Lin, *supra* note 53, at 19.

⁵⁸ *Id.*

⁵⁹ Lin, *supra* note 53, at 19.

⁶⁰ These arguments can be proven by the outcomes of regression analyses and descriptive statistics conducted in Chapter 2. Appealing trade secret misappropriation cases to higher courts could not grantee plaintiffs to have more trade secret protections. Moreover, the highest civil damages made by district courts would be dismissed or overruled by the higher courts no matter numbers of judges made a given case decision, and even a lot of courts’ judgments on civil damages of trade secret misappropriation for plaintiffs were NT\$0 or no further judgments no matter no matter how many judges made a given case decision and which year that a given case decision made. See Chapter 2 of this article.

regression analyses indicate that the dependent variables “Number of Trade Secret Cases Filed in the Year of a Given Case” and “Number of Trade Secret Cases Awarded Civil Damages in the Year of a Given Case” are both statistically significant with respect to the independent variable “Whether a Given Judgment was Decided in District, High, or Supreme Court,” but are not statistically significant with respect to the independent variables “Whether a Given Judgment is an Appealed Case from a Lower Court” and “Number of Judges Presiding Over a Given Case” in the period from January 1, 2004, to June 30, 2008. Within the same period, the other dependent variable “Civil Damages of a Given Judgment” is not significantly related to the independent variables “Number of Judges Presiding Over a Given Case,” or “Whether a Given Judgment is an Appealed Case from a Lower Court.”

In the period from July 1, 2008, to June 30, 2013, the dependent variables “Number of Trade Secret Cases Filed in the Year of a Given Case” and “Number of Trade Secret Cases Awarded Civil Damages in the Year of a Given Case” have no relation to the independent variables “Number of Judges Presiding Over a Given Case” and “Whether a Given Judgment was Decided in Supreme Court or in Intellectual Property Court.” In the same period, more trade secret misappropriation cases on civil damage compensations were NT\$0 (or even no further judgments), regardless of the number of judges that decided a given case or which year a given case was decided.

Given these findings, the answer to the research question is that the number of trade secret cases is not correlated to the amounts of civil damage compensation in Taiwanese courts between 2004 and 2013. This article proposes four recommendations regarding trade secret misappropriation in Taiwan from the perspectives of “substantive law,” “procedural law,” and “enterprise roles.” First, the effects of adding criminal liability in the new 2013 *Trade Secrets Act* to deter trade secret misappropriation are not clear because there is no statistical support for the relationship between number of trade secret cases and amounts of civil damage compensation. Second, to create uniformity for the standards of civil damage compensation or criminal liability regarding trade secret misappropriation is important, since without them, plaintiffs cannot predict how judges will “overrule,” “reverse,” or even “adjudicate” given trade secret misappropriation cases. Third, enterprises can avoid “risk of conflict and dispute resolution” concerning potential trade secret misappropriations, by hiring skilled, professional legal counsel to manage such risk on their behalf, in order to reduce (or eliminate) the cost of litigation over trade secret misappropriation. Fourth, enterprises should pay attention to internal trade secret management, as establishing standards of trade secret management are more beneficial to continued appeals of trade secret misappropriation cases to higher courts. From the perspective of “enterprise roles,” the third and the fourth recommendations proposed by this article aim for the same goal of decreasing cost of litigation by means of investing more money in human resources (e.g., lawyers or legal counsel) who are expert in trade secret practice.

5. APPENDIX

Appendix Table 1.1

	whethe~i	whethe~d	whethe~r	howman~s	whethe~enumber~c	yearof~s	number~v
whethe ragi~i	1.0000						

whethe ragi~d	-0.2865* 1.0000							
whethe ragi~r	-0.6415* 0.2627* 1.0000							
howma nyjud~ s	0.7540* -0.2688* -0.8584* 1.0000							
whethe ron~e	0.4675* -0.2071 -0.3780* 0.6201* 1.0000							
numbe rsoft~c	-0.3195* 0.1121 0.1900 -0.2105 -0.1258 1.0000							
yearoft het~s	0.3269* 0.0172 -0.2423* 0.2658* 0.1142 -0.5451* 1.0000							
numbe rsoftc~v	-0.2598* 0.1060 0.1119 -0.1313 -0.0594 0.9410* -0.5555* 1.0000							

Appendix Table 1.3

Table 1.3 Data concerning the trade secret cases in Taiwan from January 1, 2004~June 30, 2008							
Dependent and Independent Variables	Civil Damages of a Given Judgment (10,000 NT\$)	Number of Judges Presiding Over Given Case	Number of Trade Secret Cases Occurring in the Year of a Given Case	Number of Trade Secret Cases Awarded Civil Damages in the Year of a Given Case	Whether a Given Judgment was Decided in District, High, or Supreme Court?	Whether a Given Judgment is an Appealed Case from a Lower Court?	Year of a Given Trade Secret Case
Case No. of the Judgments							
2004 Tai Shang Zi No. 560	N/A	5	17	8	3	0	2004
2006 Tai Shang Zi No.1043	N/A	5	22	4	3	0	2006
2007 Tai Shang Zi No. 2346	N/A	5	29	7	3	0	2007
2007 Tai Shang Zi No.1651	N/A	5	29	7	3	0	2007
2007 Lou Shang Zi No.12	500	3	29	7	3	0	2007
2007 Zhung Shang Gung Yi Zi No.145	0	3	14	7	3	0	2007

2007 Shang Gung Yi Zi No.193	0	3	14	7	2	0	2007
2007 Zhung Shang Zi No. 294	1712.7	3	14	7	2	0	2007
2007 Shang Zi No.74	5.92	3	14	7	2	0	2007
2008 Tai Shang Zi No. 1214	N/A	5	14	0	3	0	2008
2008 Tai Shang Zi No. 968	N/A	5	14	0	3	0	2008
2005 Zhung Shang Zi No. 481	532	3	29	13	2	0	2005
2007 Lou Shang Yi Zi No. 24	0	3	29	7	2	0	2007
2006 Lou Su Zi No. 141	0	1	29	4	2	0	2006
2005 Chung Shang Zi No. 215	120	3	29	13	2	0	2005
2004 Chung Su Zi No. 112	0	1	17	8	2	0	2004
2005 Shang Zi No. 124	0	3	29	13	2	0	2005
2006 Shang Yi Zi No. 548	0	3	29	4	2	0	2006
2004 Su Zi No. 836	53.78	1	13	8	2	0	2004
2006 Zhung Lou Shang Zi No. 23	0	3	13	4	2	0	2004
2005 Lou Su Zi No.205	0	1	22	13	2	0	2004
2005 Shang Zi No. 154	3.4	3	13	13	1	0	2004
2005 Lou Shang Yi Zi No. 98	0	3	22	13	1	0	2005
2005 Shang Zi No. 955	100	3	22	13	1	0	2005
2005 Lou Shang Zi No. 40	40	3	22	13	1	0	2005
2005 Chung Lou Su Zi No. 1	40	1	13	13	1	0	2005
2004 Lou	0	3	13	8	1	0	2004

Shang Yi Zi No. 40							
2004 Shang Yi Zi No. 626	20	3	13	8	1	0	2004
2008 Su Zi No. 216	0	1	14	8	1	0	2008
2004 Su Zi No. 2370	35	1	13	7	1	0	2004
2007 Su Zi No. 450	100	3	14	7	1	0	2007
2007 Chung Su Zi No. 16	20	1	14	7	1	0	2007
2005 Chung Su Zi No. 210	0	1	29	13	1	0	2005
2004 Ze Zi No. 6	0	1	22	8	1	0	2004
2006 Su Zi No. 369	0	1	22	4	1	0	2006
2007 Lou Su Zi No. 40	8.1	1	29	7	1	0	2007
2006 Su Zi No. 2125	0	1	29	4	1	0	2006
2005 Su Zi No. 1735	0	1	29	13	1	0	2005
2006 Su Zi No. 1254	0	1	22	4	1	0	2006
2005 Chung Su Zi No. 271	1500	1	22	13	1	0	2005
2006 Su Zi No. 1215	0	1	29	4	1	0	2006
2004 Lou Zan Shang Zi No. 20	3.5	3	13	8	1	0	2004
2004 Lou Su Zi No. 45	0	1	13	8	1	0	2004
2004 Su Zi No. 517	30	1	17	8	1	0	2004
2005 Chung Ze Zi No. 3	0	1	22	13	1	0	2005
2007 Lou Su Zi No. 7	0	1	29	7	1	0	2007
2006 Su Zi No. 449	0	1	29	4	1	0	2006
2004 Zu Ze Zi No. 131	0	1	17	8	1	0	2004
2005 Su Zi No. 1377	0	1	29	13	1	0	2005
2006 Su Zi No. 614	0	1	29	4	1	0	2006
2005 Su Zi No. 565	0	1	22	13	1	0	2006

2004 Chung Su Zi No. 7	0	1	17	8	1	0	2004
2005 Chung Su Zi No. 130	0	1	29	13	1	0	2007
2005 Ze Yi Zi No. 46	192.9	1	29	13	1	0	2007
2006 Lou Su Zi No. 51	20	1	29	4	1	0	2007
2006 Lou Su Zi No. 22	122.4	1	22	4	1	0	2006
2004 Chung Su Zi. 203	73.1	1	13	8	1	0	2004
2004 Su Zi No. 116	143.4	1	17	8	1	0	2004
2004 Lou Su Zi No. 48	0	1	17	8	1	0	2004
2006 Su Zi No. 317	138.8	1	29	4	1	0	2006
2005 Su Gung Yi Zi No. 2	91	3	29	13	1	0	2005
2005 Su Zi No. 1039	75.8	1	29	13	1	0	2005
2008 Lou Su Zi No. 12	0	1	14	0	1	1	2008
2007 Lou Su Zi No. 188	0	1	14	7	1	1	2007
2007 Lou Su Zi No. 150	0	1	14	7	1	1	2007
2006 Chung Su Zi No. 528	377	1	29	4	1	1	2006
2007 Lou Su Zi No. 35	0	1	29	7	1	1	2007
2005 Ze Zi No. 59	9959.8	1	29	13	1	1	2005
2006 Su Zi No. 11644	0	1	29	4	1	1	2006
2006 Lou Su Zi No. 53	0	1	22	4	1	1	2006
2005 Su Zi No. 4273	500	1	22	13	1	1	2005
2004 Ze Zi No. 5	0	1	22	8	1	1	2004
2006 Lou Su Zi No. 80	0	1	22	4	1	1	2006
2005 Lou Zan Shang Zi No. 23	19.3	3	22	13	1	1	2005
2005 Chung Su Zi No. 1235	0	1	22	13	1	1	2005
2005 Lou Su	300	1	22	13	1	1	2005

Zi No. 158							
2005 Lou Su Zi No. 165	0	1	22	13	1	1	2005
2005 Lou Su Zi No. 12	0	1	13	13	1	1	2005
2005 Ze Zi No. 60	0	1	13	13	1	1	2005
2005 Ze Zi No. 61	0	1	13	13	1	1	2005
2005 Lou Su Zi No. 21	0	1	13	13	1	1	2005
2004 Chung Su Zi No. 49	0	1	13	8	1	1	2004
2007 Lou Shang Zi No. 79	33.6	3	14	8	1	1	2007
2004 Shang Zi No. 299	292	3	17	8	2	1	2004

Note: From discussions of the data related to “Civil Damages of a Given Judgment (10,000 NT\$),” the symbol “N/A” means that higher courts dismissed or reversed lower court judgments, and no further judgments regarding civil damage compensations were made. From discussions of the data related to “Whether a Given Judgment was Decided in District, High, or Supreme Court,” the symbol “1” means that a given judgment was decided in District Court; the symbol “2” indicates that a given judgment was decided in the Taiwan High Court or its branches; and the symbol “3” means that a given judgment was decided in the Supreme Court. From discussions of the data related to “Whether a Given Judgment is an Appealed Case from a Lower Court,” the symbol “0” means that a given judgment is not an appealed case from a lower court; and the symbol “1” indicates that a given judgment is an appealed case from a lower court.

Appendix Table 1.4

Dependent and Independent Variables	Civil Damages of a Given Judgment (10,000 NT\$)	Number of Judges Presiding Over Given Case	Number of Trade Secret Cases Filed in the Year of a Given Case	Number of Trade Secret Cases Awarded Civil Damages in the Year of a Given Case	Whether a Given Judgment was Decided in Supreme Court or in Intellectual Property Court?	Whether a Given Judgment is an Appealed Case from a Lower Court?	Year of a Given Trade Secret Case

Case No. of the Judgments							
2010 Min Zu Su Zi No. 77	0	1	3	0	4	0	2010
2011 Min Shang Gung Yi Zi No. 2	0	3	1	0	4	1	2011
2009 Min Zu Shang Gung Yi Zi No. 2	0	3	4	0	4	1	2009
2009 Min Zu Shang Zi No. 23	0	3	4	0	4	1	2009
2009 Min Zu Su Zi No. 9	0	1	2	0	4	0	2009
2009 Min San Shang Zi No. 16	0	3	2	0	4	1	2009
2009 Min Zu Shang Zi No. 26	0	3	4	0	4	1	2009
2013 Tai Shang Zi No. 837	N/A	5	3	0	3	1	2013
2011 Tai Shang Zi No. 876	N/A	5	2	0	3	1	2011
2010 Tai Shang Zi No. 2425	N/A	5	4	0	3	1	2010
2009 Tai Shang Zi No. 1687	N/A	5	2	0	3	1	2009
2008 Tai Shang Zi No. 2530	N/A	5	3	0	3	1	2008
2008 Tai Shang Zi No. 2237	N/A	5	3	0	3	1	2008
2008 Tai Shang Zi No. 2079	N/A	5	3	0	3	1	2008
2013 Tai Shang Zi No. 235	N/A	5	3	0	3	1	2013

Note: From discussions of the data related to “Civil Damages of a Given Judgment (10,000 NT\$),” the symbol “N/A” means that higher courts dismissed or reversed lower courts’ judgments, and no further judgments regarding civil damage compensations were made. From discussions of the data related to “Whether a Given Judgment was Decided in Supreme Court or in Intellectual Property Court,” the symbol “3” means that a given judgment was decided in the Supreme Court; and the symbol “4” indicates that a given judgment was decided in Intellectual Property Court. From discussions of the data related to “Whether a Given Judgment is an Appealed Case from a Lower Court,” the symbol “0” means that a given judgment is not an appealed case from a lower court; and the symbol “1” indicates that a given judgment is an appealed case from a lower court.

Appendix Table 2.1

	(1) numbersoftradesecc etsdisputesocc
whetheragivenj udgmentwasma deindi	-3.827* (-2.26)
whetheragivenj udgmentisanape aled	0.409 (0.24)
howmanyjudge smadeagivencas edecis	0.400 (0.46)
_cons	24.90*** (13.23)
<i>N</i>	84

t statistics in parentheses
* $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$

Appendix Table 2.2

	(1) numbersofcasejudg mentsawardedciv
whetheragivenj udgmentwasma deindi	-2.174* (-2.21)
whetheragivenj udgmentisanape aled	0.381 (0.39)
howmanyjudge	0.483

smadeagivencas edecis	(0.95)
_cons	10.32 *** (9.44)
<hr/>	
<i>N</i>	84
<hr/>	
<i>t</i> statistics in parentheses	
* $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$	

Appendix Table 2.3

	(1)
	numbersoftradesecr etsdisputesocc
<hr/>	
whetheragivenj udgmentwasma deindi	3.525 (1.76)
whetheragivenj udgmentisanape aled	0 (.)
howmanyjudge smadeagivencas edecis	0.600 (0.86)
_cons	-10.70 (-1.14)
<hr/>	
<i>N</i>	15
<hr/>	
<i>t</i> statistics in parentheses	
* $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$	

Appendix Table 2.4

	(1)
	numbersofcasejudg mentsawardedciv
<hr/>	
whetheragivenj udgmentwasma deindi	0 (.)
whetheragivenj udgmentisanape aled	0 (.)
howmanyjudge smadeagivencas	0

edecis	(.)
_cons	0 (.)
<hr/>	
N	15

t statistics in parentheses
 * $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$

Appendix Table 2.5

	whethe~i	whethe~d	whethe~r	howman~s	whethe~e	number~c	yearof~s	number~v
whethe ragi~i	1.0000							
whethe ragi~d	-0.4193	1.0000						
whethe ragi~r	0.8912*	-0.5030	1.0000					
howma nyjud~ s	-0.9011*	0.7715*	-0.8648*	1.0000				
whethe rorn~e	-1.0000	0.4193	-0.8912*	0.9011*	1.0000			
numbe rsoft~c	0.5395*	-0.0428	0.3358	-0.3985	-0.5395*	1.0000		
yearoft het~s	-0.1817	0.0583	0.0109	0.1552	0.1817	-0.5285*	1.0000	
numbe rsofc~v	.*	.*	.*	.*	.*	.*	.*	.

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