

THE EXPECTATION OF IP DISPUTES DATABASE¹

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Introduction

Thailand has Copyright Act 1994 (as amended on Copyright Act 1974), and has the Royal Degree providing condition for the protection of international copyright, has a (new) Trade Mark Act 1991 (the first Trade Mark Act was enacted in 1961). The Trade Mark Act 1991 protects foreigner's trade mark or international trade mark in many ways, and has many advances of protections. And, Thailand also has Patent Act 1999 (as amended). All of Thailand's intellectual property Acts are amended and enacted pursuant to the international standard because Thailand is in most of the conventions and the agreements such as Paris convention, Berne convention, WTO, GATT, and TRIPS etc.

At present, Thailand has totally 7 Acts for intellectual property protection such as the Trade Secret, the Layout Design and Integrated Circuit, the Geographical Indication, the Plant Variety, and mentioned above.

In terms of the protection in IPR, a Central IP & IT Court established in 1997 as the specialized court in Thailand for the purpose of adjudicating intellectual property and international trade cases. The main reason for the establishment of the court is that intellectual property and international trade cases are different from ordinary criminal and civil cases and should be adjudicated by the judges who possess knowledge and full understanding in these fields. The Central IP&IT court is only one IP & IT Court in Southeast Asia, and probably the only one in the world.

Source of Laws and Interpretation

Not so long ago, IP Laws in Southeast Asia, even in Thailand, were just a new model. Like other developing countries, Thailand had no high technology for patents, no well-known literary works, no distinctive trademarks. The idea for IP protection was very uncommon for Thai people. In terms of the lawyers including judges, they had no legal minds to solve the dispute on this field. However, before setting up the Central IP&IT Court, the IP cases were brought to the ordinary civil court and criminal court. Judges had to find out the idea for the protection from text books from abroad (in case of the law is unclear or no laws specified). The Thai court took the idea of the foreign judgments to adapt with the matter of facts in the cases and took the rule or the idea from those to

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use in Thai court. Somehow, the problems of the source of laws and the interpretation were not appeared at that time. However, the problem is that it is hard to access to the source of laws and the source of the foreign judgments.

The Model of IP Laws in Southeast Asia Countries.

The characteristics of IP Laws is always modernized, and developed continuously. The model of IP laws throughout the world usually are not different very much. For example:

Somehow, the judgments of any country can be used as a guideline for the disputes occurring in another country. The idea of interpretation of laws can be borrowed to adapt for the same environment in another country as well.

Actually, most of the countries throughout the world have the same core ideas of IP laws. For example; the Japan Patent Law (Law No.121 of April 13, lastly as amended into force: July 1, 2003) has details of patentable and unpatentable subject matter, patentability requirements, filing requirements. Those of details are the same as the laws of the South Korea, Malaysia, Thailand, Philippines and Indonesia etc.² It would be very useful if the judgments or any rule set up by the precedent cases in one country can be used to adapt for cases or to study for scholars in another country.

Globalization Means Diffusion of Intellectual Property Laws.

Today Intellectual Property Laws in each country are getting more complicated than ever. However, all of the countries have the same international standard required by TRIPS in particular. Therefore, not only the laws in each country should not be familiar to other countries, but also the judgment of every country or the interpretation of laws made by judges would not be different too much.

In terms of protection of IPR, in the view of IP owners, the protection is not simple. Unlike real property, intellectual property is often intangible. It can be moved freely across borders without detection. Sometimes the infringement will be in a person's head, on a piece of paper, through data transmission on the Internet, or embedded in a product etc. Thus, to make its intellectual property secure and not freely exploitable, the lawyers, scholars, and judges must have developments of ideas and judgments all around.

In this age of globalization, lawyers, public prosecutor and judges require access to the database of judgments and laws of another country including IP laws. To prosper, every lawyer wants to know all developments occurring outside their own countries.

Case Statistic of the Central IP&IT Court

Since the court established by the Acts in 1996 and hearing has formally begun in 1997. The Central IP & IT Court has a lot of intellectual property and international trade cases, as follows;

In 1997, 151 intellectual property cases.

In 1998, 1,747 intellectual property cases.

In 1999, 1,970 intellectual property cases.

² Arthur Wineburg, editor, Intellectual Property Protection in Asia, Lexis Nexis, Matthew Bender, Second Edition, Release No. 2002, July 2002.

In 2000, 2,458 intellectual property cases.

In 2001, 3,344 intellectual property cases.

In 2002, 3,739 intellectual property cases.

In 2003, 4,171 intellectual property cases.

Thailand has a lot of judgments on IP disputes every year. In the Central IP&IT Court, the court released the judgments for most of cases said above.

In the Supreme Court, the Supreme Court gave judgment around 150 cases a year.

Usefulness of IP disputes Database

In practice, if there can be the IP disputes Database among countries, it would be very useful as follows;

1. It can be a reflection of the ideas if judges or the courts of those countries to get the ideas to develop in another countries.
2. The complete disputes database will become the source of laws and the source of international standard for IP protection.
3. Those databases can demonstrate an understanding of IP idea of laws. Further more, it can be used in the way of training, communication, cooperation, and commitment in international forum in the future.
4. To be sure, we can be specific about strength on IPR protection in the same standard throughout countries.
5. To be familiar with the cultures and environments for the protection on IPR and the infringement in the concerning countries.
6. To develop a practical dispute resolution to recognize an excellent judgment of other countries to be enforced in another country.
7. To bring us all the improved quality of the interpretation on IP laws field.
8. To eradicate problems of unharmonization on IPR protection among countries.
9. To be able to contribute database to the public to be used in the way they want.
10. To be benefit to students for the purposes of study and research.

Conclusion

The Database of Judgments can be fully useful for many ways mentioned above. The more databases are completed, the more benefits will be.

To express exactly how the IPR protection works as the same standard throughout countries, databases of IP disputes resolutions, the particular judgments are very necessary. At present, we should share our information and knowledge to others in order to be together in peaceful societies throughout the world.

The idea of harmonization on IPR protection could not be fulfilled if the databases of the judgment on IP disputes are difficult to be accessed.

We have no doubt about the borderless regime in Intellectual Property. What's wrong in the world when someone can get different results of judgment in the same act, where the judgment issued from two countries. While those countries have IP laws in the same details.

The public, in every country, needs to learn the lessons of others. If no good database is available, where can they get experiences? Like someone said “the best way to learn is to learn from others”.

With no reluctance would be, the big challenge is to get it done on the IP Disputes Database.