



2nd National Conference

RECENT DEVELOPMENTS IN INTELLECTUAL PROPERTY :

THE IMPACT ON DEVELOPING ECONOMIES

26 & 27 March 2002

**Park Plaza International Hotel
Kuala Lumpur**

Sixth Session

FORUM AND PANEL DISCUSSION

TOPIC :

HOW SHOULD DEVELOPING ECONOMIES ADDRESS THE IMPACT OF THESE CURRENT ISSUES

Personal Reflections On Impressions From The Floor

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Jointly Organised by :

IP DIVISION, MINISTRY OF
DOMESTIC TRADE & CONSUMER
AFFAIRS, MALAYSIA

MALAYSIAN INTELLECTUAL
PROPERTY ASSOCIATION

ASIAN PATENT ATTORNEYS
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Sixth Session

HOW SHOULD DEVELOPING ECONOMIES ADDRESS THE IMPACT OF THESE CURRENT ISSUES

SESSION CHAIRMAN :

YA Justice Dato' Gopal Sri Ram – Judge, Court of Appeal, Malaysia

Personal Reflections On Impressions From The Floor

By Corbett Haselgrove-Spurin.*

Introduction.

Mr. T. Kuhanandan has kindly invited me to act as a delegate representative. Since I can only speak for myself, having had little opportunity to gather an accurate picture of the views of other delegates, I would rather entitle this short presentation as “Personal Reflections on Impressions from the Floor.” It has been a pleasure to attend this Conference in Kuala Lumpur which has contributed considerably to my knowledge and understanding of the current state of development and practice of Intellectual Property in South East Asia, which will no doubt prove to be invaluable to me, both as a legal academic and as an Alternative Dispute Resolution practitioner.

Allow me first to introduce myself. I am a senior lecturer in law at the University of Glamorgan in the UK, specialising in Global Dispute Resolution in Construction Law, Import, Export and Maritime Law and Scheme Leader of the LLM in Commercial Dispute Resolution and Company Secretary and Director of Nationwide Academy for Dispute Resolution UK Ltd, franchisors to Nationwide Academy for Dispute Resolution Malaysia Sdn Bhd., an international service provider of Dispute Resolution Systems and Services and also of Nationwide Mediation Academy UK Ltd a training and accreditation organisation for adjudicators, arbitrators and mediators. NADR is actively involved in Intellectual Property Dispute resolution with panel members listed as WIPO mediators and arbitrators, Squaretrade mediators and, until its recent demise, as panel listed E-Resolution arbitrators.

Reflecting on the paper delivered by Tuan Idris Junid on Trademark and Geographical Indications, with particular reference to **s7 Trade Mark Act 2000**, whilst I may not be a wine directly covered by this provision, I am most certainly, like any good aged wine “Mature” having recently passed my bi-centenial anniversary. Furthermore, whilst I am proud to assert that as a Welshman born and bred and that consequently my GI is WALES, as with many other intellectual property issues, my pedigree is far from pure with trace elements of English, Irish and Franco-Corsican Mediterranean roots. In consequence, even if a wine, “CHS CWYMRU” might not be entitled to protection under **s3 Trade Mark Act 2000** because by virtue of **s7(2) Trade Mark Act 2000**, the GI could not be truly stated to be HOMONYMOUS. Thankfully, as long as advances in cloning techniques are not extended to human beings, and assuming that if they do, no one in their right mind would wish to clone your humble speaker, I should manage to remain unique and individual and have no real need to assert and protect Intellectual Property rights in the CHS brand.

General Overview of the Value of the concept of Intellectual Property Rights.

It is impossible to overstate the value and importance of Human Resources and Intellectual Property, though it does not necessarily follow that the concept of ownership of such rights can in all circumstances be viewed as an “inevitable and desirable good.” Nonetheless it is certainly true to say that in the modern commercial environment that “Knowledge = Power = Potential Wealth”, and that the ability to develop, exploit and protect ideas and concepts is crucial.

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In order to do so, the new wealth must be described. This however is difficult. Intellectual property has an elephantine quality. Readily recognised by all but less easily described and categorised. Intellectual property rights are highly susceptible to third party intervention. The abuse of the ideas and concepts owned by individuals and organisations is widespread. This is not just a legal problem and most certainly not a mere domestic legal problem for Malaysia. It is a problem that needs to be addressed by participation from many sectors, but the question is who can and will engage in addressing the problem, since there are no immediate financial returns for so doing. Action must be taken collectively for the common good without a view to profit. Few commercial organisations are willing or able to expend assets addressing the problem where it is not possible to demonstrate a tangible return for shareholders.

This International Conference, with speakers from Asia, Australia, India and Europe has highlighted many aspects of Intellectual Property. The proceedings have been both welcome and worthwhile and have made a valuable contribution to the global understanding of the practice of and the protection of intellectual property rights. I am confident that an analysis of the questionnaires completed by delegates at the end of the last session will provide valuable qualitative and quantitative data that will assist in developing future programs, but the following provides some immediate personal impressions of the individual sessions.

Address and Official opening.

It was a privilege to receive such an all embracing introduction to the topic of Intellectual Property from YB Tan Sri Dato' Hj Muhyiddin bin Hj Mohd Yassin, the Honourable Minister of Domestic Trade and Consumer Affairs. This comprehensive, wide ranging speech admirably placed the significance and importance of the ensuing proceedings into context and set the scene for all that was to follow.

International Treaties Governing IP – The Impact on Developing Economies.

Mr Nicholas Redfearn provided a valuable resource on the current state of affairs regarding the harmonisation of international intellectual property rights and above all the contribution made to this by TRIPS. It is a paper that delegates would be well advised to revisit and study in depth. This study was beautifully supported by example by Mr Jagit Singh Dira, who explained the opportunities available for all to profit from Intellectual Property rights in Malaysia, though I am not sure how well paid it is to be an "informer" or how attractive a proposition it is in reality.

Biotechnology Case Study : The Basmati Rice Case and Biotechnology and IP Protection.

Mr Pravin Anand not only provided a tour de force in terms of outlining the issues involved in protecting investments in biotechnology, but also succeeded in completely changing the way that I, and I suspect the entire audience, perceives the previously humble "Basmati Rice" grain which has now gained the status of a personal friend.

Dr Koshy Philip revisited TRIPS in the context of Biodiversity, Biotechnology and introduced the audience to the Intellectual Property Rights issues involved in genetic engineering in a manner that even the non-scientifically minded of us in the audience could understand.

The Issue of Compulsory Licensing in Patents for Pharmaceutical Industry and Anti-Counterfeiting and Compulsory Licensing in the Pharmaceutical Industry for Developing Countries – A potent weapon or an Emasculated Deterrent ?

An excellent duo of papers on the need for licensing and for effective policing of intellectual biotechnical property rights, most particularly to prevent the distribution of dangerous pirate medicines, were delivered by Mr Gerard Norris and Prof Lim Heng Gee. However, despite the importance of protecting rights in this area it is also clear that intellectual property rights must not be allowed to inhibit the development of new treatments. Nonetheless it is important that research and development costs are recoverable. Thus these competing needs require a fine balance to be struck by legislators as the intellectual property regime is developed and refined.

The Impact of Parallel Imports on Developing Economies – Should it be regulated or restricted ? The Economic, Social and Legal Issues.

Mrs Murgiana Haq examined in depth the development of the cross over between the intellectual property rights of manufactures of so called designer label products and the regime governing the extent to which the manufacturer can legally ensure that retailers abide by price maintenance schemes designed to situate such products at the prestige top end of the market. Mrs Haq poses more questions than answers regarding this complex area of law and left the audience with much to ponder. Image costs, but at what price ? The retail price of designer labels reflects advertising costs not production and distribution costs. Should the law be used to support this state of affairs which secures jobs for the advertising industry, not for those that make the goods, whilst pushing up the cost of living ?

IP Protection Developments in DIGITAL ERA and CYBER SPACE.

Mr Pravin Anand has the ability to engage and hold the attention of his audience, all the while dispensing valuable pearls of wisdom in a clear yet entertaining manner about a subject which could easily be rather dry. The great value of this presentation is that it highlighted problems related to the identification and delineation of the intellectual property “RIGHT” and most particularly as to who can possess that right ! This insight into Cyberspace Governance was most valuable and extremely enlightening.

IP Valuation and Asset Management

The valuation of intellectual property rights is as much a mysterious art as a science to many of us but Ms Shirley Kwok did much to demystify it for the benefit of delegates. From a personal perspective, this is a fascinating area with implications for the international insurance market and one that deserves much deeper study in the future.

Current Framework on Enforcement of IP Rights (Prosecution) Opportunities and Hurdles.

The stalwart efforts being made by the Malaysian authorities to stamp down on piracy were explained by Mr Jagjit Singh Sira. Malaysia has made a concerted effort to deal with the problem yet it is illuminating to note that even in cracking down on software piracy in the music industry, enforcement has as yet exposed merely the tip of the ice-burg. Intellectual property infringement outside the entertainment industry still awaits new initiatives which will no doubt come in due course.

Business Methods and Software Patent.

The concise insight provided by Mr. Yoshiaki Kameya into the way that Japanese Law approaches the protection of intellectual property rights in the software industry highlighted the fact that we are from establishing a universal intellectual property regime, but also showed that problems that are faced in developing an intellectual property rights protection system are universal.

Updates on Recent Developments in Malaysia on IP Laws.

Dr. Lim presented the admirable paper by Associate Professor Dr. Ida Madieda Bt Abdul Ghani Azmi on copyright developments, providing a useful insight into database issues, highlighting conflicts between protecting rewards for labour versus the rights to free speech and open competition. The audience was left to ponder the relationship between and the liability of compilers and copiers of the rights of individuals where data is inaccurate.

The relationship between Trademark and Geographical Indication and the recent developments under the Trade Mark Act 2000 was discussed by Tn. Idris bin Junid highlighting the way that Malaysia has accommodated TRIPS.

Mr.P.Kandiah ranged widely over recent developments related to Patent law outlining the significance of time factors and a knowledge of how to make a filing before discussing provisions for compulsory non delegable licences, pausing to comment on perceptions of public morality and licensing in the context of parallel trading in contrast to the anti-competitive concepts being developed within the European Union.

Conclusions

First, a caveat. This Conference caters for participants from all sectors. Care needs to be paid particularly to panellists with a legal background, to set out information in a digestible and understandable form for the benefit of non lawyers and above all not to assume as some speakers did that “you are all familiar with ... and know / understand” Comments from fellow delegates made it clear that this is not necessarily so.

This is only the 2nd Conference and perhaps there is still a need to cover basic concepts for new delegates. Perhaps MIPA could produce a booklet of fundamental guidelines for delegates so that in future panel speakers can target specialist areas. A degree of repetition as successive speakers cover the same basic ground work could be avoided, leaving more time for them to expand on specifics.

If nothing else came out of this Conference beyond the fact that it highlighted what whilst the significance of Intellectual Property Rights is important, rights must be balanced by responsibilities to society, then this Conference has been a great success. Yes it is true that rewards for endeavour must be protected, but it is also important to ensure that the free exchange of knowledge that leads to future beneficial developments is not inhibited.

However, it also became clear during the proceedings that a global harmonised approach to the enforcement of intellectual property rights, whilst highly desirable, remains as yet a distant dream. In the meantime Malaysia has to protect its own interests without gifting opportunities to less scrupulous countries. The Conference left this delegate confident that Malaysia is more than up for and fit for the job.

And finally ...

Dato' Gopal Sri Ram mused in summing up on the above ten or so minutes of ramblings about this conference that “now you all know why Wales has a mere Assembly, not full nationhood!” That might well be so, though one may be assured that the degree of personal influence over the matter that attached to your delegate representative was virtually nil. However, it might be remarked that there is no patent on democracy. The democratic credentials of the Welsh Assembly may well be limited at the present time, but out of acorns spring mighty oaks. The democratic DNA ensure that it will inevitably mature with time, though from a more sanguine perspective, let not the reader forget that the Welsh have actively participated in the full democratic process of England and Wales for many years since. Who wears the trousers is surely what really counts. With a goodly number of our past Prime Ministers hailing from the principality, the tail has often wagged the dog. For now the Scots have got the English Bull by the horns, but as long as there remain Welshmen can talk the hind leg off a donkey, the Welsh are assured a second wind.

Wales has long provided a hot bed for innovation both commercial and political. Intellectual Property Rights and their protection are no less significant for the Welsh than they are for Malaysians but equally, the right, opportunity and ability to adopt, adapt and develop old concepts into new, more fitting for our modern society is essential. The protection of intellectual property rights is vital but the protective regime must not become so straight jacketed and pro-rights orientated that it stifles the progress of society.

We all must both honour and respect our past whilst keeping a weather eye to the future. A fair reward for endeavour, not a monopoly for all time, is all that the innovator can hope for or expect from a balanced intellectual property rights protection regime. Devising such a global scheme is a challenge we all face and must meet if the global community is to live, work and prosper in harmony. Humanity demands nothing less. The key is to apply common sense – which sadly is not such a common commodity as one would hope. But then, this Conference has been a refreshing beacon of hope, so all is not lost ! Onwards and upwards let us go, I say.

Diolch Yn Fawr ! Terima Kasih !