

POLITICAL UNCERTAINTY AFFECTS IP OWNERS

by Areeya Ratanayu and Clemence Gautier

Ever since the military coup of 2006, Thailand has been subject to many disruptions. The Council for National Security dissolved the constitution and appointed an interim civilian government in which retired civil servants were responsible for the management of each ministry. The main aim of the council was to oust former Prime Minister Thaksin Shinawatra from power.

Compulsory Licensing

On November 29, 2006, Thailand's Ministry of Public Health (MoPH) announced its decision to force Merck & Co. to relinquish its patent and

intellectual property rights on efavirenz, an effective HIV/AIDS treatment known by its brand name Stocrin®, and to produce the drug itself through the Government Pharmaceutical Organization. This was in spite of the fact that Merck offers Stocrin® at no-profit pricing in Thailand, which has been one of the world's few middle-income countries receiving the drug at this price.

On January 29, 2007, the MoPH extended its policy to break the patent of another anti-HIV medication, Abbott's Kaletra®, and a cardiovascular drug, Sanofi-Aventis' Plavix®.



*Left: Areeya Ratanayu, Legal Consultant
Right: Clemence Gautier, Consultant
Intellectual Property Department*

The military regime relied upon a section of the Thai Patent Act (Section 51) which had never before been invoked. It argued that in a period of emergency, the government can produce patented drugs or drugs for "non-commercial use", under terms and conditions which the government itself unilaterally sets. Supporters of the recent compulsory licensing actions have argued that such licenses are often used internationally, even in

Continued on page 5

POLITICAL UNCERTAINTY *(from page 1)*

the US and EU. In reality, although this is the case for some forms of compulsory license, it is not true of government usage. Internationally, compulsory licenses are a judicial remedy in court cases involving breaches of laws or disputes between trading competitors. They are also

common among inventors of new technologies who may require the license of an existing technology to develop the new invention. Government use of compulsory licenses is seen as a more draconian action because it results in far greater losses for the patent owner. According to the government, negotiations with the pharmaceutical companies were

inconclusive and the only solution was to sign these three compulsory licenses. Its decision is linked to the fact that HIV and heart disease are the second and third biggest most common diseases in Thailand.

The major dispute between the MoPH and the pharmaceutical

Continued on page 6

POLITICAL UNCERTAINTY *(from page 4)*

companies is that the government intends to import cheaper generic forms of the drugs from Indian companies. The MoPH recently refused to consider Abbott Laboratories' proposal to reduce the price of Kaletra®, a proposal which the Brazilian government has accepted. The Thai government has set up a subcommittee on compulsory licensing to consider a group of around 30 drugs which may become subject to compulsory licenses.

The situation between the MoPH and the pharmaceutical companies remains unsettled.

Thai Relations with the US

The issue of the licenses may have had an impact on Thailand's relationship with the US government, despite US denial that this is the case. For many years, Thailand has been on the Watch List according to the 301 Report; this year it was reclassified to the Priority Watch List. On April 30, 2007, the Office of the United States Trade Representative (USTR) again included Thailand in its list of countries that do not do enough to respect

IP rights. In justifying this decision, the USTR criticized Thailand's lack of control over the sale of visual media, pointed to the piracy of books, DVDs, footwear, software, and clothing, and drew attention to the inadequate sentences of criminals. This action, however, has been viewed in many circles as a reaction to Thailand's announcement of compulsory licenses.

In reaction to this reclassification, the Thai government declared that it would do more to suppress violations of IP law. It is consulting government agencies, NGOs, and representatives of the private sector. The DIP is analyzing the relationship between anti-competition law and IP rights.

Computer-Related Crime

After many years of negotiations, the government finally introduced the Computer-Related Crime Act in July 2007 to counter cyber crimes. The adoption of this law touches on many controversies both in Thailand and internationally.

Supporters argue that the Act will have a positive impact on internet users, protecting online privacy and ensuring internet security. Because it creates a cyber-environment that is

more favorable to business, the Act also protects e-commerce and national security. The offenses covered by the Act include hacking, unlawfully accessing computers or network resources, and the unauthorized interception of e-mails or data with the intention of committing theft or harming others. Additionally, the Act permits law enforcement agencies to pursue international criminals. It authorizes police officers and government inspectors to seize computers on private property if they suspect that the computers contain pornography or evidence of criminal activity or cyber crime. The Act's opponents say that excessive control by the authorities will put the freedom and privacy of the individual at risk.

The Future

Beyond these events, foreigners who want to invest in Thailand await the end of the uncertain political situation. If the government maintains such incoherent and disjointed IP policies, Thailand may experience a decrease in investments from foreign companies. ♦