

Health and safety and IP must go hand in hand

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No one in their right mind would buy counterfeit medicines, chemicals, or car parts, yet there is a dark trade in these dangerous items in Asia _ and it is on the increase. A recent case in March, as reported by the Bangkok Post, is a clear example of what must be tackled: "Thailand's food chain and livestock industry faces a risk from imports of counterfeit glutaraldehyde, an organic compound used in disinfecting poultry and swine facilities" where up to 50% of the products found were fake.

Alarming reports are also coming from border areas with Cambodia, where the incidence of fake malaria drugs is skyrocketing. When consumers unknowingly use such fakes, malaria thrives.

To counter these trends, vigilance and suppression of counterfeit products among consumers, distribution channels, and government officials is now more important than ever.

Patent Protection: The authorities have a variety of legal grounds on which to prevent such trade. Key among these are intellectual property (IP) laws. In many cases, fake medicines and chemicals are transported unbranded out of China and into Vietnam, Cambodia and Thailand. This means that the laws preventing unauthorised use of trademarks cannot be relied on (as is usually the case when it comes to counterfeits of, say, designer handbags or clothing).

Authorities and rights holders must therefore look to patent law to try to enforce their rights to stop these dangerous goods from entering the market.

Patent rights cover the actual invention, such as the molecule or the process by which a pharmaceutical or chemical has been made. Such patents are granted by governments to the inventors on the basis that they improve the product or process over what has gone before it (referred to as "the prior art").

Of course, to be able to enforce these rights, a patent has to be accepted for registration by the relevant local patent office first. Yet many patent offices in Southeast Asia, Thailand included, face enormous delays in granting such patents. It can take more than 14 years to get such a patent in Thailand.

Given that the protection period is 20 years, this is a significant and unacceptable delay. The Thai Patent Office knows this is a problem and is investing time and money to improve its processes, including the introduction of Patent Examination Guidelines for its patent examiners.

Free Trade Talks: These examination delays _ and the health and safety implications for consumers _ are an issue that will surely be raised in the free trade agreement (FTA) talks that have recently begun between the European Union (EU) and Thailand. In terms of imported goods into Thailand, the EU stands third behind Japan and China, with these imports focusing heavily on machinery, transport equipment, pharmaceuticals, and medical equipment.

This existing large volume of trade has the potential to grow exponentially in the future, particularly with the increasingly free movement of goods, services, capital, and people in Asean from 2015 onward. Given the timing, this FTA could set Thailand up to be the major import hub for European goods and investment in Asean.

IP will feature prominently in the EU's agenda. Only with a secure IP system can foreign direct investment reach its full potential. It is no secret that Thailand is one of the nations, along with China, that has not had a perfect track record when it comes to IP protection and enforcement.

The Department of Intellectual Property (DIP) has shown a strong commitment to improve the situation _ for example, through the forthcoming Madrid Protocol accession enabling use of the international system of trademark registration, ex officio seizure of goods by the Customs Department, the growing number of raids by the DIP and police, and the increase in IP criminal matters being prosecuted at court.

But there remain several shortcomings in the IP system, and the EU may seek some commitments from Thailand to improve them. One of these areas is likely to be the process for granting patents for pharmaceuticals.

Quality Assurance for Medicines: Various NGOs have claimed that an FTA could have a negative effect on access to medicine in Thailand. In evaluating this claim, it is crucial to distinguish between the separate issues of patentability and access to medicine. We must also remember the crucial role that patent protection, along with other important IP rights, plays in preventing dangerous products from entering the market and the importance of empowering Customs officers and other officials to prevent distribution of such counterfeits.

Thai citizens need to be made aware that the patentability test actually ensures that only drugs that are genuinely new and inventive are awarded a monopoly. This complies with the global TRIPS (Trade Related Aspects of Intellectual Property Rights) regime and other IP treaties that Thailand has signed. This process actually improves the standard of healthcare by introducing better medicines for the Thai public. Companies that produce generally cheaper generic options are free to compete on products for which the patent has expired.

Pricing of drugs is always a debatable issue, but this is a matter of policy that may change according to the government's position. Remember that Thailand ranks 24th in the world in terms of GDP.

It is therefore by no means a poor nation or one that cannot afford to offer the best medicines to its citizens.

The issue of utmost importance is that Thailand puts in place rigorous patent protection and enforcement procedures, so that Thai citizens are assured that they have access to high-quality, genuine medicines.