

## Patent litigation in Thailand: Know your rights and duties

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Patent litigation is on the rise in Thailand as patent owners become increasingly vigilant and their competitors strive to take advantage of technical disclosures and publicly available advancements.

With such intense market competition nowadays, it is no surprise that most companies try hard to be more innovative, both in terms of process improvements and new product developments.

As a result, companies may suddenly find themselves in a dispute about whether certain acts of manufacturing, importing, using or selling of a product, or implementation of a process amount to an infringement of a previously registered and validly held patent in Thailand.

From the perspective of an original inventor and a patent owner, it is crucial to ensure that new inventions and improvements receive a careful review for patent registration. If a decision is made to file a patent application for such inventions, the patent application must be drafted to deliver as robust and as broad protection of the invention as possible.

However, while the patent application is pending, the applicant is not yet allowed to bring a lawsuit against an infringer based on the pending application. In other words, a patent must be granted in Thailand before the patent owner can commence a legal action against the infringer in court.

From the standpoint of a potential infringer, it is advisable to carefully search and analyse related patents filed or granted in Thailand prior to engaging in any commercial production, marketing and/or sale of a patented product or implementation of a patented process.

Assuming that there is a valid and enforceable patent in Thailand under which a dispute arises, all patent infringement actions in Thailand fall within the jurisdiction of the Thai Intellectual Property and International Trade Court (IP&IT Court). It has the authority not only to hear complaints relating to registered patents in Thailand, but also to grant other interim relief, including a preliminary injunction and an order for search and seizure of evidence of infringement (i.e., an Anton Piller order, so named for a famous 1976 case in England).

For a patent owner facing a potential infringement in Thailand, several enforcement options are available, ranging from informal enforcement measures to formal legal proceedings in court. Both criminal and civil infringement actions are available. Assuming that the infringer can be identified with certainty, the first recommended step is usually to send a formal letter notifying the violator of your patent rights, or a more strongly worded cease-and-desist letter.

Sending letters is a cheaper and less time-consuming avenue compared with launching a complaint with the IP&IT Court or the police authorities right away. It is quite possible that the alleged infringer(s) may not be aware that there is a valid patent in Thailand, and in some cases, they may agree to cooperate in order to avoid a costly and time-consuming litigation. Generally, these types of preliminary letters are sent by a patent attorney or a law firm representing the patent owner, or by the patent owner itself.

If the infringer does not reply or fails to discontinue the alleged infringing activity, more formal enforcement means may be employed, including a court order to seize evidence of infringement, a preliminary injunction, and, ultimately, a complaint to the IP&IT Court.

Once the lawsuit begins, the IP&IT Court will set the issues in dispute. All parties in the suit will be given an opportunity to present their witnesses and evidence to the court. A patent

infringement action generally takes from 18 to 36 months from the submission of the pleadings to the time of the first-instance judgement of the IP&IT Court, but it is possible that the trial may be protracted owing to the complexity of the patent and the amount of evidence to be presented.