



CORPORATE COUNSELLOR

IP linkage: Connecting agencies to speed patent approvals

Published: 14/04/2017 at 04:00 AM

Newspaper section: [Business](#)

Many people were surprised when Prime Minister Prayut Chan-o-cha revealed on Feb 24 that there were more than 12,000 patent applications awaiting decisions by the Thai Patent Office. Addressing what has become one of the world's longest patent backlogs, he said, had become an urgent matter.

Currently, Thai and foreign applicants are awaiting the announcement of a government order that is expected to introduce a modified examination process for qualifying patent applications. This is not the first time the prime minister has affirmed the government's policy to strengthen intellectual property (IP) protection and enforcement in Thailand.

Just last year, the Suppression of Intellectual Property Infringement Subcommittee was set up to resolve issues related to preventing IP infringement, reduce problems for IP rights holders, increase IP protection in accordance with international standards, and improve Thailand's image as an IP-friendly country -- a particularly important undertaking, as Thailand has been on the US Trade Representative's Priority Watch List for nine years for providing insufficient IP protection.

The agencies that are part of the subcommittee include the Food and Drug Administration (FDA) and 15 other government agencies. Their inclusion is a clear indication that the government has recognised the importance of links between intergovernment agencies whose work touches on IP. The next agency to be added should be the Agriculture Ministry, in order to ensure that agricultural inputs, animal health and new plant variations are adequately protected.

Intellectual property linkage refers to connecting an IP office, through open communication lines and complementary processes, to other government agencies that work on IP. This generally includes agencies tasked with regulating food, drugs and agricultural products, in order to ensure not only proper communication between the officials of both agencies, but also that each agency's regulations are in line with one another, and they do not promulgate conflicting requirements. IP linkage is also useful in suppressing IP infringement, especially when health regulators work closely with IP offices.

On March 8, the government held a meeting to discuss its plan to clear the longstanding patent backlog. Participants included the FDA, the Department of Intellectual Property (DIP), the National Science and Technology Development Agency (NSTDA), the Pharmaceutical Research and Manufacturers Association (PRMA), the Intellectual Property Association of Thailand (IPAT), Free Trade Area Watch (FTA Watch), and the Thai Pharmaceutical Manufacturers Association (TPMA). The broad participation was a clear sign of the government's intention to connect various interested parties in order to resolve the issue.

There are many examples of IP linkage around the world. For instance, the National Intellectual Property Rights Coordination Center (IPR Center) in the United States is composed of 23 partner agencies, of which 19 are federal agencies and four are foreign agencies (Interpol, Europol, and the Canadian and Mexican governments). The IPR Center is structured as a cohesive task force, in order to allow resources and skills to be pooled and leveraged, and to foster the sharing of information. A similar body has been created in the Philippines.

There is also a patent linkage system in the US. When filing a new drug application with the US FDA, an applicant must list any patents that cover the drug. The FDA will take these existing patents into consideration when reviewing the application, and if a patent exists, marketing approval will not be granted to a generic applicant unless and until the patent expires or is found invalid.

In the European Union, the EU Agencies Network comprises various agencies across member states, including the EU Intellectual Property Office. It promotes the sharing of information and expertise. While the EU does not have a patent linkage system in place, generic drugs are still not allowed to be placed on the market until an existing patent expires.

Thailand can look to Singapore, its regional neighbour, for guidance on moving forward. After entering into a free trade agreement with the US, Singapore introduced patent linkage as one of the requirements in an application for marketing approval. This system allows patent owners to monitor for potential infringement before generic drugs are launched by providing a framework that warns a patent owner any time a competitor's application is submitted to market the same drug.

Thailand has begun to provide linkage between the DIP and the FDA, but the system is in a very undeveloped stage. Since 2008, the FDA has required that all applicants for a new drug fill out a form listing all of their existing patents. While this is a step in the right direction, this type of mandatory disclosure should be enforced on applications for generic drugs, as infringement is most likely to occur with such drugs.

The Thai government's recent efforts to connect the various ministries and agencies whose work touches on IP is an important step in addressing many of the issues long identified as obstacles to further encouragement of Thai innovation and value creation.

This article was written by Alan Adcock, partner and deputy director in the intellectual property and regulatory affairs group at Tilleke & Gibbins. Please send comments to Andrew Stoutley at andrew.s@tilleke.com

About the author

Writer: Tilleke & Gibbins