

ABSTRACT

Thesis Title : Legal Problems Regarding Compensation for Copyright,
Patent and Trademark Infringement

Student's Name : Mr. Sareebut Wongsason

Degree Sought : Master of Laws

Academic Year : 2000

Advisory Committee :

- | | |
|---|-------------|
| 1. Asst. Prof. Soontorn Lorsirirattanakul | Chairperson |
| 2. Assoc. Prof. Dr. Jakkrit Kuanpoth | |

Compensation for injury is envisaged to be an effective measure for the enforcement of the intellectual property rights. The courts are authorized to order payment of damages against infringer. The objective in implementing the enforcement procedure is to prevent infringements of intellectual property rights and for the protection of legitimate interests of the right holders. This is because the right holders have to devote a lot of efforts and time in creating and developing the work or building up the reputation of their products.

The aim of the study is to explore rules and procedures laid down for determining damage caused by intellectual property infringement. The law of other countries will also be studied in comparison with the current intellectual property laws in Thailand. This is done in order to find out whether or not the principles enshrined under Thailand's current laws are appropriate in adequately and equitably protecting the interests of the right holders.

It is found that principles embodied in legislations of the countries that adhere to the Common law and the Civil law, have had a significant influence on Thailand's law and the legal paradigm and the rules adopted by foreign courts have also been accepted by the Thai judiciary.

As for trademark infringement, the principle enshrined under the Civil and Commercial Code is applied for the determination of compensation. According to Section 438 of the Civil and Commercial Code, the Court shall determine the manner and the extent of compensation according to the circumstances and the gravity of the wrongful act.

Regarding the infringement of copyright and patent, the determination of compensation has to be done in accordance with the principle established under Section 64 of the Copyright Act B.E. 2537 and Section 77 ter of the Patent Act B.E. 2522. Both copyright and patent laws have adopted the same principle for the determination of damages. If there is an infringement of a patent or copyright, the Court is empowered to order the infringer to pay damages to the right holder of an amount the Court finds appropriate by taking into account the severity of the damage as well as the lost benefits and expenses required to enforce the rights.

Considering the basic principles under Thai laws, there is no doubt that rules and procedures laid down for determining damage caused by intellectual property infringement are inappropriate because they confer unlimited authority on the judiciary. In this regard, it may be worthwhile suggesting that the present laws should be reformed in order to limit the discretionary consideration of the court. The reformed legislation must lay down an acceptable standard. The new regulation should also

clarify the uncertainty in the current substantive and procedural provisions. Since the number of infringement is increasing, it is imperative that standards of compensation should equally reflect a uniform approach.