

## ABSTRACT

Thesis Title : Legal Problems Regarding the Exhaustion Doctrine of  
Intellectual Property Rights

Student's Name : Mr. Nandana Indananda

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Advisory Committee :

1. Asst. Prof. Dr.Jakkrit Kaunpoth Chairperson

2. Assoc. Prof. Dr. Kalaya Tansiri

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Intellectual Property Right (IPRs) is a legal right which may be asserted in respect of the product of human creativity. The right owner has the right to prohibit others from exploiting the products covered by IPRs. The protection of IPRs is generally in the form of granting exclusive privileges to the right owner. As a result, he becomes the only person who can use all products covered by the IPRs. No one is allowed to take benefit from such products without consent of the right owner. However, when the owner of such products has already put his products on the market, it is questionable whether he still has the exclusive rights over such products. In many countries, legislation and court decisions have been adopted to limit the owner's rights. The law in certain countries stipulates that once the owner of an intellectual property right has put such goods on the market either himself or with his consent, this means that the right owner has allowed the purchaser or any third party to gain benefit from the purchased products. This is the so-called "Implied License Theory" used

in the countries of the Common law system. On the other hand, the laws of some countries consider that such rights are exhausted, and anyone can exploit those products without the consent of the right owner. This principle is known as "Exhaustion of Intellectual Property Rights" under the Civil law system.

The principles of Implied License and the Exhaustion of Intellectual Property Rights are essential. Without these principles, any exploitation of the product covered by IPRs would be amount to an infringement of the right. However in most cases, this principle is confined to first sales occurred within the territory where the IPR exists. This means that national intellectual property rights can be used to prevent the importation of goods sold abroad by the right owner or with his consent.

In case of customs union and free trade areas which is governed by the principle of free movement of goods, international exhaustion is significant. According to the principle of international exhaustion, the Exhaustion Doctrine of Intellectual Property Right shall have effect throughout the region. The right owner cannot fix the price, quantity or quality of products sold in each member country in order to divide markets and to control the sale of such products. This is because such an action would be an obstacle to free trade and runs against the spirit of regional trade liberalization.

The General Agreement on Tariffs and Trade (GATT) has an objective to reduce trade barriers. But GATT explicitly stipulates that the protection of Intellectual Property Rights is not a sort of trade restrictions. The Member States are free to enforce Intellectual Property laws to protect right owners even though that may be amount to a restriction on trade. The Agreement on

Trade Related Aspect of Intellectual Property known as TRIPs was adopted as the result of the Uruguay round is not so clear on the issue of the exhaustion of intellectual property rights. TRIPs allows all members to apply the doctrine of exhaustion of rights in the way they see fit.

As far as Thailand is concerned, the Exhaustion Doctrine is not enshrined in any of its intellectual property laws and no court decisions on this issue have so far been adopted. The court has applied the law of torts in ruling the cases of parallel import. In those cases, the Thai court recognizes the exclusive rights and allows the right owner to prevent the parallel importation. This is so despite the fact that such products are genuine products sold in a foreign country by the right owner or with his consent.

From the analysis of the principle of law concerning the Exhaustion of Intellectual Property Rights by looking at foreign laws together with the provisions of law and judgments of Thai courts, this study concludes that Thai law should provide for the International Exhaustion Doctrine of Intellectual Property Rights and legalizes the parallel import. When this is done, it will open the free market competition for the benefit of local consumers as the commodity price in the Thai market will drop. This legal practice will provide Thai consumers with varieties of products and at the same time will prevent right owners from using the IPRs to divide markets and creating excessive monopolistic power in the markets.