



2008

MALAYSIA'S NATIONAL INTELLECTUAL PROPERTY POLICY (NIPP) – A PROMISING START

C O N T E N T S

Introduction.....	1
Establishment of an IP Court in Malaysia.....	1-2
IP Corporation of Malaysia – Enhanced Cooperation and Information Sharing.....	2
Conclusion: IP Infrastructure Leaves Much to be Desired.....	2

ABOUT NANYANG LAW LLC

We are a dynamic, innovative and vibrant boutique Singapore law firm. We are fully committed to providing the highest quality legal services to our clients and ensuring our clients have easy access to our professional staff.

We specialize in a variety of work such as corporate, intellectual property, chancery, litigation and corporate secretarial services.

As a result, our clients range from public listed companies to venture capital firms to individuals with specific needs.

We will be happy to meet you to discuss your needs and see how best your interests can be protected. We take this opportunity to reiterate our vision statement which is to provide quality and timely legal services, which adhere to the highest standards of integrity and excellence, delivered in a professional, responsible and client-oriented manner.

We look forward to being of assistance to you.

FOREWORD

Dear friends, partners and clients,

We hope you enjoyed reading our last issue of Law @ Nanyang in March 2008.

For the 2nd issue of this year, we introduce the general Intellectual Property Law in Malaysia.

We further hope you will find this issue informative. Please do not hesitate to contact us if you have any queries relating to this newsletter.

Happy reading!

Ng Kim Tean
Chairman

INTRODUCTION

Malaysia's entry into the Patent Cooperation Treaty (PCT) in late 2006 and the subsequent launch of its National Intellectual Property Policy (NIPP) in April 2007 are resounding gestures confirming the Malaysian government's commitment to IP. Such moves are clear recognitions that strong IP laws could directly influence foreign direct investments, especially for knowledge-intensive businesses. Indeed, as Prime Minister Dato' Seri Abdullah Ahmad Badawi pointed out, one of the primary aims of the NIPP is to strengthen Malaysia's IP landscape to attract more foreign investors.

Since the NIPP is still in the stages of relative infancy, it remains to be seen whether Malaysia has successfully attained this end. This article turns instead to other aspects of the NIPP that have so far been greeted with success. It also singles out the IP infrastructure in Malaysia as a key area which requires more attention.

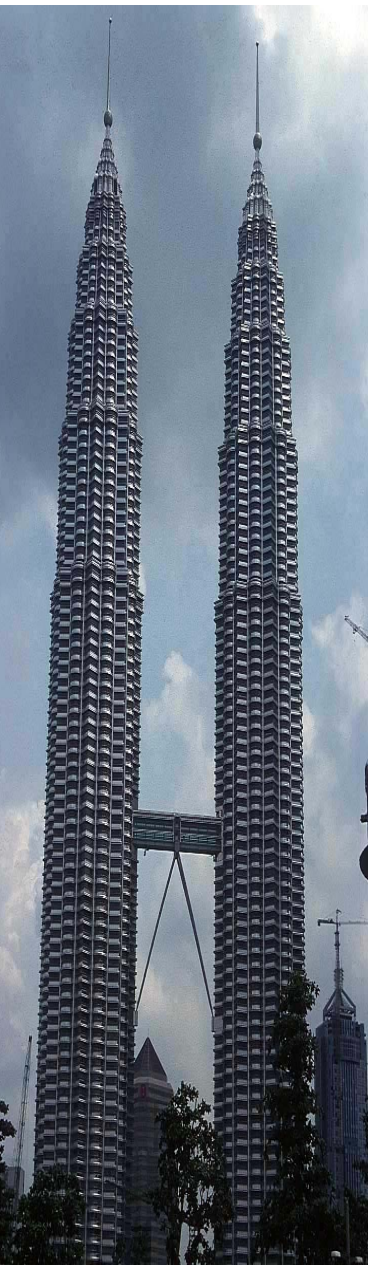
ESTABLISHMENT OF AN IP COURT IN MALAYSIA

Armed with a budget of RM5 billion, the NIPP Fund was first used in July 2007 to introduce the Intellectual Property Court for speedier disposal and procedure

of IP cases. However, the idea of establishing an IP Court in Malaysia predates the launch of the NIPP. It had been strongly pursued since 2004 by the Minister of Domestic Trade and Consumer Affairs, Datuk Haji Mohd. Shafie Bin Haji Apdal, following concerns over the rising numbers of piracy of copyrighted materials and counterfeiting of goods in Malaysia at the time.

Malaysia's efforts at establishing an IP Court were in motion by September 2005 with the establishment of a Steering Committee tasked with the preparation of a concept paper on the matter. The Committee conducted visits to various countries that had already established such courts such as Thailand, Japan, Korea and the United Kingdom. The Committee found that the establishment of IP Courts in those countries had resulted in the expediency and efficiency of disposal of IP cases – a result that gave the Ministry a nod in the right direction.

To pave the way for an independent IP Court, one of the Sessions Courts in Kuala Lumpur (Criminal Sessions Court 4) had since 1 January 2006, been dedicated to hear criminal IP cases. Malaysia's baby steps in the direction of setting up an IP Court finally took a leap when the proposal by the Ministry was tabled to the Cabinet in June 2007.



With support from the various related Ministries and agencies, in particular the Federal Court, the Government, on 6 June 2007, approved the establishment of the IP Court in Malaysia.

Flowing from the Government's approval, there will now be fifteen Sessions Courts with criminal jurisdiction known as "Sessions Court (Intellectual Property)", one in each state including Putrajaya. In addition, six High Courts with both civil and appellate jurisdictions known as "High Court of Malaya (Intellectual Property)" or "High Court of Borneo (Intellectual Property)" as the case may be, would be established in Kuala Lumpur, Selangor, Johor, Perak, Sabah and Sarawak.

Measuring the actual success of the IP Court on the other hand requires time. Notably, in July 2007, at the Court's first sitting, an unemployed man was issued with an arrest warrant in connection with a charge of possession of 246 pirated songs in 24 cassettes. Since then the Court's seriousness about combating the problem has become more apparent. In September 2007 for example, it found Aussino (M) Sdn Bhd guilty of possession of pirated software, imposing a sentence of RM80,000 (US\$23,000) on the company, in default of 12 months' imprisonment. The hefty sentence, as evident from the Court's judgment, was in part due to the Court's assertion of its commitment to address the problem of copyright infringement. It remains to be seen whether the IP Court's flexing of its judicial muscle effectively deters IP rogues.

IP CORPORATION OF MALAYSIA – ENHANCED COOPERATION AND INFORMATION SHARING

Although the NIPP and the NIPP Fund are within the domain of the Domestic Trade and Consumer Affairs Ministry, effective implementation of the NIPP requires integration of various government bodies to avoid administrative overlaps. In this regard, the IP Corporation of Malaysia (MyIPO), has played a significant enabling and facilitative role in the IP registration process.

Firstly, MyIPO has successfully partnered with the Ministry of International Trade and Industry and the Ministry of Science, Technology and Innovation to share

information in the areas of Information, Communications and Technology and Bio-Technology, vital in easing the process of registration of trade marks and patents.

Secondly, MyIPO has also successfully initiated dialogue sessions with IP owners and IP agents to resolve specific problems in operational and examination issues.

Third and most importantly, MyIPO has been responsible for maintaining a national database of trade marks and patents registration, allowing for monitoring of filing trends and strategic planning in the process of registration. MyIPO's annual reports have also been comprehensively produced and made available to the public, in keeping with its aim of generating greater awareness and interest in the field of IP.

CONCLUSION : IP INFRASTRUCTURE LEAVES MUCH TO BE DESIRED

Although the NIPP for the most part looks set to be met with continued success, Malaysia's IP infrastructure suffers from a lack of fresh and reliable supply of expertise. For instance, since the signing of the PCT, there had been a 70% growth in the number of patents that go through international filing - from 60 to 103. In order to meet the increase, MyIPO has managed to employ nineteen more patent examiners to join an existing team of seventy-two examiners. However, total experience per individual averages out to only 5.25 years. These examiners also require two years before they may be fully independent, forcing Malaysia to turn to its international counterparts for training assistance. No plans have also been made to set up local branches in leading research universities, a step that could well be an answer to Malaysia's expertise problem.

In conclusion, while it is now becoming easier and faster to secure trade mark and patent registrations in Malaysia, inherent deficiencies in Malaysia's labour pool could well fly in the face of its ambitions to attract foreign investors. It is suggested that perhaps in the next few years, the NIPP could oversee intensive training programmes or massive recruitment drives across national university campuses to make up for the shortfall in examiners and other required personnel.

NANYANG LAW LLC

141 Market Street
#10-00
International Factors Building
Singapore 048944

Tel 6324 0040
Fax 6324 0012
Web www.nanyanglaw.com
Email info@nanyanglaw.com

The legal information provided in this newsletter is not the same as legal advice, although we do our best to make sure our information is correct and constructive. We strongly recommend that you consult a lawyer if you want professional assurance that our information and your understanding of it is suitable to your particular situation.