

Keynote Speech
By
The Chief Justice of the Supreme Court
“Ways to Foster and Create Justice in Intellectual Property Cases”
On
The Opening of the 2005 Academic Seminar
To Mark the 8th Anniversary of
The Central Intellectual Property and International Trade Court
entitled
“EU-ASEAN Symposium on IP Enforcement by Specialized Courts,
Challenges and Recent Developments in IPR”
at the Siam City Hotel
Thursday, December 1, 2005

Distinguished Participants:

As mentioned, throughout its 8 years in operation, the Central IP and IT Court has achieved its founding objective. However, what is very important in the ensuing period is the follow up, evaluation and review of existing and tentative problems so as to improve the task of facilitating justice and creating equity in intellectual property trials.

The basic principle that all related personnel need to always bear in mind in creating justice throughout the intellectual property trial is “The Underlying Principle of the Intellectual Property Law”

The underlying principle that is internationally accepted for intellectual property law is the fact that the law protects creators and inventors by giving them the “sole right” or “monopolized right” to the use of their intellectual property under certain conditions, one of the conditions being “public interest” to be obtained from the intellectual property of that right holder.

The “sole right” of the right holder is therefore established to “limit access to the creation” by the public and needs to be counter balanced by the principle “access to the creation” by other members of the public. To create a fair view of intellectual property law, the two interests need to be taken into consideration and a suitable balance needs to be established. The important issue is where to strike the balance as there are numerous internal and external factors to consider. Thus, the state of suitable balance may vary in each social and global setting.

In like manner, the principle to be employed when gauging the efficiency of IPR protection or enforcement depends on the counter balance of two principles, namely “the Rules of Appropriation” and “the Rules of Diffusion”.

In a society where too much emphasis is placed on appropriation, there is often the problem of “excessive monopoly costs for IPRs” and the public’s inaccessibility to the creation, which negatively affect the public and have undesirable outcomes in the long run.



Conversely, a society that is too lenient in the enforcement of IPR faces the problem of excessive infringement. The result is there will be under-investment in innovation.

The most difficult task facing IP legislators and IP law enforcement personnel is establishing the counter balance between the rules of appropriation and the rules of diffusion, as mentioned.

If legislators or law enforcement officers in one society draft the law or enforce the law to expand the protection for rights holders only, without taking into account public interest or without having studied the underlying principle of intellectual property law, the society would face problems as a society that puts too much emphasis on appropriation. Concerning this matter, we would need to rely on the careful consideration of related offices or organizations to study and select the best method that helps to create and foster justice in IPR enforcement.

Another important factor relating to intellectual property is “dynamism”.

At present, the intellectual property system is accelerated in its development and is quickly gaining added value. It has become a basic component of entrepreneurship both domestically and internationally. What’s important is that intellectual property law is “highly dynamic” and new intellectual property problems spring up all the time. Today, in Thai society we face the problem of the judicial framework being unprepared for the enforcement of IPR. This may have become an outdated issue but newly emerged and more pressing problems are the excessive use of criminal punishment, the lack of understanding in the underlying principle for IP law, etc.

In considering and assessing these new problems, related personnel need to always monitor and seek new knowledge so as to efficiently enforce the IPR law and suitably facilitate justice.

Lastly, I would like to ask that all related IP people enforce the IPR law by accurately taking into account “the underlying principle of the law” so that the enforcement of IPR in this society may be carried out to create justice, to strike a balance between public interest and the interest of the right holder and to coincide with the underlying principle of the IPR law.

