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ILLEGAL SALES AND COMMERCIAL ESPIONAGE

How should you protect
your intellectual assets?



Stepping-up Border
Control in
the Philippines

Patent Amendments
to Improve
Enforcement

Trademark
Enforcement
in China

Tackling IP
Infringement at
an Exhibition

So, Guo says, he stands by a strict legal system preventing individuals from purchasing counterfeit goods.

New Zealand's laws also aim at commercial infringement rather than at individual consumers. "This is unlikely to change significantly in the near future," Johns says. "The Copyright Act has an exception to infringement by importing for goods for the importer's 'private and domestic use.' The seizure powers of the New Zealand Customs under the Copyright Act and Trade Mark Act also do not extend to such goods. New Zealand also generally favours consumer freedom, including by permitting parallel importing."

Any move to extend liability in this respect would likely be very unpopular with consumers generally. "IP owners might also be reluctant to be seen to take action against individual consumers, even if permitted," Johns adds. "As a comparison, a recent law change implementing a 'three-strikes' system aimed at infringing file-sharing by individuals online has not been popular with either right holders or the public. Similarly, local holders of broadcast rights in foreign works recently commenced litigation intended to prevent individuals circumventing geo-blocking measures by foreign streaming right holders (principally Netflix, which offers greater content to US users than in to users New Zealand). This litigation, now settled, was launched against internet service providers and other companies offering circumvention technology rather than against individual consumers engaged in the primary infringement."



Patent pooling arrangements are per se legal, but the manner by which these patents are exercised may be subject to the operation of competition law.

Patent Pooling v. Monopoly

Patent pooling arrangements, where members of a patent pool agree to jointly own a set of patents and license them as a package to other firms, are per se legal, but the manner by which these patents are exercised remain subject to the operation of competition law in Singapore, says Stanley Lai, a partner and head of intellectual property at Allen & Gledhill in Singapore. "Where a denial or refusal of licensing constitutes an abuse of dominant position by the pool, or restrictive terms (for example 'tie-in' arrangements) are imposed on licensees, these may give rise to a basis for intervention under the Competition Act of Singapore."

There is no specified regulation handling patent pooling in both the competition and IP laws in Vietnam. But in respect of anti-monopoly, the IP law has regulations on compulsory patent licensing, and the competition law prohibits patent pooling (horizontal agreements) in certain circumstances, says Dang The Duc, managing partner at Indochine Counsel in Ho Chi Minh City.

In accordance with Article 145 of Vietnam's IP law, a compulsory patent license may be granted under the decision of the Ministry of Science and Technology in cases where (i) the use of the patented invention is for meeting the needs of national security, healthcare and nutrition or other urgent needs of the society; (ii) the patent holder fails to fulfill the obligation of using the patented invention in prescribed period; person in need of using the patented invention fails, in spite of efforts made after a reasonable time for negotiation on adequate price and commercial considerations, to reach a patent license agreement with the patent holder; and (iii) the patent holder is determined to perform a competition restriction act prohibited under the competition legislation, Dang The Duc says. "Rights to use the patented invention under the decision on compulsory patent license shall be non-exclusive and non-sublicensable, and limited as to scope and duration so that such rights are sufficient for meeting the purpose(s) of the licensing, and goods manufactured under the patent license are mainly for supplying domestic market, except for the cases in association with the competition restriction acts as mentioned above."

Article 9 of Vietnam's competition law prohibits horizontal agreement between competitors where they involve price fixing or market sharing, directly or indirectly, limiting or controlling the volume of goods manufactured or purchased, provided that the combined market shares of such competitors in the relevant market exceed 30%. Exemptions provided in Article 10 of the same law comprise the following circumstances (for the purpose of decrease of cost to benefit consumers):

- (i) Rationalizing the organizational structure, business model, raising business efficiency;
- (ii) Promoting technological advances, raising goods and service quality;
- (iii) Promoting the uniform application of quality standards and technical norms of products of different kinds;
- (iv) Harmonizing business, goods delivery and payment conditions, which have no connection with prices;
- (v) Enhancing the competitiveness of small and medium enterprises; and
- (vi) Enhancing the competitiveness of Vietnamese enterprises on the international market.

"But to enjoy the exemptions, undertaking parties are required to make a request to the Minister of Industry and Trade of Vietnam for approval in advance," says Dang The Duc. AIP