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PROTECTION OF INDUSTRIAL DESIGNS VIA HAGUE SYSTEM

Malaysia at Critical Innovation Crossroads

Intellectual Property Valuation
in Malaysia

PROTECTING RIGHTS

as a Means To Enhance Development

ISSN 2231-7783



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IP News in Brief



Editor's Note

Dear readers,

In conjunction with the recent amendments of the Industrial Designs Act 1996 that has been passed by the Parliament on 20 December 2012, "Industrial Design" has been selected as the theme for this edition of MyIP Bulletin.

The new amendments are expected to be enforced on 1 July 2013 and it includes the introduction of Intellectual Property Official Journal, the utilization of IP as a security interest in financial transactions, the extended period of protection for industrial designs, and the practice of absolute or worldwide novelty.

This IP Official Journal will replace the Government Gazette to provide information relating to industrial design applications and registered industrial designs to the public via online. Malaysia also now recognizes IP as an asset for its owner to be offered as collateral in obtaining financing from financial institutions.

These amendments also benefit industrial design owners through the extension of protection period from 15 years to 25 years. This puts Malaysia in line with the international standard that is practiced worldwide.

The establishment of absolute or worldwide novelty requires the industrial design to be new in the world in which the local design industries can obtain recognition for their design in the international market. It is hoped that the public will take full advantage of these amendments of Industrial Designs Act 1996, and further explore opportunities to expand their businesses.

Thank you,

MyIP Bulletin Editor

Introduction

An industrial design is usually understood as a product's overall impression that attracts a person's eye. A manufacturer will always highlight the product's appearance or aesthetics features, as well as its functionality and marketability besides the cost of the product. Businesses have invested a significant amount of time and resources in building their design appearance that is new and original.

An industrial design adds value to a product, hence the importance of protecting an industrial design through registration at national or regional intellectual property offices. The owner will obtain exclusive right to prevent any unauthorized manufacturing or selling of his products by others. Where functionality of a product does not differ much from another product, appearance means a lot and proper protections are called for.

Malaysia provides industrial designs protection in accordance with the Industrial Designs Act 1996 and the Industrial Designs Regulations. The owners of designs are encouraged to register their designs to obtain fair return on their investment. As for the protection in other countries, the owner needs to register in the respective countries. However this is costly as they need to file separate applications to these countries.

World Intellectual Property Organisation (WIPO) through its International Bureau (IB) that administers the Hague System is offering an alternative to this traditional route. This alternative is available for the owner if their country accedes to the Hague Agreement. Should Malaysia accede to the Hague Agreement, owners of designs or designers would be able to file through Hague System route that is easy and cost effective. According to WIPO statistics (2012), each year more than 700,000 applications for industrial designs are filed in various areas of industry around the world.

Hague System

The Hague Agreement concerning the international deposit of industrial designs was adopted in 1925 and came into force in 1928. The Hague System of the Hague Agreement consists of three international treaties i.e the London Act (1934 Act), the Hague Act (1960 Act) and the Geneva Act (1999 Act).

The Hague System provides a one-stop centre for the registration, maintenance and management of industrial designs rights around the world by filing a single international application to one or more designated Contracting Parties. The System allows

PROTECTION OF INDUSTRIAL DESIGNS VIA HAGUE SYSTEM

Mohd Faizudin Mohd Sharuji
Director of Industrial Designs Division, MyIPO

the filing of a maximum of 100 different designs in one application. It also simplifies the process of multinational registration with each Intellectual Property Office by reducing the requirement to file separate applications.

The filing of an international application does not require any prior national application or registration. Protection for an industrial design for the first time can therefore be applied through the Hague System. This application may be filed in French, Spanish or English. Self designation to country of origin is also possible should an applicant from that Contracting Party wish to do so. Currently there are 70 Contracting Parties of the Hague System including 27 country member of the European Union (EU) and 16 country member of the African Intellectual Property Organization (OAPI).

Hague System is primarily a procedural arrangement and does not determine the conditions for protection. The International Bureau only does formality examination. The rights derived from the protection given are governed by the law of each designated Contracting Party. This also applies to the refusal procedure when deciding on the registrability and novelty of the design. The minimum term of protection under the System is 15 years.

Advantages of the Hague System

The Hague System lowers the costs for industrial design registrations in other countries through the submission of a single application in one language with one set of fee in a single currency. Applicants are therefore not burdened by having to apply at many intellectual property offices, facing different formalities procedures, different languages, several currency and paying different fees.

The System also makes it easy to manage subsequent maintenance of international registrations. Applications are handled through a single

establishment (International Bureau), which allows future amendments and renewals of registrations to be carried out there, rather than requesting such amendments at various Intellectual Property offices.

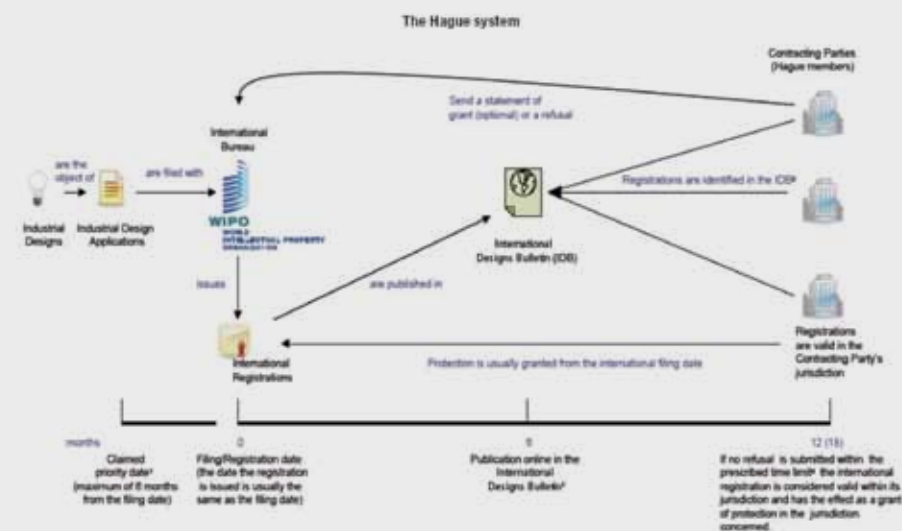
Statistics

The Hague System recorded a growth of 6.6% of international registration in 2011. Filing from Germany, the United States of America (US) and Norway account for 81% of total growth. The 2,363 international registrations in 2011 consist of 11,077 designs, equivalent to 4.7 designs per registration.

International Registration Filing Through IP Offices Vs Hague System

Any application for protection in foreign countries from non member of the Hague Agreement needs to be submitted to the respective countries separately. As an alternative, an application from the Contracting Party (CP) can be filed either directly with International Bureau or indirectly via the Contracting Party where the entitlement is derived from. The diagram below shows the different routes of industrial designs registration process.

Figure 1 : Overview of the industrial design registration process



- 1 An applicant can claim a priority date based on an earlier filing of an application, either at the IB or at a national office. However, the application used as the basis for a claimed priority date must have been filed within six months prior to the current application, or that priority date will be disregarded.
- 2 An applicant can choose to defer or expedite publication. In the case of deferment, under the Geneva Act an applicant can postpone publication for up to 30 months from the initial filing date, or the priority date, and under the Hague Act, for up to 12 months from the filing date, or the priority date.
- 3 After identifying, in the International Designs Bulletin, the international registrations that have designated them, offices carry out substantive examination according to their respective national or regional legislation, if any.
- 4 The time limit is either 6 or 12 months from the publication date, depending on the Contracting Party.

Source: WIPO, February 2012

Reference:

1. Hague System for the International registration of Industrial Designs <http://www.wipo.int/hague/en/>
2. Hague Annual Report 2012 (WIPO)
3. WIPO Indicators 2012

Recent Amendments to the **Industrial Designs Act 1996**, Salient Features

Rashidah Ridha Sheikh Khalid
Legal Officer, MyIPO

The amendments to the Industrial Designs Act 1996 [Act 552] will see new changes to conventional practice of Industrial Designs in Malaysia. Some of the highlights of the Industrial Designs (Amendment) Act 2013 [Act A1449] ("the Amendment 2013") are as follows:

1. **Intellectual Property Official Journal;**
2. **IP as a security interest in transactions;**
3. **The validity period of protection for industrial designs; and**
4. **Absolute or worldwide novelty.**

1. Intellectual Property Official Journal

MyIPO embarked on another milestone by offering its own Intellectual Property Official Journal ("IP Official Journal") which will undertake publications in place of the government Gazette. Section 46A of the Amendment 2013 provides for the publication of an IP Official Journal.

By having its own official journal, MyIPO is able to make available online, based on statutory requirements, the information relating to industrial design applications and registered industrial designs to the public.

The amendment 2013 will be the first legislation administered by MyIPO that introduce the facilities of the IP Official Journal in Malaysia. It is expected that future amendments to the Patents Act and the Trade Marks Act will include similar provisions that give effect to the IP Official Journal.

This move is appears to be in line with international developments in countries such as United Kingdom, Australia, and Singapore where the IP Official Journal serves as the official organ for publication purposes in the respective IP Offices.

As such, the provisions referring to the Gazette (with the exception for Section 1 of the Act) was replaced

with the phrase Intellectual Property Official Journal. It is envisaged that the use of the IP Official Journal will minimize and cut down the delay caused by backlog due to the 'queuing process' in the conventional gazetting.

2. IP as a security interest in transactions

MyIPO aims to create an environment where IP will be accepted and use as a security interest in financial transactions in Malaysia. Realizing the potential of IP as a financial instrument, MyIPO proposes to give this due recognition for future dealings in financial transaction.

The amendment to Section 30 of the Industrial Designs Act 1996 is made to encourage the recordal of entitlements on the registered Industrial Design as for the purpose of acknowledging the rights acquired by virtue of such recordal.

Intellectual Property is personal property and hence can be subject to securitization like the creation of a charge or mortgage etc. This amendment to the Industrial Designs Act introduces legislatively the concept of IP as a security interest and this is well reflected in Section 29 and Section 30 of the Amendment 2013.

3. Extending the terms of protection for industrial designs

The amendment to Section 25 provides the owner of a registered industrial design the right to extend the period of registration for a period of twenty five (25) years.

Prior to the amendment of the Industrial Designs Act 1996, the validity period of protection conferred to an Industrial Design owner is up to fifteen (15) years only (where each term is five (5) years each respectively).

With the coming of the amendment 2013, the validity period of protection has been extended to another ten (10) years (that is by way of two (2) optional terms of five (5) years each).

The rationale of this is two fold. First, this is to be in line with the international developments where many other jurisdictions like the United Kingdom and some parts of the European Unions have already extended the maximum term of protection to twenty five (25) years and secondly, it will enable industrial design owners more time to exploit the potential of their designs that have longer product life cycle in the market.

Eventually, it is expected that by extending the period of protection for industrial design, this will help encourage investment in Malaysia due to greater period of protection given to industrial design owners.

4. Novelty Requirement

Amendment is made to Section 12 of the Industrial Designs Act 1996 to lift the concept of local novelty to what is known as an absolute or worldwide novelty.

Amendments to Section 12 effect the widening of the scope of novelty from the current "within Malaysia" i.e. local novelty to become "Malaysia or elsewhere" i.e. worldwide novelty.

The advantages in relation to raising the novelty standard can be summarized as follows:

- Worldwide novelty is important for industries that are interested to join international markets. Worldwide novelty enables the local industries to tap the international market.
- It increases international recognition of Malaysian Designs Industries. Holders of Malaysian



Apple Gets Trademark On Store Design

Apple has been granted a trademark by the United States Patent and Trademark Office (USPTO) to protect the "design and layout" of its stores which covers the storefront, described as a "panelled facade, consisting of large, rectangular horizontal panels". (Source : worldjpreview)

registered Industrial Designs would in turn enjoy international recognition.

- To harmonize essential feature of the national law in relation to the novelty standard, to be in line with the international norm. Conducting search for designs that are similar in appearance and existed outside Malaysia is now possible due to the fact that we are now living in a borderless world where the internet and technological advancement transcend the communication boundaries.
- Foreign applicants who wish to have their Industrial Design registered in Malaysia will gain confidence of the new novelty requirement.

It is to be noted that the implementation of the worldwide novelty as well as the other provisions in the Amendment Act 2013 have yet to be enforced. It is expected to take effect starting from 1 July 2013.



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Intellectual Property **Valuation** in Malaysia

Dato' Azizan Mohamad Sidin
Director General, MyIPO

Emergence of the New Economy

Intangible assets are now transpiring to be the most important factor in the competitiveness and sustainability of an organization due to the shift from industrial society to knowledge society. These changes have influenced the global economic environment where the development of business models, establishing value and potential growth, are now relying on the intellectual property (IP), or intangible assets. A current survey published by Ernst & Young stated that on average, 70% of business transactions are attributed to intangible assets such as brands, customer contract, technology and goodwill.

Due to the increasing dependency of businesses on their IP, there is a growing need for recognizing and valuing all identifiable intangible assets of a company as part of a transaction.

Valuation of IP

The value of an IP asset represents the potential future economic benefits to the IP owner or authorized user and is now recognized as a new important source of financing. The use of IP assets to gain access to credit is gaining increasing attention with multinational corporations as well as small and medium-sized enterprises (SMEs). IP Valuation, a process to determine the monetary value of the subject IP, is the key tool in the process of financing based on IP assets.

The Need for IP Valuation in Malaysia

SMEs play a very important role in supporting the nation's economic transformation. It is the backbone, the engine that drives much of our economy. However, due to their lack of track record or collateral for financing purposes, young and innovative SMEs in Malaysia often face difficulties when trying to grow. IP may be the main or the

only asset that the SME companies have. The lack of finance required to grow may be detrimental to these SMEs, leading them to cease operations.

While Financial Institutes (FIs) in Malaysia generally acknowledge the importance of IP to a company's success, none are willing to accept it as collateral for providing financing. Paving the way towards IP Financing, Malaysia is taking further steps to facilitate the process by initiating the IP Valuation Initiative.

Prime Minister Dato' Sri Najib Tun Abdul Razak, on 7th October 2010, at the 22nd MSC Malaysia Implementation Council Meeting decided that Intellectual Property Corporation of Malaysia (MyIPO) is to formulate an IP valuation model as provided in the National IP Policy where Multimedia Corporation Development (MDeC) could support in the formulation of the model.

Realizing the importance of this mission, Prime Minister, in his budget speech, emphasized that efforts will be undertaken to enable SMEs to further expand their businesses by using intellectual



Bankrupt Kodak Sells Off Patents To Investors For \$525m

Eastman Kodak has filed for bankruptcy and sold its digital imaging patents to a consortium of bidders, which includes Google and Apple, for \$525m (£322m). (Source : BBC)



Training of Local IP Valuers

To set the foundation of using IPR as collateral to obtain financing, intellectual property laws are being amended. The Industrial Designs Act incorporating these amendments has been passed by the Parliament on the 20th December 2012, while the amendment of Trade Marks Act and Patents Act are in the pipeline. To ensure the proper training and transfer of knowledge from foreign IP valuation experts, a structured training module has been developed by MyIPO. The module was launched by the Minister of Domestic Trade, Co-operatives and Consumerism, YB Dato' Sri Ismail Sabri bin Yaakob on the 7th March 2013.

A pool of local experts will be created with the training of 20 trainees chosen from different backgrounds needed for the valuation of IPs. Trainees will range from legal, technical and financial backgrounds. The combination of these knowledge will be crucial in performing valuations of IPs especially patents where technologies vary from biotechnology to mechanical inventions.

The first training session on Introduction to IP started on 28th February to 1st March 2013 and was later continued with the IP Valuation Methods session from 6th to 9th March 2013. The training, scheduled to be implemented in tranches, will continue till May 2013. A summary of the IP Valuation Training Module is outlined as below:

property rights (IPR) as a collateral to obtain financing. For this, a valuation model will be created to enable IPR to be valued and commercialised in the market as well as utilised as collateral to obtain financing from financial institutions. For this purpose, two initiatives will be implemented:

- i) Establishment of Intellectual Property Financing Fund scheme amounting to RM200 million. The scheme will be offered through Malaysian Debt Ventures Berhad. The Government will provide a 2% interest rate subsidy and guarantee of 50% through Credit Guarantee Corporation Malaysia Berhad (CGC); and
- ii) allocation of RM19million for training programmes for local intellectual property valuers conducted by Intellectual Property Corporation of Malaysia (MyIPO) as well as create an intellectual property right market platform.

Module I	Introduction to Intellectual Property Rights
Module II	The Evolution of IP Rights: Moving Beyond IP Commercialisation to IP Financing
Module III	Intellectual Property Collateralisation and Securitisation
Module IV	Introduction to IP Valuation Methods
Module V	Valuation Report & Case Study
Module VI	IP Negotiations
Module VII	IP Management for Bankers, Financial Institutions & Venture Capitalists
Module VIII	Drafting of IP Collateral/ Securitisation Documents
Module IX	Practical Workshop



New Focus On IP Valuation In 2013

The Malaysian government announced that an intellectual property financing fund scheme will be set up with an allocation of RM200 million (US\$65 million) in connection with its 2013 budget. The government has also allocated RM19 million (US\$6 million) for training programmes for local IP valuers.

(Source : MyIPO, worldipreview)



MILESTONE
PERBADANAN HARTA INTELLEK MALAYSIA
INTELLECTUAL PROPERTY CORPORATION OF MALAYSIA

01/03/2012

Enforcement of Copyright
(Amendment) Act 2012



19/03/2012

MS ISO 9001:2008 Certification for Expedited
Examination of Patents & Trade Marks

27/04/2012

National Intellectual Property Day
Sultan Ahmad Shah International
Convention Centre (SASICC)
Kuantan, Pahang

27/09/2012

Malaysia acceded to :
i. WIPO Copyright Treaty (WCT)
ii. WIPO Performances and
Phonograms Treaty (WPPT)

2003

03/03/2003

Corporatization of BHI to
Perbadanan Harta Intelek Malaysia
(Intellectual Property Corporation
of Malaysia)



BHI

02/01/2013

MyIPO New Branch
Office in Malacca

03/03/2013

10th Anniversary

2005

03/03/2005

Melaka hosted 1st National
Intellectual Property Day

PHIM changed its
acronym to MyIPO



10/08/2005

Government declared
26 April as National IP Day

16/05/2006

Malaysia acceded to
Patent Cooperation
Treaty (PCT)

16/08/2006

1st Malaysian PCT Application
PCT MY2006/000001

15/02/2011

Introduction of Expedited Examination for Patents & Trade Marks



17/10/2011

Official Visit by DG of WIPO

20/04/2011 - 01/12/2011

MyIPO New Branch Offices in Johor Bahru, Kuantan and Penang

2011



27/04/2010

Launching of MyIPO's Facebook, Twitter and YouTube profiles

2010

OCTOBER 2010

MyIPO HQ moved to Menara UOA Bangsar



2013

2009

23/04/2009

National Intellectual Property Day with special focus on TK, GR, TCE & GI

2007

27/04/2007

Launching of National IP Policy

28/06/2007

Malaysia acceded to Nice Agreement & Vienna Agreement

17/07/2007

Establishment of IP Court

2006

Malaysia at Critical Innovation Crossroads

Professor Emeritus Tan Sri
Dato' Sri Paduka Dr Limkokwing

Tan Sri Limkokwing is the undisputed creativity and innovation czar for the country - having been crowned the Father of Innovation for Creative Education and winning the prized University of Innovation award for the university that bears his name. Here, he shares his vantage point about Malaysia's innovation journey - with its twists and turns - and why the final sprint to high-income nation status - is about making innovation inclusive and pervasive throughout the country.

Malaysia is at a critical juncture in its socio-economic journey. At the seven year marker of our goal to reach a fully-developed and high-income nation by 2020, few would argue that we have a lot of work in front of us; and that it's time for everyone to roll up their sleeves, and to get with the programme.

Central to this goal is that by 2020 we would have effectively migrated both mindset and muscle to think, do and be innovative. We should - at that finish line - ideally be a nation of innovative thinkers offering innovative products (read: high value) to the world market, making us high income earners. For many cultures, 7 tends to be a magic number, so this would be a year to plant the innovation flag firmly in the ground, and 'burn the boats' so that there is no turning back. We have no time left for half-hearted attempts, or half-measures that we have been plagued with these last few years.

Despite the Prime Minister's best efforts and numerous government initiatives, what is clear is that within much of the public sector conformity still reigns supreme, which in turns stifles private sector innovation with obsolete rules and regulations. To the larger population it remains a mystery about how it can improve their everyday lives. Innovations tend to be clustered in urban areas because that's where the universities, government and big businesses are located. So like the digital divide, the rural communities are often on the fringes of the conversation and the attention. But here's the point. Innovation is just as important as it is to the farmer as it is to the software programmer. Innovation is just

as important to the fisherman. When everyone in the country believes he or she can also be a creator - not just a user - then we are a truly innovative society.

Whether it is grassroots or high-end innovation, enabling ecosystems must be in place, to pervasively encourage ground-breaking concepts and new directions. Also, the Government's most important role is to promote and fund innovative projects, but it cannot and shouldn't fund agencies that compete with the private sector. These agencies have huge capital injection from government funds, and their role should be as facilitator, not competitor. When they compete, they put the private sector at a disadvantage because we don't have that kind of money. Instead, these agencies should support and collaborate with the private sector to fast-track the initiatives and make it pervasive in every sector of industry. That to me would be a more holistic approach.

Innovation Conversation Must Move Beyond Science & Technology

The innovation conversation in Malaysia has largely been framed it in the context of innovating products. Yet, the start point of an innovation seems to have been relegated to sound bites. We have put the cart before the horse. Science and Technology tend to attract a certain kind of student - where does that leave at least 50% if not more, of the population who is not good at science or tech? What about the kid who dreams of the next Avatar, or who dreams of designing buildings, of coming up with new forms of packaging, or the one who wants to find a



Global Innovation Index: Malaysia Is World's 38th Innovative Country

Bloomberg declared Malaysia the 38th most innovative country in the world in its annual "Global Innovation Index", a list of the world's 50-most innovative countries. (Source : Bloomberg)

solution to poverty?. We owe it to them to change the conversation so that it embraces different skills and multiple strengths/intelligences. We must talk of holistic innovation, and at events like these, we must showcase the variety of innovation so that people who are not in science or who are not in technology will feel there is a 'space' for them to innovate.

Innovation is firstly about that breakthrough idea to improve or solve - and science and technology do not necessarily cover all fields. Current statistics say only about 23% of Malaysia's current workforce is highly skilled, yet this number must rise to 37% by 2015 if Malaysia is to become a developed nation by 2020. We have to bridge a 14% gap in the next 2 years and we cannot do that if we focus on a limited group of people. We need the whole country to be part of the effort. That is why we made it our mission to demystify innovation with the Inovasi Negara campaign launched in March this year.

Public Ownership Central To Inovasi Negara

Conceptualized and designed by the University, the campaign is energeise Malaysians from all walks of life to be innovative. Our aim is to make Innovation a way of life for all Malaysians - so that everyone feels a sense of ownership and understands the role they need to play to get us going, by connecting, enabling, empowering, rewarding and up-scaling. To connect, we will be running a nationwide advocacy campaign

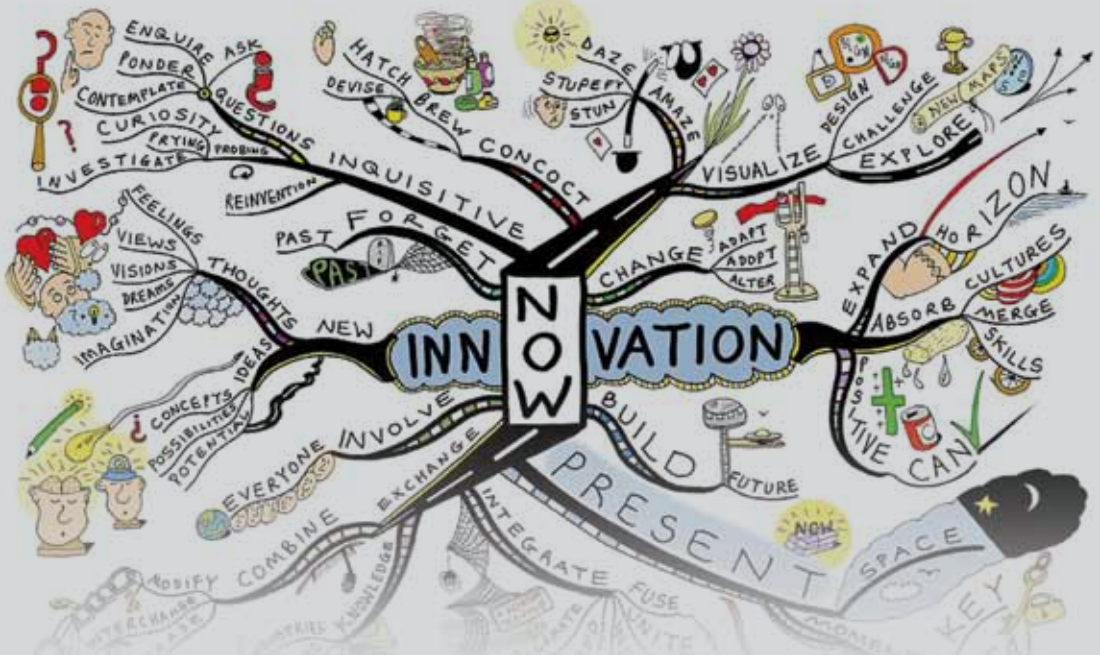
to promote inclusive innovation. To enable, we will be conducting workshops throughout the country to get as many people as possible to initiate on efforts aimed at creating innovative solutions. Acceleration centres will be set up to facilitate this endeavour. To empower, we will be delivering training programmes to empower 10,000 young people annually. This will generate an enlarged base of young innovators throughout the country. To encourage, we will recognise 300 innovators annually across the country, from both urban and rural sectors, who have created innovative solutions worthy of recognition. To facilitate upward mobility, we have set aside 100 scholarships for students to take up creativity-driven programmes in Design Innovation, Product Innovation, Creativity in Software Engineering, Digital Media and Business Innovation.

Going online and on mobile, we will be able to connect with some 25 million Malaysians, practically everyone we want to reach in the country. Whether it is grassroots or high-end innovation, enabling ecosystems must be in place, to encourage ground-breaking concepts and new directions - in classrooms and boardrooms; in factories and fisheries, in urban centers and the rural heartland.

Western Model of Innovation May Not Be Best for Developing World

The world's attention has shifted to Asia. Westerners are coming to this part of the world to learn how we do it. Many Asian countries have stopped looking to the West to teach them how to get going with innovation. We are seeing innovation in Africa with African-centric mobile phone innovations where mobile phones are used to check everything from crop prices to transferring money. The developing world has much to offer in terms of innovation models which are more likely to be adaptable for countries in the South and the East rather than a Western model.

We have bright sparks who have worked tirelessly to inject creativity and innovation with their products/services. Many have been extremely successful in exporting their brands worldwide. Most of them have given much of their time - often with little or no government support - to support youths and SMEs as mentors. Many of our own home-grown entrepreneur-innovators are wooed by Asian and African countries because our development model and our challenges mirror what they are going through. Because we intimately understand the roadblocks, the mindset, we are better able to provide a model that works in developing world. Most of them have stopped looking to the West because their development cycle is foreign to the rest of the world.



Malaysia's Huge Innovation Potential

Looking into the future, projections are that by 2050, Malaysia will be the 21st largest economy in the world. And we are poised to overtake Hong Kong as the most preferred IPO destination in Asia. That's a huge credibility spike for us from the world community, and we should rightly be proud, and leave no stone unturned to make sure we achieve that goal. For the most part, we are on the right track. Malaysia is ranked 12th in the world for business friendliness as well as in biodiversity. We are ranked 14th in global business competitiveness: the highest placing among developing economies in Asia. We are ranked 14th in natural gas reserve and 28th in oil production.

Malaysia is placed 24th in trade enabling, 20th in global peace and standing as the 10th most friendly country in the world. But we are lagging behind in some important criteria. In creativity and innovation rankings, we have some work to do, and some distance to cover. We are now ranked 32nd in the world according to Global Innovation Index in 2012. In the regulatory environment, we stand at 70th, in education we stand at 74th, in knowledge creation we stand at 65th and in creative output we are at 62nd. Clearly, we need to charge up on creativity and loosen up on compliance and conformity. Clearly, we need to strengthen our enabling ecosystems.

With Asia projected to lead worldwide consumer consumption by 2030, the race is on for the region's customers. Those companies that come up with fresh ideas will outpace the competition. Over the next two decades, it said, ASEAN will also continue

to benefit from the rapid growth of the two Asian BRIC economies, China and India. Another key factor driving ASEAN's ascendancy will be the sustained economic growth of Indonesia, which is forecast to become a US\$4-trillion economy by 2030, larger than South Korea and Australia in terms of GDP size.

Indonesia will be the hub of business growth in ASEAN, forecasted to become a US\$4 trillion economy by 2030, larger than South Korea and Australia in GDP size. Malaysia's geographical location in the heart of Asia places her in a position that is unmatched to tap into this market explosion. But we need to get our act together when it comes to the most important building block of innovation. We need to completely do away with conformity-driven education because that is the death knell to innovation.

We must reduce the rigidity of compliance and conformity to encourage pervasive application of creativity in human capital development. We must design and engineer an education system to fully develop the potential of our people, no matter where they are in the country. Regulators and the regulated must come together to iron out the issues that are bound to stall the transformation process. It is not an easy task as every government department and every piece of legislation will have to be studied. With just seven years to go before the 2020 finish line, we don't have the luxury of training for a marathon. We are in the finals, and the finish line is in sight. If we want to get there with our goals achieved, we need to bite the bullet and get the job done.

HIGHLIGHTS OF WCT AND WPPT

Mohamed Fairuz Mohd Pilus
Director of Copyright, MYIPO

WIPO Copyright Treaty (WCT) and WIPO Performances and Phonograms Treaty (WPPT) were adopted in Geneva, Switzerland on 20 December 1996. WCT and WPPT are said to be a complement of the Berne Convention for the Protection of Literary and Artistic Works (the Berne Convention) and the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (ROME Convention).

WCT and WPPT were formed to address the rapidly evolving developments in digital technology and communications especially one that involve internet. Identified as the Internet Treaties, WCT

and WPPT were endorsed to respond to the new market place and technology developments.

On top of that, these two Treaties ensure and clarify that the existing rights of the copyright owners will continue to be adequately and effectively protected in the digital environment. Nevertheless, as to maintain a fair balance of interest and to confer reasonable flexibilities between the owners of copyright and the users i.e. the general public, WCT and WPPT had also taken into account provisions on limitations and exceptions for uses deemed to be for public interest, such as for non-profit educational and research purposes.

Adopting WCT and WPPT

In general, WCT addresses issues on protection for authors of literary and artistic works to include computer programs, data compilations, audio visual works, musical works and photographs. WPPT on the other hand, focuses more on protection of related rights to the copyright which are rights for performers and producers of phonograms.

Further to that, as to guarantee that technology can be used effectively to protect the owners' rights and/or to license their works through internet as well as to safeguard the reliability and veracity of the online market place, WCT and WPPT require member countries to provide two types of technological adjuncts. These provisions are:

- i. 'Anti Circumvention' provisions require member countries to provide adequate legal protection and effective remedies against the circumvention of technological measures;
- ii. 'Rights Management Information' provisions require member countries to prohibit the intentional alteration or deletion of electronic 'rights management information' supplementing the protected materials.

Benefits of Adherence

It is undeniable that WCT and WPPT offer numerous benefits to the copyright industries. It gives new

dimension to the whole copyright industries with the new markets, new method of use and dissemination of works that was created by the digital technologies, in particular the digital network such as internet.

Obviously, the Treaties provide a substantial legal basis for healthy electronic commerce such as:

i. National treatment

This is to ensure that the interest and economic rewards of that local creators and enterprises are protected when their creations are exploited abroad particularly in this digital environment where there is no clear distinction between domestic and foreign market.

ii. Promotion of electronic commerce and encouragement of investment

WCT and WPPT promote electronic commerce through international trade by creating and establishing legal rules that response to the new technological environment in an effective and appropriate way. For that reason, the secured and confident rightholders will exploit the market and more valuable creations will be made available through this medium.

In addition, an effective and secured intellectual property system will bring in investors to that country given that the level of intellectual property protection and enforcement is robust.

iii. Contribution to the national economy

Undoubtedly in this recent development, copyright based products have become the major contributor to the growth of national as well as the overall global economy. Taking into account the new digital environment, one can surely predict that future market of products and services will be through digital network. Thus, implementing WCT and WPPT will provide full support to the copyright industries.

Thus, adherence and implementation to both WCT and WPPT was the primary basis that compels Malaysia to start amending the Copyright Act 1987 in 2006.

The elements of WCT and WPPT were reflected in the new provisions of the Copyright Act (Amendment) 2012, namely;

- i. Deletions of the word live from the term “live performances” throughout the Act to be consistent with Article 2 of the WPPT.
- ii. Incorporating the elements of the WCT on rights of commercial rental for films to the author in the event the commercial rental would impair the rights of reproduction.
- iii. Amending subsection 16A(1) to be consistent with the requirements of Article 15 of WPPT in relation to the rights on reproduction of a fixed performance.

- iv. Amending section 16B to further clarify the performers’ rights in respect of equitable remuneration.
- v. Amending section 23A to comply with the requirement in Article 17 of the WPPT in providing clarification on the calculation of the protection period for fixed performances.
- vi. Introduce new sections 36A and 36B on technological protection measure and rights management information, to be consistent with Article 18 of WPPT and Article 11 of WCT. The new section 36A provides for the prohibition of the act of circumventing technological protection measure and section 36B provides for the prohibition of removing or altering electronic rights management information.

Conclusion

It was a wise decision for Malaysia to accede to WCT and WPPT taking into consideration the emerging in digital technology globally. Further to that, studies also demonstrated that copyright industries have made significant contribution to foster economic growth in some of developed and developing countries. Consequently, it is timely for Malaysia to strengthen the copyright regime to guarantee effective and strong protection of the intellectual property system to attract investors.

RIM



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Mewakili industri rakaman muzik Malaysia untuk

- Melindungi hak harta intelek termasuk aktiviti penguatkuasaan anti cetak rompak dalam bentuk fizikal dan digital
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IP FACTS & FIGURES

Samsung Tops EPO Rankings

Samsung filed the highest number of patents at the European Patent Office (EPO) in 2012, with 2,289 patents out of a total of 257,744, becoming the first Asian company to top the EPO rankings.

(Source : EPO)

China The World's Most Invention Filings In 2012

China's State Intellectual Property Office (SIPO) has become the most prolific patent office in the world in 2012. According to SIPO statistics, a total of 653,000 invention applications were received in 2012. For the same year, the total number of patent applications in China was 2.051 millions. Among the invention applications, almost 82% came from domestic companies and, among this figure, the 80% were service applications.

(Source : SIPO, chinaipr.gov.cn)

BRICK Nations Catching Up On Patents

The BRICK (Brazil, Russia, India, China and South Korea) nations were shown to be filing almost as many patents as the G7 (US, UK, France, Germany, Italy, Canada and Japan) nations in 2011. By 2011, the number of patents filed by the BRICK nations had increased from 106,724 in 1992 to 663,451, taking the ratio down to 1.2 G7 patents for every one patent filed in BRICK nations.

(Source : worldipreview)

US Seizes Counterfeit Goods Worth \$1.26 Billion In 2012

US customs and border officials seized counterfeit goods worth around \$1.26 billion in 2012. China continues to be the top source for the counterfeit merchandise. 72 percent of the goods seized were from China at an estimated manufacturer's retail price of \$906 million.

(Source : CBP)

Google Patent Grants Increase By 170 Percent In 2012

1151 patents were granted to Internet search provider Google by the US Patent and Trademark Office (USPTO) in 2012, a 170 percent increase on 2011.

(Source : IFI CLAIMS Patent Services)

Google: Copyright Removal Requests Spike To 2.5 Million Per Week

Google receives the requests of copyright removal per week has increased from 250,000 to 2.5 million in just six months, to remove links to allegedly infringing websites in its search results.

(Source : The Hill)

Jadual Perancangan Latihan Tahun 2013

PROGRAM	ANJURAN
JANUARI	
Seminar Kesedaran Harta Intelek Peringkat Zon Timur (Kota Bharu)	MyIPO ZON TIMUR
Kursus Kesedaran Harta Intelek (Kementerian Kerja Raya) / Bengkel Strategi Dasar Inovasi JKR	IPTC
<i>Prior Art Search (Patent) Siri 1</i>	IPTC
Taklimat Harta Intelek di INTAN Wilayah Timur	IPTC
Taklimat Harta Intelek bersama Perbadanan Produktiviti Malaysia	IPTC
FEBRUARI	
<i>Consultation Seminar on Accession to the Madrid Protocol</i>	MyIPO
Seminar Kesedaran Harta Intelek Peringkat Negeri Perlis	MyIPO ZON UTARA
<i>Seminar on IP Registration Procedures Siri 1</i>	IPTC
<i>Patent Drafting Siri 1</i>	IPTC
Kursus Kesedaran Harta Intelek (Kementerian Dalam Negeri)	IPTC
MAC	
Seminar Kesedaran Harta Intelek di Labuan	MyIPO SABAH
Seminar Lanjutan Cap Dagangan & Reka Bentuk Perindustrian Peringkat Negeri Kelantan	TM & ID
<i>MyIPO-WIPO Nanotech Regional Seminar and Patent Drafting</i>	PATEN
<i>MyIPO-PBT/LADA IP Seminar</i>	IPTC
Kursus Kesedaran Harta Intelek (Kementerian Pelancongan)	IPTC
Program Bina Upaya Hak Cipta – <i>Rationale of Copyright Protection</i>	HAKCIPTA
Program Bual Bicara Hak Cipta MyIPO	HAKCIPTA
Seminar Kesedaran HI untuk Pengetua ILP & Pengurusan Tertinggi Kementerian Sumber Manusia	IPTC
Seminar HI & Prosedur Pendaftaran IPT Zon Kuching, Sarawak (UNIMAS, UiTM Sarawak)	IPTC
Bengkel Penderafan & Carian Paten IPT Zon Kuching, Sarawak (UNIMAS, UiTM Sarawak)	IPTC
Seminar HI Zon Miri, Sarawak (IKBN Miri)	IPTC
APRIL	
Seminar Kesedaran Harta Intelek (Kapit, Sarawak)	MyIPO SARAWAK
<i>Seminar on IP Registration Procedures Siri 2</i>	IPTC
Kursus Kesedaran Harta Intelek (MITI)	IPTC
Kursus Hakcipta (Agensi Penguatkuasa, Badan Perundangan & Kehakiman)	HAKCIPTA

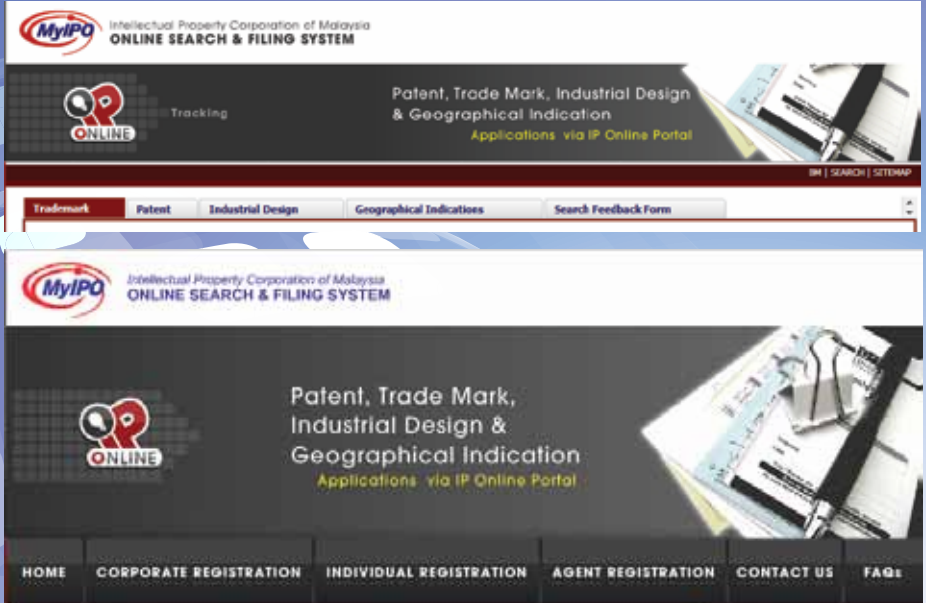
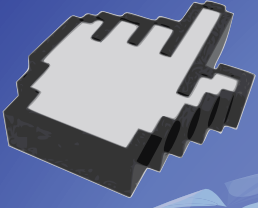
PROGRAM	ANJURAN
MEI	
Seminar Kesedaran Harta Intelek Peringkat Negeri Sarawak (Sarikei)	MyIPO SARAWAK
<i>Prior Art Search (Patent) Siri 2</i>	IPTC
Program Bina Upaya Hak Cipta – <i>Rights in Copyright</i>	HAKCIPTA
WIPO <i>Regional Seminar</i>	HAKCIPTA
MyIPO-PBT/LDA <i>IP Seminar</i>	IPTC
<i>South East Asian Patent Drafting (SEAD) Course</i>	MyIPO
Seminar HI & Prosedur Pendaftaran IPT Zon Tengah	IPTC
Bengkel Penderafan & Carian Paten IPT Zon Tengah	IPTC
JUN	
Seminar Kesedaran Harta Intelek Peringkat Negeri Terengganu	MyIPO ZON TIMUR
Seminar <i>IP Registration Procedures</i> Siri 3	IPTC
Seminar Hari Harta Intelek Negara 2013	MyIPO
<i>National Seminar on Traditional Cultural Expressions (TCEs)</i>	HAKCIPTA
Taklimat Undang-Undang Hakcipta bersama Persatuan Penulis & Penerbit Buku (MABOPA), DBP, IPTA/IPTS & Perpustakaan	HAKCIPTA
<i>Patent Drafting</i> Siri 2	IPTC
Bengkel Pelaksanaan Pendaftaran Perbaharuan Utiliti Tanpa Pemeriksaan	PATEN
Kursus Kesedaran Harta Intelek (Kementerian Penerangan Komunikasi dan Kebudayaan)	IPTC
Seminar <i>Patent Drafting</i> (Kuching, Sarawak)	MyIPO SARAWAK
Seminar HI & Prosedur Pendaftaran IPT Zon Selatan (ILP Ledang, ADTEC Johor)	IPTC
Bengkel Penderafan & Carian Paten IPT Zon Selatan (ILP Ledang, ADTEC Johor)	IPTC
JULAI	
Forum <i>Do's & Don'ts in Trade Marks</i>	TM
Program Bual Bicara Hak Cipta MyIPO	HAKCIPTA
Taklimat Pindaan Akta Hak Cipta (Fungsi Tribunal Hak Cipta, <i>Voluntary Notification System</i> , Keperluan Pendaftaran CMO) Peringkat Zon Tengah	HAKCIPTA
<i>Commercialization and Licensing of IP – MIPA</i>	IPTC
OGOS	
Seminar Kesedaran Harta Intelek di Langkawi	MyIPO ZON UTARA
Seminar Reka Bentuk Perindustrian dengan kerjasama agensi kerajaan dan swasta	ID
Seminar <i>IP Registration Procedures</i> Siri 4	IPTC
MyIPO-PBT/MBJB/IRDA <i>IP Seminar</i>	IPTC
Taklimat Pindaan Akta Hak Cipta (Fungsi Tribunal Hak Cipta, <i>Voluntary Notification</i> , Keperluan Pendaftaran CMO) Peringkat Zon Timur	HAKCIPTA
Taklimat Undang-Undang Hakcipta bersama Pengusaha Kraftangan & Balai Seni Visual Negara	HAKCIPTA
Seminar HI & Prosedur Pendaftaran IPT Zon Timur	IPTC
Bengkel Penderafan & Carian Paten IPT Zon Timur	IPTC

SEPTEMBER	
Seminar Kesedaran Harta Intelek Peringkat Negeri Perak	IPTC
Kursus Kesedaran Harta Intelek (Kementerian Belia dan Sukan)	IPTC
Kursus Peperiksaan Ejen Paten 2013	IPTC
Taklimat Pindaan Akta Hak Cipta (Fungsi Tribunal Hak Cipta, <i>Voluntary Notification System</i> , Keperluan Pendaftaran CMO) Peringkat Zon Selatan	HAKCIPTA
Seminar HI & Prosedur Pendaftaran IPT Zon Melaka	IPTC
Bengkel Penderafan & Carian Paten IPT Zon Melaka	IPTC
OKTOBER	
Seminar Kesedaran Harta Intelek Peringkat Negeri Sabah (Lahad Datu)	MyIPO SABAH
Seminar <i>IP Registration Procedures</i> Siri 5	IPTC
<i>Patent Mapping Training for Stakeholders</i>	PATEN
Seminar Kesedaran Harta Intelek (Limbang, Sarawak)	MyIPO SARAWAK
Kursus Kesedaran Harta Intelek (MOSTI)	IPTC
Taklimat Pindaan Akta Hak Cipta (Fungsi Tribunal Hak Cipta, <i>Voluntary Notification System</i> , Keperluan Pendaftaran CMO) Peringkat Zon Sabah	HAKCIPTA
Seminar berkaitan dengan Kutipan Royalti Karya Sastera Peringkat Zon Tengah	HAKCIPTA
Seminar Kesedaran Hakcipta Bersama Penggiat Seni (Karyawan), Artis	HAKCIPTA
Seminar HI & Prosedur Pendaftaran IPT Zon Sabah	IPTC
Bengkel Penderafan & Carian Paten IPT Zon Sabah	IPTC
Seminar HI & Prosedur Pendaftaran Zon Labuan	IPTC
NOVEMBER	
Seminar Kesedaran Harta Intelek Peringkat Negeri Sembilan (Seremban)	MyIPO MELAKA
<i>Patent Drafting</i> Siri 3	IPTC
Kursus Kesedaran Harta Intelek (Kementerian Pembangunan Wanita, Keluarga dan Masyarakat)	IPTC
Kursus Kesedaran Harta Intelek (Kementerian Tenaga, Teknologi Hijau dan Air)	IPTC
<i>Prior Art Search (Patent)</i> Siri 3	IPTC
Taklimat Pindaan Akta Hak Cipta (Fungsi Tribunal Hak Cipta, <i>Voluntary Notification System</i> , Keperluan Pendaftaran CMO) - Zon Sarawak	HAKCIPTA
Seminar HI & Prosedur Pendaftaran IPT Zon Perak	IPTC
Bengkel Penderafan & Carian Paten IPT Zon Perak	IPTC
DISEMBER	
Seminar <i>IP Registration Procedures</i> Siri 6	IPTC
Kursus Kesedaran Harta Intelek (Kementerian Pengajian Tinggi)	IPTC
Kursus Kesedaran Harta Intelek (Kementerian Kemajuan Luar Bandar dan Wilayah)	IPTC
MyIPO-PBT/DBKL <i>IP Seminar</i>	IPTC
Taklimat Pindaan Akta Hak Cipta (Fungsi Tribunal Hak Cipta, <i>Voluntary Notification System</i> , Keperluan Pendaftaran CMO) - Zon Utara	HAKCIPTA
Taklimat Undang-Undang Hakcipta bersama Pengusaha Rumah Tumpangan, Hotel, Pusat Hiburan dan Karaoke	IPTC
Seminar HI & Prosedur Pendaftaran IPT Zon Utara	IPTC
Bengkel Penderafan & Carian Paten IPT Zon Utara	IPTC

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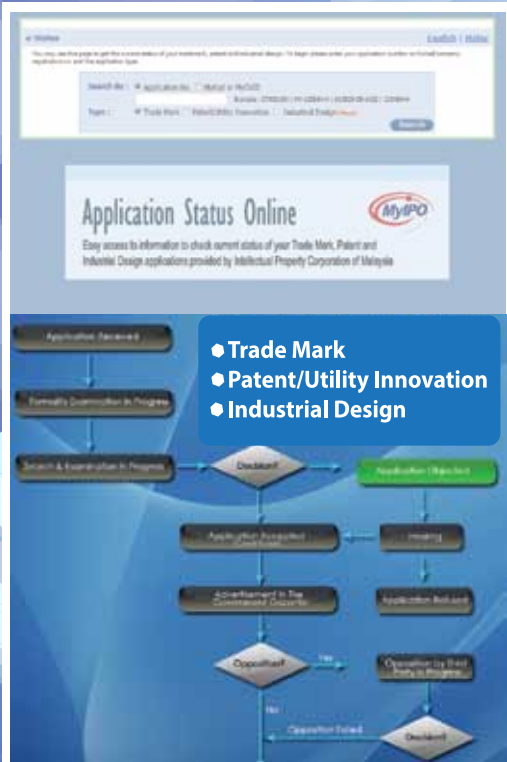
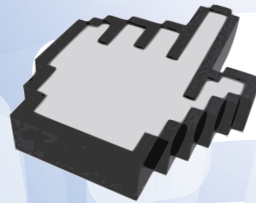
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Easy access to check current status of your Trade Marks, Patents and Industrial Designs applications

UK Patent Change Paves Way For Pharma Innovation

Source: worldipreview.com

- The UK government announced a change to the Patent Act that will allow parties to run drug trials without infringing other parties' patents.
- Drug development companies may trial new innovative drugs, whatever country they are seeking regulatory approval.
- A consultation was carried out by the UK Intellectual Property Office last year. Life sciences stakeholders were invited to give their views on the proposed amendment.
- The benefits for the proposed amendment were:
 - It aims to attract more location in UK for carrying out innovative clinical and field trials.
 - It also helps the industry get their products to market as quickly as possible which will benefit patients, the industry and the economy.
- UK patent law is in line with patent laws in other European countries such as Germany as it exempts from patent infringement any studies or trials necessary to bring a drug to the market in any country.
- It will reduce the costs and "legal uncertainty" associated with patent infringement.
- It will help remove the need to off-shore clinical and field trials, encourage UK manufacturing, and give UK patients earlier access to innovative new drugs.
- The amendments to the UK Patent Act are proposed to come into effect on October 1, 2013.

Source: CMS Newsflash China

China Prepares Third Revision of PRC Trademark Law

- Chinese legislators prepare for the third revision of the PRC Trademark Law, aims to simplify the registration process, strengthen the protection of trademark rights and improve the enforcement against trademark infringement.
- The most notable amendments contained in the Draft Revision are below:
 - Sound is allowed to be registered as trademark, as long as it can distinguish the goods/services of the registrant from others. A single color sign is also registerable, provided that it has gained distinctiveness through use.
 - Registration requirement is simplified to allow applicant combine the applications for registration of the same trademark in several classes into one application.
 - Only prior right holders and other interested parties are allowed to file an opposition against the registration of a trademark with the State Trademark Office (STO).
 - The amendment allows courts to award punitive damages against intentional infringement. The maximum amount of the punitive damages is up to three times of the actual damages incurred by the plaintiff.
 - In addition to the Illegal Benefits and the Actual Losses, the actual damages can be calculated by reference to the amount of royalty payment. The amount of the Statutory Damages is increased from RMB500,000 to RMB 1,000,000.
 - The court is empowered to request the infringer to present its accounting books or other information which are relevant to the trademark infringement. If the latter refuses to comply with the above request, the court may order the infringer to compensate the damages which are claimed by the right holder.

IP News in brief
EU, Thailand

Fragrant Rice Wins GI Status In EU

Source: lexology.com

- The Thailand Department of Intellectual Property has secured the first South-East Asian product registration of Khao Hom Mali Thung Kula Rong-Hai as a protected Geographical Indication in the European Community for a special variety of fragrant jasmine rice which has a particular sweet aroma and taste.
- Khao Hom Mali Thung Kula Rong-Hai failed to gain protection and recognition in the EU after five of its member states opposed granting the fragrant rice GI rights in 2012; argue that Thailand could not use the phrase "Khao Hom Mali" as it is a generic term and questioned whether the rice was packed in a specific area.
- The Department advanced its case on the basis that GI status was warranted because Khao Hom Mali Thung Kula Rong-Hai jasmine rice is only able to grow in a defined geographical region, Thung Kula Rong-Hai area encompasses five provinces in the northeast of Thailand.
- The Department believes the securement of the protected GI status will increase the international profile of the product and bring significant economic advantages to Thai rice farmers.

IP News in brief
United States of America & EU

USPTO and EPO Announce Launch of Cooperative Patent Classification System

- A new patent classification system, called the Cooperative Patent Classification (CPC) has recently launched by USPTO and EPO.
- The CPC comprises of 250,000 symbols based on International Patent Classification (IPC) system.
- The new system will be used by USPTO, EPO and more than 45 patent offices – sharing the same classifications as an international standard.

IP News in brief
United States of America

A New Design Patent International Filing Treaty

Source: lexology.com

- In December 2012, President Obama signed into law the Patent Law Treaties Implementation Act of 2012, which implemented the Geneva Act of the Hague Agreement Concerning the International Registration of Industrial Designs ("the Hague Agreement") in United States.
- The Hague Agreement is an international registration system that offers the possibility of obtaining protection for industrial designs in a number of countries and/or intergovernmental organizations (both referred to as "Contracting Parties") by means of a single international application filed with the International Bureau of the World Intellectual Property Organization (WIPO).
- The Hague Agreement simplifies the management of an international industrial design registration portfolio, since it is possible to record subsequent changes or to renew the registration through a single procedural step.
- Design owners are relieved from the need to make a separate national application in each of the Contracting Parties in which they require protection. Thus, they avoid the complexities arising from procedures that may differ from country to country.

Source: [USPTO / patexia.com](http://USPTO/patexia.com)

- USPTO and EPO will collaborate to regularly update the system to follow technology filing trends.
- The collaboration and information sharing facilitated by this classification will make patent examination process more effective, through:
 - Utilizing patent examiner search results performed by other IP offices around the globe.
 - Having a better understanding of search strategies.
 - Increasing access to more classified prior art.
- Work sharing will minimize duplicative efforts and reduce examiner workloads.

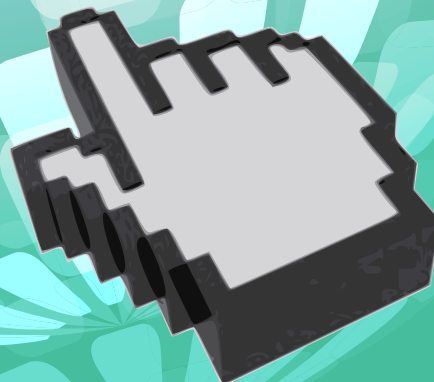
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MyIPO is introducing **IP Online Journal** that offers online advertisement and publication of Patents, Trade Marks, Industrial Designs and Geographical Indications.



The screenshot displays the homepage of the Malaysia Online IP Online Journal. At the top left, there are logos for the Malaysian coat of arms, KIPMER, and MyIPO, followed by the text 'Perbadanan Harta Intelek Malaysia Intellectual Property Corporation of Malaysia' and its tagline '(Ageni di bawah Kementerian Perdagangan (Dalam Negeri), Industri dan Keperluan)'. On the top right, there are options for 'Language' (Malay and English) and 'Style' (various color themes), along with a font size selector 'A+ | a-'. The main header features the text 'Malaysia Online IP ONLINE JOURNAL' with a mouse cursor icon. Below this is a navigation menu with four categories: 'PATENT' (EXCLUSIVE RIGHT GRANTED), 'TRADE MARK' (ONLY TRADEMARKS, THE LOGOS AND SERVICES), 'INDUSTRIAL DESIGNS' (ORIPASIONAL, ABSTRAK, 3D/2D), and 'GEOGRAPHICAL INDICATIONS' (AN INDICATION THAT ASSOCIATES TO A SPECIFIC GEOGRAPHICAL PLACE). To the right of the menu is a vertical list of links: Home, News, Publications, Promotions, Contact Us, Archives, and Login. At the bottom, there is a disclaimer: '2012© Copyright Intellectual Property Corporation of Malaysia (MyIPO) . All rights reserved. DISCLAIMER: The Government shall not be liable for any loss or damage caused by the usage of any information obtained from this website. Intellectual Property Corporation of Malaysia (MyIPO), Unit 1-7, Ground Floor, Menara UOA Bangsar, No. 5 Jalan Bangsar Utama 1, 59000 Kuala Lumpur'. Below the disclaimer are links for 'PRIVACY STATEMENT | SECURITY POLICY | COPYRIGHT NOTICE | DISCLAIMER'.

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PATEN



CAP DAGANGAN



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