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# myip bulletin

**INDUSTRIAL DESIGNS  
MANAGING THE EMERGING  
ISSUES, CHALLENGES AND  
OPPORTUNITIES**

**MALAYSIA TRADITIONAL  
KNOWLEDGE DIGITAL  
LIBRARY (MYTKDL)**

**1 ASEAN ENTREPRENEURSHIP  
SUMMIT (1AES)**

**THE 'C'S OF PASSING OFF:  
CONFUSING CANDIES,  
COMMERCING CHARITIES &  
CLOTHED CELEBRITIES**

**ARTICLE BY PRESIDENT,  
LOCKSMITH ASSOCIATION OF  
MALAYSIA (LAOM)**



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# Editor's Note

Dear readers,

According to Oxford Advanced Learner's Dictionary, "innovation" is defined as 'the introduction of new things, ideas or ways of doing something'. It is also defined as 'a new idea, way of doing something, etc. that has been introduced or discovered'. In the world of IP, you move ahead by means of innovation. For entrepreneurs and professionals, by constantly doing things in a new way and not hopping at only one spot will always guarantee you a competitive edge over your rivals. Innovating does not only benefit businesses, it also proves useful to the community at large. It shakes things up and transforms tired, repeated practice into something fresh and exciting that stimulates creativity in the society.

Readers are presented with a feast of remarkable articles for this issue. For example, on page 13 our Director-General talks about the regional 1 ASEAN Entrepreneurship Summit that Malaysia will be hosting in November 2015. The Summit will act as a platform for the ASEAN community to connect and exchange ideas. In another article, Dr. Patrick Lok shares his views and years of experience in commercialising the 14 locksmith patents that he currently holds. An article on MyIPO's effort to catalogue Malaysia's vast traditional knowledge into an online database is also one of this issue's highlights. Co-authors Mr. Suaran Sidhu and Ms. Stephanie Abraham discuss the act of passing off from the legal standpoint and how it has evolved to fit our current times. Interested readers will delight in the discussion on emerging issues, challenges and opportunities pertaining to industrial designs on page 17.

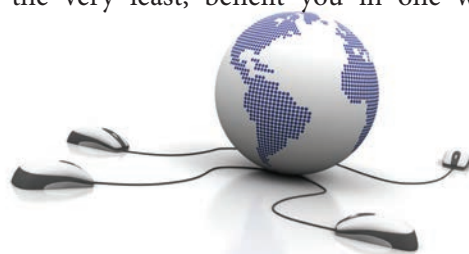
Our 'Happenings' page shows a glimpse of the nation-wide activities MyIPO has partaken in recently. The details on the widely-anticipated annual Global IP Valuation Conference are also available in this issue, so don't forget to check it out. Malaysians with a flair for designing jewellery are encouraged to participate in the 2015 ASEAN Jewellery Design Competition; exciting awards await the winners.

In conjunction with the National Intellectual Property Day, we also call upon inventors and IP owners to submit their intellectual property for participating in the IP Award which consists of seven categories, namely: Organization, Patent, Trademark and Geographical Indications, Industrial Design, Copyright, Inventor of IP, and Young Inventor of IP. Stand the chance to win up to RM30,000 grand prize!

We sincerely hope that the bulletin that you are holding in your hands will further stoke your interest in all things of IP, or at the very least, benefit you in one way or another.

Until the next issue, Happy Reading.

Thank you,



# WHO FILED THE MOST MADRID TRADEMARK APPLICATIONS IN 2014?

47,885

Number of applications

+ 2.3%

Growth in 2014

## TOP 5 CLASSES

Number of classes specified in international registrations  
and growth rate 2013-14

Computers and  
electronics  
9,740  $\downarrow$  -2.4%



Services for  
business  
8,470  $\uparrow$  +0.5%



Technological  
services  
6,133  $\uparrow$  +0.3%



Pharmaceuticals  
5,362  $\downarrow$  -0.4%

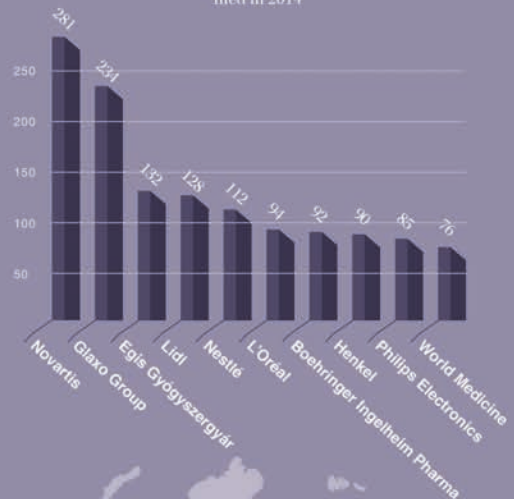


Clothing  
5,251  $\downarrow$  -7.7%



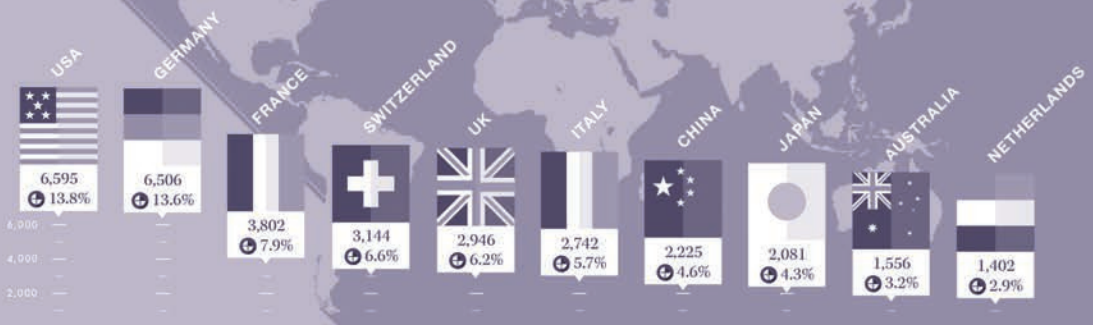
## TOP 10 MADRID APPLICANTS

Number of Madrid applications  
filed in 2014



## TOP 10 COUNTRIES

Number of applications and share of world total



# MALAYSIA TRADITIONAL KNOWLEDGE DIGITAL LIBRARY - TOOL KIT PERLINDUNGAN PENGETAHUAN TRADISIONAL

## Pengenalan

Sistem harta intelek yang wujud pada hari ini adalah sistem harta intelek moden yang diasaskan dari zaman perindustrian di Barat yang berubah mengikut perkembangan teknologi. Harta intelek adalah merupakan hasil dari ciptaan kreatif minda manusia yang terdiri daripada paten, cap dagangan, hakcipta, rekabentuk perindustrian, rekabentuk susunatur litar bersepadu dan petunjuk geografi yang dilindungi dibawah undang-undang harta intelek dengan memberikan hak harta intelek kepada penciptanya.

Landskap sistem harta intelek diperingkat antarabangsa telah banyak mengalami perubahan terutamanya pada abad ke 21 apabila skop perlindungan harta intelek diperingkat antarabangsa dilihat dari perspektif yang lebih luas lagi, bukan sahaja untuk memberi perlindungan hak harta intelek, tetapi juga memberi perlindungan pengetahuan tradisional dan sumber genetik bagi mengimbangi tuntutan komuniti orang asal (*indigenous people*) dan komuniti tempatan (*local communities*).

## Sistem Harta Intelek Di Malaysia

Sistem harta intelek di Malaysia adalah serupa dengan yang diamalkan diperingkat antarabangsa dimana pencipta harta intelek diberi hak harta intelek mereka. Hak harta intelek dilindungi oleh undang-undang harta intelek yang merangkumi Akta Cap Dagangan 1976, Akta Paten 1983, Akta Hakcipta 1987, Akta Reka Bentuk Perindustrian 1996, Akta Reka Bentuk Susun Atur Litar Bersepadu 2000 dan Akta Petunjuk Geografi 2000.



Tujuan sistem harta intelek ini adalah untuk memberi hak harta intelek kepada penciptanya agar mereka boleh menghalang pihak lain dari mengeksploitasi harta intelek mereka dan mengambil tindakan undang-undang bagi menuntut bayaran royalti atau gantirugi sekiranya berlaku perlanggaran hak harta intelek mereka.

## Pengetahuan Tradisional dan Sumber Genetik

Kejayaan sistem harta intelek dalam memberi hak harta intelek telah membuka satu tampanan hebat kepada komuniti orang asal dan komuniti tempatan. Hak mereka dinafikan dan tidak diiktiraf dalam pemberian hak harta intelek yang berkaitan pengetahuan tradisional dan sumber genetik yang dimiliki oleh mereka.

Diantara isu yang hangat diperdebatkan adalah masalah eksploitasi secara tidak adil dan monopoli secara keterlaluan dalam sistem harta intelek khususnya dalam sistem paten mengenai pengetahuan tradisional dan sumber genetik. Ianya telah mengakibatkan masalah *biopiracy*, *misuse* dan *misappropriation* terhadap pengetahuan tradisional dan sumber genetik tersebut. Keadaan ini berlaku kerana tiada satu mekanisme yang jelas untuk mengawal pengetahuan tradisional dan sumber genetik dari dieksploitasi oleh pihak yang tidak bertanggungjawab.

Namun begitu, banyak usaha-usaha sedang dilakukan diperingkat antarabangsa dan tempatan untuk melindungi pengetahuan tradisional dan sumber genetik dari diskploitasi secara tidak adil. Diperingkat antarabangsa misalnya, Konvensyen Kepelbagaian Biologiikal (CBD) yang diadakan pada tahun 1992 dan telah mengiktiraf pengetahuan tradisional dalam melindungi spesies, eko-sistem alam semulajadi dan memberikan peraturan akses dan perkongsian faedah kepada penggunaan pengetahuan tradisional dan sumber genetik tersebut.

Pada tahun 1988-1999, *World Intellectual Property Organization* (WIPO) telah membuat kajian mengenai isu-isu hak harta intelek dan kaitan dengan Pengetahuan Tradisional (*Traditional Knowledge* [TK]), Sumber Genetik (*Genetic Resources*) dan pernyataan kebudayaan tradisional (*Traditional Cultural Expressions* [TCE]). WIPO telah memberi garis pemisah yang jelas untuk membezakan antara pengetahuan tradisional, sumber genetik dan pernyataan kebudayaan tradisional supaya memudahkan mentadbir urus isu-isu tersebut.

Dalam konteks ini, WIPO telah mentakrifkan pengetahuan tradisional adalah merujuk kepada pengetahuan, inovasi dan amalan orang asal dan komuniti tempatan yang di turunkan dari satu generasi ke generasi yang lain yang berkaitan dengan makanan dan perubatan dengan menggunakan sumber genetik dari alam semulajadi. Manakala sumber genetik GR pula adalah merujuk kepada sumber kekayaan alam semulajadi yang terdiri daripada flora dan fauna yang digunakan dalam kehidupan orang asal dan komuniti tempatan sebagai sumber utama perubatan dan makanan harian mereka.

Manakala pernyataan kebudayaan tradisional adalah merujuk kepada adat resam, kerja kesenaian, upacara kerohanian termasuk amalan men-tera dan jampi serapah orang asal dan komuniti tempatan.

Sejak tahun 2000 lagi orang asal, komuniti tempatan dan kerajaan khususnya dari negara-negara membangun telah menuntut perlindungan harta intelek keatas pengetahuan traditional. Sehingga kini tuntutan tersebut masih tidak dapat dipenuhi kerana mengikut amalan sistem harta intelek, pengetahuan tradisional adalah pengetahuan yang telah lama wujud di kalangan awam dan digunakan secara bebas dan dianggap sebagai "public domain". Oleh sebab itu, komuniti harta intelek menganggap pengetahuan tradisional bukan lagi menjadi hak milik mutlak orang asal atau komuniti tempatan dan ianya boleh digunakan secara percuma oleh semua pihak.

Pada tahun 2000, WIPO telah menubuhkan jawatankuasa *Inter governmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore* (IGC) sebagai satu forum untuk membincangkan isu-isu berkaitan dengan harta intelek dan pengetahuan tradisional, sumber genetik dan pernyataan kebudayaan tradisional secara global. Persidangan IGC pada tahun 2009 telah bersetuju mengadakan *international instrument(s)* bagi perlindungan pengetahuan tradisional, sumber genetik dan pernyataan kebudayaan tradisional secara lebih efektif. Sehingga kini, persidangan IGC ini masih belum dapat memutuskan bentuk *instrument(s)* yang sesuai untuk perlindungan tersebut.

stanford.edu

#### IP FACT & FIGURES

A primary reason why individual patent holders sell to patent assertion entities is that they offer insurance and liquidity - Study on patent trolls (patent assertion entities)

## Mekanisma Perlindungan Pengetahuan Tradisional

Kajian WIPO telah mengenalpasti dua(2) mekanisma perlindungan pengetahuan tradisional dan sumber genetik seperti berikut:

### i) Perlindungan Positif

a) Mekanisma ini adalah dengan memberi hak kepada pemilik pengetahuan tradisional untuk mengambil tindakan atau memohon gantirugi ke atas penyalahgunaan pengetahuan tradisional mereka.

b) Ia dapat dilakukan dengan mengadakan satu sistem tersendiri (*suigeneris system*) atau mengadakan peruntukan khas mengenai perlindungan pengetahuan tradisional dan sumber genetik dalam sistem paten.

c) Misalnya di India, pengetahuan tradisional telah diberi perlindungan di bawah akta paten dengan menyatakan pemilik pengetahuan tradisional tersebut, pengakuan telah mendapat keizinan dari pemiliknya (*prior informed consent*) dan asal sumber genetik diperolehi.

### ii) Perlindungan Pertahanan

a) Mekanisma ini adalah dengan melindungi hak harta intelek berkaitan pengetahuan tradisional dari diambil oleh orang lain.

b) Ia dapat dilakukan dengan mendokumentasi pengetahuan tradisional dan sumber genetik.

c) Misalnya di India dengan mewujudkan pangkalan data pengetahuan tradisional dalam bentuk digital yang dikenali sebagai *Traditional Knowledge Digital Library* (TKDL) dan di China dikenali sebagai *Chinese Traditional Medicine Patent Database* (CTMPD).

## Kaitan Perlindungan Pengetahuan Tradisional dan Sistem Harta Intelek

Gap analisis yang dibuat oleh WIPO pada tahun 2008 mendapati rekacipta yang berasaskan kepada pengetahuan tradisional secara umumnya boleh dipatenkan. Persoalan yang timbul bagaimanakah pengetahuan tradisional yang tersebar dikhalayak awam yang telah menjadi "public domain" dapat diberi perlindungan seperti dalam sistem harta intelek sama ada melalui perlindungan positif atau perlindungan pertahanan.

Kebanyakan pengetahuan tradisional yang mempunyai ciri-ciri rekacipta dan inovasi tradisional yang dikenalpasti boleh dilindungi melalui sistem harta intelek adalah melalui sistem paten. Perlindungan harta intelek ini adalah untuk pengetahuan tradisional yang berkaitan tumbuhan perubatan yang melibatkan bahan aktif atau kandungan kimia, kombinasi kandungan produk semulajadi dan kompaun sintetik atau perbezaan dalam kompaun bahan semulajadi tersebut. Penekanan perlindungan pengetahuan tradisional adalah keatas ciri-ciri kebolehpatenan iaitu baru, melibatkan langkah merekacipta dan boleh digunakan untuk industri.

Kajian mendapati bahawa 74% pembangunan sesuatu dadah adalah dari sumber ubatan herbal tradisional yang telah diketahui umum. Eksploitasi secara tidak adil pengetahuan tradisional ini akan menggalakkan lagi aktiviti *bio-piracy*, *misuse* dan *misappropriation*.

### IP FACT & FIGURES

ipkomododragon.blogspot.co.uk  
Currently, 28 Indonesian GIs were registered in Indonesia, as well as 3 foreign GIs.

Institusi dan perundangan sekarang masih tidak mencukupi untuk memberi perlindungan secara berkesan bagi eksploitasi secara adil pengetahuan tradisional dan sumber genetik tersebut.

### Keperluan Perlindungan Pengetahuan Tradisional Di Malaysia

Pada masa kini penduduk Malaysia adalah sebanyak 30 juta di mana 12% adalah kumpulan etnik yang terdiri daripada 19 kumpulan orang asli di Semenanjung, 36 kumpulan etnik di Sabah dan 47 kumpulan etnik di Sarawak yang kaya dengan pengetahuan tradisional dan mahir dalam penggunaan sumber genetik dari alam semulajadi. Malaysia juga diiktiraf sebagai Negara Megadiversiti yang kaya dengan flora yang melebihi 19,000 spesis dan fauna yang melebihi 155,000 spesis. Maka itu, adalah merupakan satu keperluan untuk memberi perlindungan sewajarnya kepada pengetahuan tradisional dan sumber genetik tersebut.

Pada tahun 2001, Malaysia telah mengadakan satu persidangan "Biodiversiti dan Pengetahuan Orang Asal" yang membincangkan masalah eksploitasi pengetahuan orang asal dalam bidang biodiversiti yang memberi penekanan terhadap keperluan untuk memberi perlindungan hak harta intelek kepada orang asal. Persidangan turut membincangkan jumlah wang yang besar terlibat dalam eksploitasi sumber *biological* dunia ketiga serta pengetahuan orang asal yang telah menyebabkan wujudnya amalan yang tidak bermoral oleh syarikat-syarikat dan juga kerajaan yang begitu berminat atas keuntungan tetapi tidak memberikan perhatian atas persoalan etika.

Disamping itu, terdapat juga rungutan yang menyatakan bahawa pengetahuan orang-orang asal sering dieksploitasi oleh syarikat-syarikat multinasional yang terlibat dalam perniagaan berbillion dolar,

yang bergantung kepada sumber-sumber biologikal negara-negara membangun. Undang-undang yang sedia ada tidak dapat melindungi hak-hak orang-orang asal bagi memastikan pembahagian yang adil dalam keuntungan yang diperolehi daripada kepakaran serta kemahiran mereka.

### Inisiatif Perlindungan Pengetahuan Tradisional di Malaysia

Kerajaan melalui Perbadanan Harta Intelek Malaysia (MyIPO) telah pun mengenalpasti beberapa isu utama untuk tujuan memberi perlindungan pengetahuan tradisional dan sumber genetik yang ada hubungkait dengan sistem harta intelek. Dua(2) mekanisma yang telah dikenalpasti adalah seperti berikut:

i) Mengadakan Perundangan Perlindungan Pengetahuan Tradisional dan Sumber Genetik

a) Kaedah ini dapat diadakan dengan mewujudkan undang-undang perlindungan pengetahuan tradisional dan sumber genetik secara sui generis system(sistem tersendiri) atau dalam sistem paten.

b) Kaedah ini sedang dalam kajian terperinci oleh MyIPO tentang kesesuaiannya termasuk penelitian terhadap polisi CBD, undang-undang *Access and Benefit Sharing (ABS)* dan undang-undang adat di negara ini.

ii) Mewujudkan Pangkalan Data Pengetahuan Tradisional

a) Kaedah ini perlu mewujudkan satu pangkalan data yang mengandungi himpunan maklumat pengetahuan tradisional dan sumber genetik di Malaysia.



b) Pangkalan data ini akan digunakan sebagai sumber rujukan pegawai pemeriksa paten, MyIPO semasa hendak meluluskan sesuatu paten.

### **Malaysia Traditional Knowledge Digital Library**

Pada masa ini, kebanyakan maklumat pengetahuan tradisi dan sumber genetik di Malaysia telah didokumentasikan oleh pelbagai pihak, agensi, institusi dan individu sama ada dalam bentuk media cetak ataupun media elektronik. Setakat ini tiada pihak yang berusaha untuk mengumpulkan semua maklumat pengetahuan tradisi dan sumber genetik tersebut. Disamping itu terdapat juga maklumat pengetahuan tradisi dan sumber genetik yang masih belum didokumentasikan oleh mana-mana pihak atau agensi.

Perbadanan Harta Intelek Malaysia (MyIPO) sedang berusaha untuk mengumpul semua maklumat pengetahuan tradisi dan sumber genetik sama ada dalam bentuk media cetak atau elektronik dan kemudiannya ditransformasi maklumat tersebut dalam bentuk digital dan dijadikan sebagai satu pangkalan data pengetahuan tradisi dan sumber genetik kebangsaan. Pangkalan data dalam bentuk digital ini dikenali sebagai *Malaysia Traditional Knowledge Digital Library* (MyTKDL).

Pengumpulan maklumat pengetahuan tradisi dan sumber genetik dalam satu pangkalan data adalah penting untuk memelihara pengetahuan tradisi dan sumber genetik daripada pupus di telan zaman, sebagai bahan rujukan generasi akan datang dan membolehkan kumpulan etnik mendapat faedah dan keuntungan hasil dari pengkomersilan pengetahuan tradisi dan sumber genetik tersebut.

MyTKDL akan dijadikan sebagai pangkalan data kebangsaan pengetahuan tradisional dan sumber genetik dan bertujuan untuk memberi perlindungan secara defensif. MyTKDL penting sebagai sumber rujukan Pegawai Pemeriksa Paten di MyIPO semasa meluluskan sesuatu permohonan paten. Ini secara langsung dapat membantu mengatasi masalah tersalah pemberian paten, eksploitasi secara tidak adil, monopoli secara keterlaluan dalam sistem paten dan masalah *biopiracy* dan *misappropriation* terhadap pengetahuan tradisi dan sumber genetik.

MyTKDL adalah merupakan salah satu aktiviti dalam pelaksanaan Dasar Harta Intelek Negara (DHIN). MyTKDL telah dilancarkan oleh Yang Berhormat Menteri Perdagangan Dalam Negeri, Koperasi dan Kepenggunaan pada 23 April 2009 sempena dengan sambutan Hari Harta Intelek Negara 2009, di Kuala Lumpur dan projek perintis selama satu tahun dengan melibatkan pengumpulan maklumat pengetahuan tradisional dan sumber genetik dari enam (6) agensi yang dikenalpasti iaitu dari Kementerian Sumber Asli dan Alam Sekitar (NRE), Jabatan Kemajuan Orang Asli (JAKOA), Kerajaan Negeri Sabah, Kerajaan Negeri Sarawak, LESTARI-Universiti Kebangsaan Malaysia (UKM), Institut Penyelidikan Perhutanan Malaysia (FRIM) dan Institut Penyelidikan Perubatan (IMR). Majlis menandatangani Memorandum Persefahaman (MoU) mengenai MyTKDL turut diadakan diantara MyIPO dengan JAKOA, Kerajaan Negeri Sabah, dan LESTARI-UKM.

Satu Pasukan *Taskforce* MyTKDL bagi menyelaras dan memantau perkembangan MyTKDL telah ditubuhkan dengan keahliannya terdiri *stakeholders* utama seperti Kementerian Perdagangan Dalam Negeri, Koperasi dan Kepenggunaan, (KPDNKK)

Kementerian Sumber Asli dan Alam Sekitar (NRE), Kementerian Perpaduan, Kebudayaan, Kesenian dan Warisan (KPKKW), Kementerian Kemajuan Luar Bandar dan Wilayah (KKLW), Kerajaan Negeri Sabah, Kerajaan Negeri Sarawak, Lestari-UKM, Jabatan Kemajuan Orang Asli (JAKOA), Institut Penyelidikan Perhutanan Malaysia (FRIM), Institut Penyelidikan Perubatan (IMR) dan Jabatan Perhutanan Semenanjung Malaysia. Taskforce ini juga telah meluluskan format standard bagi mendokumentasikan pengetahuan tradisional dan sumber genetik dan sistem pengelasan pengetahuan tradisional dan sumber genetik. Tujuan sistem klasifikasi ini adalah bagi memudahkan proses pengecaman asal-usul pengetahuan tradisional dan sumber genetik tersebut.

Pada peringkat awal, sistem MyTKDL ini dibangunkan secara dalaman sahaja di MyIPO. Usaha-usaha sedang dilakukan untuk mengumpul lebih banyak maklumat pengetahuan tradisional dan sumber genetik dari Malaysia termasuk dari India dan China. Dijangkakan maklumat ini akan semakin bertambah dan keupayaan sistem MyTKDL akan semakin terhad.

Oleh sebab itu, dengan bantuan dan sokongan dari Kementerian Pertanian dan Industri Asas Tani (MOA), sistem MyTKDL ini sedang dalam proses menaiktaraf infrastrukturnya supaya ianya dapat menampung maklumat pengetahuan tradisional dan sumber genetik yang lebih banyak pada masa akan datang.

### IP FACT & FIGURES

Indonesia to boost private sector R&D Government funding for R&D in Indonesia is about Rp 8 trillion (USD631 million) a year, or 0.09% of GDP. Meanwhile the government funding in Singapore, Malaysia and Thailand are 2.6%, 1% and 0.25% of GDP, respectively.

## Kesimpulan

Pengetahuan tradisional dan sumber genetik adalah menggambarkan sejarah, budaya dan identiti sesuatu komuniti dalam Malaysia. Pengetahuan tradisional dan sumber genetik perlu dilindungi, dipulihara dan dipromosikan dengan tujuan untuk membolehkan komuniti tersebut mendapat manfaat daripada harta warisan mereka.

Usaha MyIPO yang telah membangunkan sistem *Malaysia Traditional Knowledge Digital Library* (MyTKDL) sebagai Tool kit perlindungan pengetahuan tradisional berharap mendapat sokongan padu dari semua pihak dengan menyumbangkan maklumat pengetahuan tradisional dan sumber genetik dari Malaysia dan dimuatnaik dalam sistem MyTKDL ini. Ini secara langsung dapat memperbanyakkan lagi koleksi maklumat pengetahuan tradisional dan dapat membantu MyIPO mengelakkan dari meluluskan paten yang salah.

MyIPO juga berharap kajian terhadap cadangan mewujudkan undang-undang perlindungan pengetahuan tradisional dan sumber genetik akan mendatangkan hasil positif yang dapat membantu negara dalam memberi perlindungan pengetahuan tradisional dan sumber genetik negara.

### IP FACT & FIGURES

An interview with Maira Sutton in worldtradelaw.typepad Instead of copyright life of the author plus 70 year, shorter copyright term means all kinds of works are able to be archived and indexed, plus, authors can remix and re-purpose things that would otherwise not see the light of day. If the works are locked up for close to 140 years (depending on the lifespan of the creator), that means, all kinds of works—videos, photos, songs, etc.—are out of the reach for new artists and creators for new innovation and creativity purposes.

Malaysia Traditional Knowledge Digital Library (MyTKDL)



MyTKDL No : MYTK00003

Title of TK Resource

Local Name : Bunga Pakma  
Local Synonym : Bunga pakma (Malay)  
Foreign Name : Rafflesia, corpse flower (English)  
Scientific Name : *Rafflesia hasseltii* Suringar

MyTKC Code : A01/17U1  
IPC Code : A61K 35/78  
A61K 35/00

Knowledge Known Since : NIL  
Category : Plant  
Used By Community :  
Locality of Collection : Malaysia  
Part of Used : Perianth lobar or the fresh or dried flower bud.

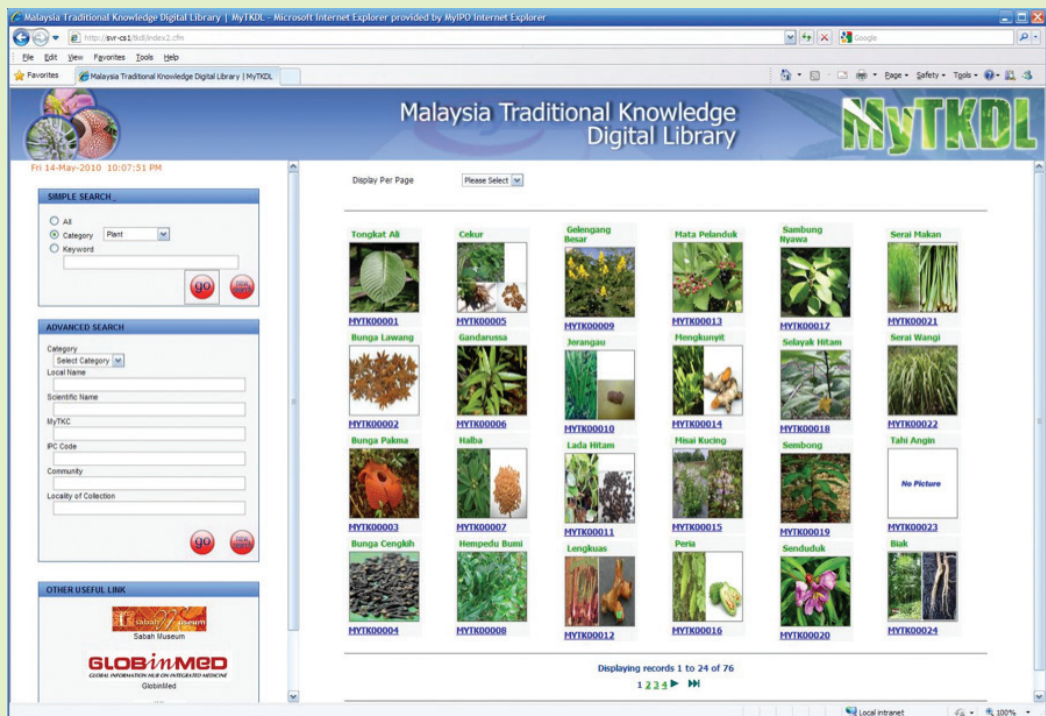
**Purposes :**

In peninsular Malaysia, flower buds are sold as traditional medicines. These buds are seen as a sign of fertility, and are given to help mothers recover after birth.

*Rafflesia hasseltii* is a family of Rafflesiaaceae. The plant has no apparent differentiation of leaves, stems or root and does not contain chlorophyll. They are true parasites; they receive all nourishment from fine root hairs embedded in the host vine. It grows exclusively from a woody vine called *Tetrastigma*. The vegetative bodies of this species begins development inside their plant host's stem or roots. The plant body is almost entirely within the host plant.

The rafflesia can be seen only when it is ready to reproduce (it is in the form of a lump or a structure resembling cabbage). The unique thing about the rafflesia family is that they produce the largest flower of any angiosperma (up to 3-4 feet) and weighs up to 36 pounds. The flower is very large, very thick and fleshy but does not last very long (less than 4-7 days). The flowers have a strong smell of rotting flesh. The flower is radially symmetrical and inside it there is a spike disk, to which either stigma or stamens are attached, depending on the sex of the plant. Its sepals are very large with no petals and numerous stamen, without stalk arranged around a fleshy column, the top of which form the stigma. The fleshy flower releases a strong aroma which smells like rotting flesh. The flower can be male or female, but on observation it was found that the male flower released this aroma more than the female flower. The smell can be noticed within a few feet of the flower. Scientists believe that the aroma lures the insects from hundreds of feet away.

While it is blooming, carrion flies and other insect pollinators visit and shuttle the pollen from male to female flowers. The flower and fruit are the only parts of the plant outside the tissue of the host plant. The fruit produced by *Rafflesia* is round and about 15cm in diameter, filled with smooth flesh and thousands of tiny hard coated seeds. The flesh attracts squirrels and tree shrews which are thought to be the main distributors of the seeds. The plant is found in the jungle of Indonesia, Malaysia Thailand and the Philippines. It grows only on the roots and stems of two species of vines belonging to the genus family *Tetrastigma lanceocarpum* and *T. diorachestii*.



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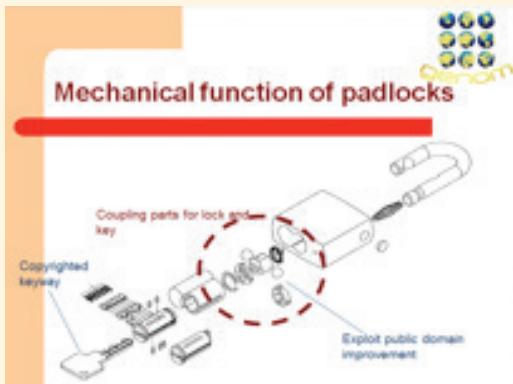


**Lok Kam Lam (Patrick), Dr.**

Founder/President,  
International Intellectual Property Network Forum (IIPNF)  
President, Locksmith Association of Malaysia (LAOM)  
Vice President, Intellectual Property Alumni Association of Malaysia

As the saying goes “when the going gets tough, the tough gets going”. This is what happened to Patrick Lok during the Asian financial crisis in 1997/1998 as it spurred him to come out with something new to overcome the slump period.

Patrick Lok is the inventor of the Genom Lock, Genom Fine architecture-hardware (Major), Genom Smart Key and Genom Smart Door. According to Lok, there was a growing public attention on infringing activities in the 90’s and he patented his Genom Keyway in the late 90’s. During that period the Government started to focus more on Intellectual Property Rights which provides protection of 20 years for patents. Lok used the IPR as his business weapon as he once thought that creativity in the lock design had reach its limit and there was nothing else to improve, but he was proven wrong. Browsing into the USPTO website, he found out that from 1790-2008, lock patents had reached up to 106,000 filings and so using the patented keyway design, it helped open doors to more ideas to be patented such as the mechanical function of products as well as the lock cylinder system.



However, inventing comes with its own set of problems. Although Lok has 14 patents which he had applied for internationally, he realised that not all his inventions could be ready for the production line. Therefore the patenting of his 14 products all at one go is pointless. For example, the patent for the key cylinder plug system costs RM200,000 in filing fees but this product is halted because the production equipment is not ready at that time and since the cylinder plug system has already been disclosed, he decided not to pursue this project any further.

His company was developed into an IP-based business as he said that IP automatically introduces his products without much marketing. The originality and quality of his products create consumer trust. He also realised the importance of IPR by registering the Genom trademark which he used in all of his products.



# 1 ASEAN ENTREPRENEURSHIP SUMMIT (1AES)

As one of the five founding members of Association of Southeast Asian Nations (ASEAN), Malaysia has been actively involved in the development of ASEAN states since its inception and in furthering the economic and social wellbeing of member states. 2015 heralds Malaysia as the Chair of ASEAN. Aside from taking a leading role in forging ahead with various existing agenda of the ASEAN charter, Malaysia will be hosting a regional

ASEAN Summit on Entrepreneurship called 1 ASEAN Entrepreneurship Summit (1AES). This Summit under the Ministry of Finance is aimed at creating a platform to bring together and connect the ASEAN community in the exchange of ideas and share best practices to develop entrepreneurship in ASEAN as a catalyst to grow the region.

Various Malaysian government ministries and agencies have come together and pooled resources and expertise to make this Summit highly impactful. As entrepreneurship is not confined to any particular domain, there is a need to engage relevant parties to provide the necessary subject matter expertise to enhance the overall effectiveness and participants' experience.

As one of the participating curators of the Summit, the Malaysian Intellectual Property Corporation of Malaysia (MyIPO) is responsible to provide the sought after expertise on matters relating to Intellectual Property (IP) in the context of the role it plays in enabling and supporting entrepreneurship. Through this Summit, the Ministry of Finance wishes take the lead in accelerating the Ideas Economy by focusing on ideas as a key to venture creation and to highlight and promote IP as a new asset class.

MyIPO as the custodian of IP rights and is currently taking the lead in championing IP financing, valuation and marketplace, has lined up a series of programmes to engage entrepreneurs as a run up to the main Summit to be held in November 2015. The suite of IP programmes is called IP Connect and consists of 3 different feature programme addressing different aspects of IP needs; IP Talk, IP Clinic and IP Filing. There will be a total of 6 sessions of IP Connect to be held over the coming months before the main Summit event in November 2015. IP Talk is a seminar style session made available to raise awareness on the importance of Intellectual Property (IP) rights for societal and economic wellbeing. It covers basic issues relating to the creation of IP, protection and registration of IP rights as well as more advance topic on IP strategy and how to monetise IP in unlocking its commercial value for wealth creation.

These sessions are designed for entrepreneurs, businesses especially SMEs, researchers, who generates and produces works or creations which can be classified as IP, as well as those wanting to exploit their IP. Even those with minimal knowledge of IP will benefit from attending this IP Talk as the contents will be focused on the fundamentals of IP and how to protect and register IP. The sessions are delivered by qualified and experienced IP practitioners and consultants.

## IP FACT & FIGURES

[ipkomododragon.blogspot.co.uk](http://ipkomododragon.blogspot.co.uk)

Currently, 28 Indonesian GIs were registered in Indonesia, as well as 3 foreign GIs.



The second component of the IP connect programme is the IP Clinic. The IP Clinic is designed to provide a one-to-one consultation whereby, participants are able to obtain relevant advice based on their specific IP needs and issues. Each slot is scheduled for 30 minutes and is conducted by qualified IP consultants or IP lawyers who are well versed in various aspects of IP including IP strategy. This particular format allows for an impactful personalised engagement on IP concerns pertinent to the participants.

The main aim of the first 2 components of the IP Connect is to create and raise awareness and understanding of the importance of IP to entrepreneurs and the general public leading to them taking steps to protect and register their IP. Such protection of the IP created and generated is a critical step towards building and developing their ideas into viable businesses. Hence this is where the third component of the IP Connect programme comes into use; the IP Clinic is to assist eligible entrepreneurs with the filing of their IP protection.

Under the IP Filing, MyIPO will assist qualified candidates to defray part of the cost incurred in filing and protection of specific IP rights i.e. copyrights, industrial designs and trade marks. The cost being defrayed will be the official and professional fees during the filing or notification of the relevant IP. Entrepreneurs, SMEs and individuals who benefit from this IP Filing incentive will be required to proceed with the registration of the IP right after the filing process has been completed.

MyIPO will be rolling out the details in relation to the IP Connect as well as the specific information and scheduling of the IP Talk, IP Clinic and IP Filing very soon and more information will be made available via the MyIPO website, [www.myipo.gov.my](http://www.myipo.gov.my). With the increasing role and importance of IP to many developed and developing economies worldwide, entrepreneurs and businesses alike in ASEAN have to step up to the competition and become IP savvy. MyIPO strongly believes that via the IAES platform and initiative, entrepreneurs and businesses will be able to unlock the real value of their ventures, leading to a stronger regional economy within the ASEAN member states.

**SHAMSIAH KAMARUDDIN**

DIRECTOR GENERAL

INTELLECTUAL PROPERTY CORPORATION OF MALAYSIA (MyIPO)



# WHO ACCOUNTED FOR THE MOST HAGUE DESIGN FILINGS IN 2014?

14,441

Number of designs contained in applications

+ 9.6%

Growth in 2014

## TOP 5 CLASSES

Number of registrations and growth rate 2013-14

**Clocks and watches**  
275 ⬇️ -7.4%



**Packages and containers**  
240 ⬇️ -19.2%



**Means of transport**  
238 ⬆️ +13.3%



**Furnishing**  
232 ⬆️ +0.9%

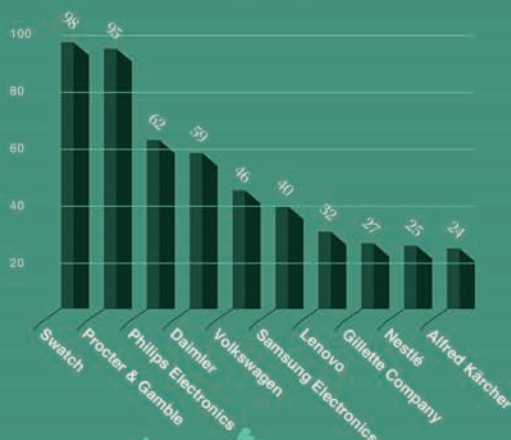


**Recording and communication equipment**  
160 ⬆️ +40.4%



## TOP 10 HAGUE APPLICANTS

Number of Hague applications filed in 2014



## TOP 10 COUNTRIES

Number of designs contained in applications and share of world total



# WHO FILED THE MOST PCT PATENT APPLICATIONS IN 2014?

214,500

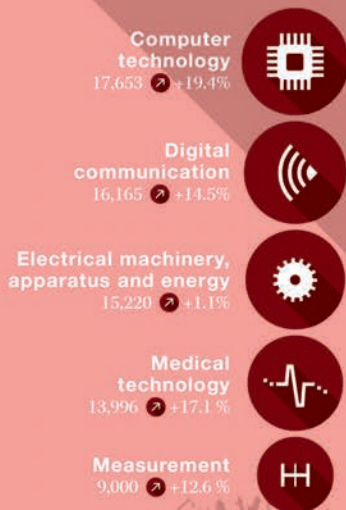
Number of applications

+ 4.5%

Growth in 2014

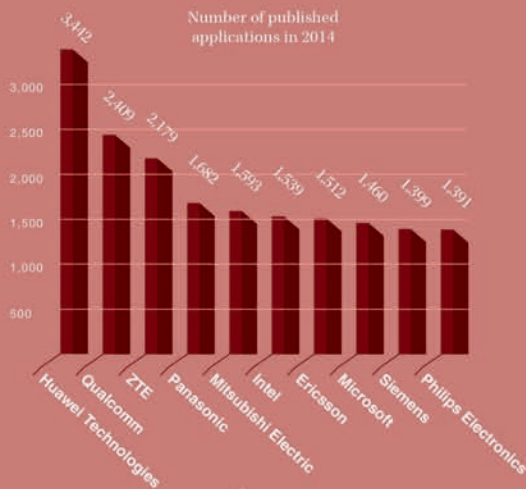
## TOP 5 FIELDS OF TECHNOLOGY

Number of published applications and growth rate 2013-14



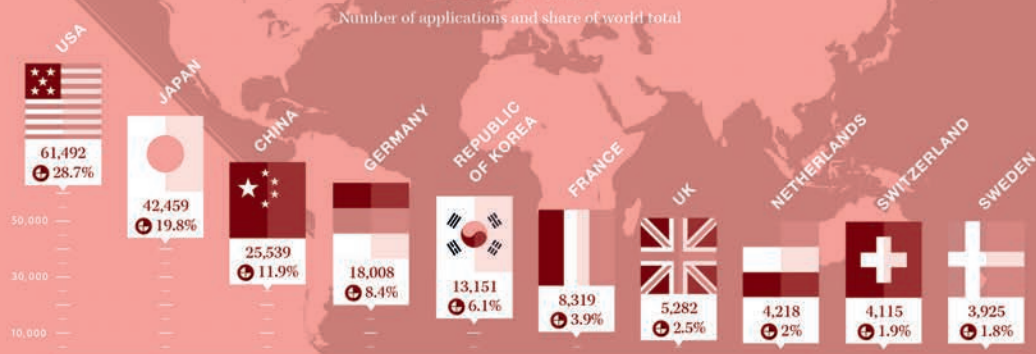
## TOP 10 PCT APPLICANTS

Number of published applications in 2014



## TOP 10 COUNTRIES

Number of applications and share of world total



# HAPPENINGS

## MyIPO Family Day 2015



## Anugerah Perkhidmatan Cemerlang



## Certificate of Bentong Ginger Presentation Ceremony



## Patent Searching Workshop



## MyIPO's Flood Relief Campaign (East Cost)



# THE 'C'S OF PASSING OFF: CONFUSING CANDIES, COMMERCING CHARITIES AND CLOTHED CELEBRITIES

"Confusion is a word which we have invented for an order which is not understood"- Henry Miller

Why is Intellectual Property ("IP") infringement so prevalent in our society today? Is it because the lack of enforcement of a party's IP rights or is it because of ignorance? If it is the latter, then ignorance should be made a "Defence" in an IP legal action as many parties do tend to state that they "did not know that they were infringing another party's IP rights". IP rights in our country remains solid but there will always be people out there who will infringe another's IP rights and will essentially feign ignorance.

At the risk of sounding redundant, the current trend that is trending now are cases which involve one party passing off another party's goods as their own. The law of passing off prevents a trader from passing off his goods as if they originated from another trade. The most often quoted passage on this matter comes from the case of **Perry v Truefitt** where Lord Langdale explained that the basis of a passing off action is where: "a man is not to sell his own goods under the pretence that they are the goods of another man; he cannot be permitted to practise such a deception, nor to use the means which contributes to that end..." There are three main requirements for the claimant to prove in order to succeed in its claim for passing off. The three requirements are:

1. The claimant would first have to show goodwill and reputation;
2. The actions of the other party are likely and/or have actually caused misrepresentation; and

Below we analyse three distinct cases, two of which are Malaysian and the third one an English case where the claim for passing off was made and the Court's finding for each case is worth noting.

## CURRENT CASES ON PASSING OFF

### High Court of Malaya in Shah Alam finds Goodwill and Reputation Exists in a 'Candy' Design **Angel Candies v Loo Yan Wah & 2 Others**

#### Brief Facts

This case involved breach of confidentiality, fiduciary duty and passing off in respect of the get-up of handmade rock candies sold under the brand of "Sticky". Sticky Candies are a type of candy that can be customised to include certain features like an image or a name inside the body of the candy. The Plaintiff was the franchisee of an Australian company. 3 Defendants were named in this suit. The 1st Defendant was a former employee of the Plaintiff; the 2nd Defendant was a private limited company who hired the 1st Defendant; and the 3rd Defendant was an individual who had been the distributor of the Plaintiff.

#### Plaintiff's Claim- Passing Off

The Plaintiff claimed that it had acquired goodwill and reputation in the "get-up" of the Sticky Candies and the Defendants' conduct of making, marketing and selling their version of the candies damaged the Plaintiff's goodwill and reputation.

Indonesia to boost private sector R&D

Government funding for R&D in Indonesia is about Rp 8 trillion (USD631 million) a year, or 0.09% of GDP. Meanwhile the government funding in Singapore, Malaysia and Thailand are 2.6%, 1% and 0.25% of GDP, respectively. Women make up over 40% of scientific researchers in Vietnam. For individual patent applications from 2008 – 2012, less than 9% out of 1,134 Vietnamese were applications from women.

## IP FACT & FIGURES

Held

The High Court of Shah Alam had found that the Plaintiff is well known to the public to be the makers of "...high quality, hand-made rock candy style lollies and candy art that comes in various shape and sizes with vibrant colours and these attractive elements has brought the goodwill and reputation to the Plaintiff's sticky candy business and becomes the attractive force that brings and cause the commercial customer to purchase the Plaintiff's product..." . This in essence the Court found was the Plaintiff's get-up.

The Court then went on to ask itself that if it sees the Defendants' product as a whole, would it be identical and if not, does it so closely resemble the Sticky Candies such that it is likely to deceive or cause confusion to the public. The Court had relied on several cases to assess this point and one of which was the test laid out in the case of **Danone Biscuits Manufacturing (M) Sdn Bhd v Hwa Tai Industries Bhd** where the court in that case had stated "...in comparing the products to determine the similarity, the products must be taken as a whole. If the packaging, on such an observation, is confusingly and deceptively similar to the plaintiff's get-up and packaging, these striking similarities will render the trade and public to be confused as they are identical goods."

After examining the goods together, the Court could not differentiate between the Plaintiff's candy and the Defendant's candy. Court found it to be very similar in "colour, design & clear packaging", therefore it would cause confusion to the public. In addition, the fact that the 2nd Defendant was selling the candies while acting as if he is representing the Plaintiff had further misled the public to believe that the Defendants' candy is one of the same as the Plaintiff's candy.

**High Court of Malaya in Shah Alam finds that a Charitable Organisation is entitled to bring a claim in Passing Off even though they are not a Commercial Business Entity. St. John Ambulans Malaysia v PJ Uniform Sdn Bhd**

Brief Facts

This was an action brought by St. John Ambulance against a retailer for uniform clothing for the trade mark infringement i.e. unauthorised use of the St John emblem and also for passing off. The Defendant put the Plaintiff to strict proof and contended that the reputation and goodwill of the Plaintiff did not depend on the emblem but on the charitable services and first aid training courses provided by the Plaintiff. Interestingly enough in this case, the Defendant raised an argument on the issue of the Plaintiff's locus to bring this suit. The Defendant had contended that the Plaintiff must show that it is trading to maintain this action. The Defendant also raised in its defence that the Plaintiff is not entitled to enforce its registered trade mark because the Plaintiff has been statutorily incorporated as a charitable and humanitarian organization i.e. it is a non-profit organisation thus it isn't an entity connected in the course of trade.

Held

The High Court of Shah Alam had found that the Defendant had narrowly construed the definition of "in the course of trade" and "trade mark" defined in the Trade Marks Act to require the registered proprietor of a mark to be undertaking a commercial business. The Court elaborated by stating that Section 3 of the Trade Marks Act allows room for expansion and hence is of the view that "the meaning of in the course of trade should be liberally interpreted to encompass the provision of any form of services rendered including that by non-commercial business or undertakings" .

For the passing off claim, the Defendant once again raised the argument that the Plaintiff did not have goodwill in the mark because the Plaintiff at all material times is not engaged in commercial business. The Court had relied on the case of **Service Master (M) Sdn Bhd v MHL Service Master Sdn Bhd & Anor** where it was stated by RK Nathan J, "Although the words goodwill and reputation are used interchangeably there is in law a difference. Goodwill requires business activity. Reputation is, being renowned without necessarily having a business reputation." The Court in the present case stated that the Plaintiff provides charitable and humanitarian services to the public who need it therefore they are renowned for this

and this satisfies the first element of the tort. The Court went on to rely on an English case of **British Diabetic Association v Diabetic Society Ltd and Ors** where it was stated "that the notion of trade in a passing off action is given a wide context and that included activity of charitable organisations..." In this case, the Court had held that a charitable organisation is like a commercial business entity. Even though there is no profit made from the works of a charitable organisation, it is a legitimate 'business entity'.

#### Analysis

The Defendant's narrow interpretation of the words "in the course of trade" had led the Defendant to argue that a charitable organisation would not fall under the 'definition' of "in the course of trade". What does "Trade" mean? In the Dictionary sense, trade means any occupation pursued as a business or livelihood. There is nothing in the dictionary which states that trade must be strictly defined to only apply in business transactions. It would appear that the court was more inclined to adopt a wider meaning.

#### High Court of Justice in England finds that well-known Retail Shops are liable for Passing Off "Images" of famous artists. **Robyn Rihanna Fenty & Ors v Arcadia Group Brands Limited (t/a Topshop) & Anor**

#### Brief facts

This case involved the famous retail shop 'Topshop' and the famous pop star artist 'Rihanna'. In the year March 2012, Topshop had started selling a T-shirt with an image of Rihanna on it. The photograph of the image had been taken by an independent photographer. Topshop claimed that they had a licence from the photographer to use the photograph however they did not have a licence from Rihanna to use the photograph on a T-shirt.

#### Court Analysis

In England, there is no law concerned with 'image rights'. There is no general right by a famous person or anyone else for that matter to control the reproduction of their image. The law protects the copyright of the image therefore if a celebrity owns a particular image, they may control the distribution of that said image. A famous case referred to here which deals with merchandising and endorsement in passing off cases is the case of **Irvine v Talksport**. In that case, Laddie J had concluded that there is nothing in the law to prevent a case of passing off being made out in a false endorsement case. Laddie J made a difference between "endorsement" and "merchandising".

He stated that *“When someone endorses a product or service she tells the relevant public that she approves of it or is happy to be associated with it. On the other hand when, for example, a film company engages in merchandising, images or characters from that film are exploited by selling all kinds of products, such as clothing and toys.”*

The Court went on to state in this case following the Irvine case that there is no difference in law between a merchandising case and an endorsement case because in both matters, a claimant must have a goodwill to protect. If certain goods are sold in circumstances which would make the public believe that the said goods are authorised by the claimant i.e. “official merchandise” but in fact, the representation is a false one, as long as this representation is in effect, the second element of passing off would have been made out.

Held in the High Court of Justice in 2013

Based on the evidence tendered into court, the judge found that since the year 2012, Rihanna is regarded as a style icon by many people and as such, people would be interested in what they perceive to be Rihanna’s views about style and fashion. If Rihanna wears them, it would be an endorsement of the said goods in the minds of the public. Therefore, this is evidence enough to show goodwill. The court had taken into account various aspects of the evidence provided by both parties in this case such as the manner in which the image was printed on the T-shirt, the “Rihanna” competitions that were hosted by Topshop prior to the sale of the said T-shirt and people’s perception of Topshop as a whole. The Court concluded that based on all these, Topshop was liable for passing off. This case is really interesting mainly because throughout the Judge’s observation of the evidence and facts in this case, it seemed that the Judge was not going to find for the Claimants as he had said that the members of the public who were purchasing the T-shirts would not be confused and/or care as to whether Rihanna had endorsed that particular T-shirt collection or if she had not. In paragraph 36 of the Judgment, the Judge had stated that:

*“...selling a garment with a recognisable image of a famous person is not in or itself passing off...”*  
*“...to be passing off, a false belief engendered in the mind of the potential purchaser must play a part in their decision to buy the product...”*

However, the Judge in the end found for the Claimant. It would seem that the reason behind this decision is due to the fact that Topshop is a well-known clothing retailer therefore their actions of putting an image of a famous person on an apparel would mislead the public into believing that the said apparel is endorsed by the relevant artist. This is a high threshold to put on a “well-known retail shop”, because now, if any other “well-known retail shops” wish to sell apparels with images of famous artists, they would need to get the consent of the said artists first before making the said apparels. This would mean that obtaining a licence to use the copyright from the particular photographer who took the photo of that celebrity will not be enough. It is opined that the judge had failed to consider that the public who purchase these apparels may be purchasing them because they look good on a particular individual or they like the material of that particular apparel and in fact has nothing to do with the famous artist’s image on the said apparel. Most members of the public would not know the difference between an endorsed item and a non-endorsed item.

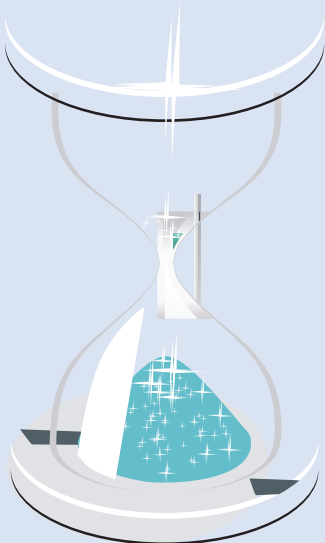
The Judge had made his conclusion based on the popularity of the retailer and this in essence might produce an unfair result. If for example, if a T-shirt with Rihanna's image on it were to be sold in a not so well-known shop in KLCC, would a normal member of the public be confused into thinking that Rihanna had endorsed the said T-shirt and had authorised the said shop to sell the T-shirt? It would rather be unlikely. What would happen to shops that are in the intermediate range? Therefore, is it fair to assume that a T-shirt with Rihanna's image on it sold in a well-known retail outlet would have Rihanna's endorsement and approval? It is opined that confusion will not arise in both circumstances. Applying the Reasonable Man's test here, I would submit that the ordinary members of the public are unlikely to be confused as to whether Rihanna had or had not endorsed a T-shirt sold in a well-known retail shop, because to them it would not matter on the reasoning that someone who decides to make a purchase of a Rihanna T-shirt would do so to collect a memorabilia of his/her idol on the one end of the spectrum or simply to purchase something to wear being the other end of the range.

#### Conclusion

The above cases give a glimpse of how the law of passing off has evolved over time to be more flexible to fit the current issues that are arising or so it would seem.

*"I try to stay in a constant state of confusion just because of the expression it leaves on my face."*  
— Johnny Depp

**Co-Authored By: Suaran Singh Sidhu & Stephanie Anne Abraham (Messrs. Azri, Lee Swee Seng & Co.)**



economist.com

#### IP FACT & FIGURES

Economists say that patent trolls can play a useful role by helping to transfer the profit generated by patents from manufacturers to inventors. But the new research finds that inventors only receive 5% of their patent's value after successful infringement cases. The rest goes to lawyers and non patent entities (NPEs) that do not engage in innovation.

## ASEAN JEWELLERY DESIGN COMPETITION 2015

As one of the initiatives under ASEAN IPR Action Plan 2011-2015, ASEAN JEWELLERY DESIGN COMPETITION 2015 was launch recently. The project is jointly co-organized by the ASEAN Intellectual Property (IP) Offices and European Community-ASEAN Project on the Protection of Intellectual Property Rights (ECAP III Phase II). This is the first time that such jewellery design competition is being organised by the organiser.

Intellectual Property Corporation of Malaysia (MyIPO) as the coordinator for the project in Malaysia has recently launched the competition through its website on 6th April 2015. MyIPO on 3rd April 2015 had also circulated letter of invitation to universities which conducted design and fine art subjects. Other ASEAN countries has also launched the competition in their respective countries.

The competition's objective is to stimulate research, creativity and excellence in the field of high jewellery creations among the ASEAN designers and raise awareness besides IP protection. The organising of the competition is seen as a recognition on the contribution made by experienced jewellers as well a platform for scouting new talents and encouraging interaction between creators and designers from different nationalities.

The Competition will be divided into two phases:

- i) Malaysia National Selection Phase (semi-finals); and
- ii) ASEAN Regional Selection Phase (final)

The entries at the Malaysian national level will be judged by a panel of juries who are distinguished design experts besides representative of MyIPO. The top 5 entries from Malaysia will enter the ASEAN Regional Phase where a winner from each country will be selected by a panel of regional (ASEAN) expert juries.

The winner of each country will be invited to attend the awards ceremony and to exhibit their award winning piece of work at the 56th Bangkok Gems & Jewelry Fair, Bangkok from 10-14 September 2015. They will also be given the opportunity to explain to the audience the characteristics and values of their jewels. As part of the award, the winner will also be given a trophy and a study programme for one week at John Hardy, the world famous jeweler, in Bali Indonesia.

Malaysians who are jewellery designer, students, craftsperson or jewels artists are most welcome to submit their entries and the closing date to submit their application to MyIPO is 20th May 2015. Eligible work of jewellery pieces must be actually made, executed, and produced after **15 February 2015**.

Those interested to participate in this competition are invited to download the application form and other requirements from MyIPO's website at [www.myipo.gov.my](http://www.myipo.gov.my). They may also address their inquiries for clarification to: [fadzlijaafar@myipo.gov.my](mailto:fadzlijaafar@myipo.gov.my) or call +603-2299 8859, [dhiya@myipo.gov.my](mailto:dhiya@myipo.gov.my) or call +603-22998869 and [fazlin@myipo.gov.my](mailto:fazlin@myipo.gov.my) or call +603-22998874.

**MOHD FAIZUDIN MOHD SHARUJI, DIRECTOR OF RESEARCH AND DEVELOPMENT**

# INDUSTRIAL DESIGNS MANAGING THE EMERGING ISSUES, CHALLENGES AND OPPORTUNITIES

Industrial design has played an important role in determining product and services competitiveness in the growing global economy. Intangible assets are becoming more important than what it used to be in the past and businesses nowadays are keen to invest a great deal of money in intellectual property and its protection.

Companies with design strengths are advantageous over companies with business strength and could easily outwit them. Design does not only add value to products and services but it also brings benefit of technology to users and emotionally connects them to the products.

As mentioned by Kenya Hara, a graphic designer, curator and author of *Designing Design*;

*“The whole world looks different if you just put your chin in your hand and think. There are an unlimited number of ways of thinking and perceiving. In my understanding, to design is to intentionally apply to ordinary objects, phenomena and communication the essence of these innumerable ways of thinking and perceiving”*

Issues Relating to Industrial Design Protection Industrial Design is the process of applying design to a product of manufacture. Legally, industrial design can be described as the overall appearance of an article or product be it the ornamental or aesthetic aspect of that particular article or product.

The owner of industrial designs are always advised to protect their industrial design, whether through the national legislation or international registration.

Global issues on the protection of industrial design and global development of legal protection for industrial design should be given a fair thought when amending national legislation.

Among these issues are;

- i) international design laws that show some areas of agreement that emerges through international agreements on the legal principles; and
- ii) the rise in counterfeiting and design piracy that is detrimental to both designers and consumers.

Malaysia also needs to adopt a legislation that will fit comfortably within the existing Industrial Designs Act 1996 and is consistent with Malaysia's obligations and commitments to international laws and treaties.

Many companies around the world have protected their industrial designs through registration to safeguard their rights. Their creativity and vision capture the imagination of consumers and create new usage. Industrial designs are not only limited to household, automotive and furniture products but it covers a larger range of products such as jewellery and toys. Hence, there are stiff competitions among manufacturers on how to attract consumers to their products through design.

The Samsung Electronics Co. v. Apple Inc. lawsuit in the United States of America are based on four industrial design (design patents) held by Apple namely; USD604305, USD593087, USD618677, and USD504889. Apple filed the suit against Samsung in April 2011.

The first three cases involve designs that look like the iPhone and the fourth case is the design that looks like the iPad. And the jury during the trial also superficially thought that the designs also look like the Samsung Galaxy S and Galaxy SII (phones) and the Galaxy Tab 10 (a tablet). The suit resulted in a win for Apple of over US \$1 billion for infringement of its industrial design (design patents). It is clear from the above example that counterfeiting is rising as the greatest threat for innovative design-intensive industries.

### International Treaty

Looking at the international level, international treaties were formed to deal with the protection of intellectual property. General standards of protection under each treaties are to be adhered by all contracting countries or parties of the respective treaties. The treaties are created with the aimed of international integration of intellectual property rights with one common understanding.

The Hague Agreement of the international registration of industrial designs consists of several separate treaties. The most important treaties are: The London Act of 1934, the Hague Act of 1960, and the Geneva Act of 1999. As of 1st January 2010, the 1934 Act has been frozen. The Hague Agreement or the Hague System provides a mechanism for registering an industrial designs whereby the owner will get

protection in several member countries by filing one application with the administrating body that is known as International Bureau (IB) of WIPO.

There are several issues to be resolved before any country accede to the Hague Agreement and Malaysia too has and had resolved a few of these issues. Among the issues highlighted are:

- i. Multiple Design
- ii. Novelty
- iii. Deferment of publication
- iv. Duration of protection
- v. Recording of changes or amendment
- vi. Reproduction

### Way Forward

The introduction of Intellectual Property Valuation (IPV) as a new source of financing, the business community in Malaysia especially, will benefit as business transaction also involve branding, technology, designing and goodwill. Thomas Alva Edison, the inventor is an example of an IP owner who used his patent on the incandescent electric light bulb as collateral to secure financing to start his company, the General Electric.

The initiative by MyIPO in training local IP Valuer is the first step in establishing the platform in using IP as collateral for financing purposes. Even though IP as collateral is new in Malaysia, this type of financial transaction has long been available in other country like United States of America. Businesses and financial institutions in Malaysia should grab this opportunity of the new area of financial activities.

The Association of Southeast Asian Nations (ASEAN) Working Group on Intellectual Property Cooperation (AWGIPC) has formulated a five strategic goals that will serve as framework for its work in the next five years under the ASEAN IPR Action Plan 2011-2015. It is designed to transform ASEAN into an innovative and competitive region. Under the Strategic Goal 2: “Developed national or regional legal and policy infrastructures that address evolving demands of the IP (Intellectual Property) landscape and ASEAN Member States (AMSs) participate in global IP systems at the appropriate time”, there are several initiatives.

Initiative number 15 is “Accession to the Hague Agreement Concerning the International Registration of Industrial Designs by at least 7 AMSs by 2015” where AMSs will formulate a legislation that will allow the filing of international registration. At the moment Singapore and Brunei had amended their legislation to allow international filing and other AMSs are in various stages of studying and amending their legislation. It is hope that the AMSs will be able to resolve the differences in their legislation to complement the needs of Hague Agreement.

**Reference:**

Hara Design Institute at the Nippon Design Center

WIPO: Hague Agreement Concerning Int.

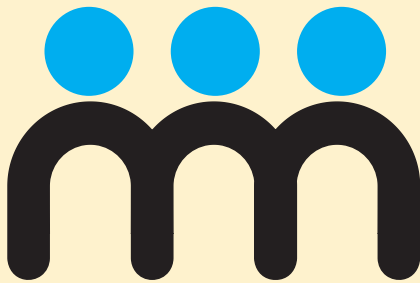
Registration of ID

ASEAN IPR Action Plan, 2011- 2015

<http://www.google.com/patents>

CNET

Brian W. Jacobs, “Using Intellectual Property to Secure Financing after the Worst Financial Crisis Since the Great Depression”



**IP FACT & FIGURES**

worldipreview.com

Total annual trademark applications in the UK Intellectual Property Office (IPO) surpassed the 55,000 mark for the first time, adding that there has been a 33% increase in filings since 2011.

Around 35 tonnes stockpile of counterfeit goods, which worth more than RMB 285,000 (\$46,000), including healthcare and cosmetics items were burned in front of the public in China. The proposed public burning was one of many that have taken place across the country as part of a crackdown on counterfeit goods.

Samsung filed the most patents at the European Patent Office (EPO) last year with 2,833 applications. Meanwhile, five of the top 10 patent filers are from Europe which includes three German companies.



# KEPUTUSAN PEMENANG ANUGERAH HARTA INTELEK NEGARA 2014 (AHIN2014)

**A. KATEGORI ORGANISASI**  
**(Pengurusan Harta Intelekt Terbaik)**  
 Universiti Putra Malaysia (UPM)

**B. KATEGORI PATEN**

**Tempat Pertama**

- a) Choo Kheng Ten
  - b) Sik Huei Shing
- Institut Penyelidikan Perhutanan Malaysia (FRIM)

**High Temperature Lumber Treatment System**

**Tempat Kedua**

- a) Dr. Faridah Salam
- b) Dr. Nur Azura Mohd Said
- c) Gayah Abdul Rahman
- d) Dr. Zamri Ishak

Institut Penyelidikan Dan Kemajuan Pertanian Malaysia (MARDI)

**Strip Immuno Gold Biosensor Untuk Mengesan Antibiotik Tetrasiklin Dalam Industri Poltri**

**Tempat Ketiga**

- a) Dr. Idris Abu Seman
- b) Nur Rasheda Ramli
- c) Madihah Ahmad Zairun
- d) Dr. Norman Kamarudin
- e) Dr. Ahmad Kushairi Din
- f) Wan Azha Wan Mustapha
- g) Dato' Tony Peng Shih Hao

Lembaga Minyak Sawit Malaysia (MPOB)

**Compositions For Controlling Ganoderma Disease In Plants And Method Thereof By Using Endophytic Fungus, Hendersonia GanoEF1**

**C. KATEGORI CAP DAGANGAN DAN PETUNJUK GEOGRAFI**

**Tempat Pertama**

- a) Fauziah Mohamed Yah
  - b) Nur Afiqah Imran
- My Haiz Sdn. Bhd - **HAIZ**

**Tempat Kedua**

- a) Dr. Suri Roowi
  - b) Hadijah Hassan
  - c) Arif Zaidi Jusoh
  - d) Rosnah Othman
  - e) Siti Aisyah Muhammad
- Institut Penyelidikan Dan Kemajuan Pertanian Malaysia (MARDI) - **NUTRIMA**

**Tempat Ketiga**

Dr. Sri Ganesh A/L Michiel  
 BIZ Inns & Hotels Sdn. Bhd.  
 - **BIZ INNS & HOTELS**

**D. KATEGORI REKA BENTUK PERINDUSTRIAN**

**Tempat Pertama**

- a) Dr. Shahrman Zainal Abidin
  - b) Mohd Norhan Dulkahar
- Universiti Teknologi Mara (UiTM)  
**Cloncase Untuk Kaedah Tut Pokok Bagi Pertanian Moden**

**Tempat Kedua**

PROTON Design Team  
**PROTON Suprima S**

**Tempat Ketiga**

- a) Norbaizura Mohd Nor
  - b) Ruslaan Bin Abd Ghani
  - c) Nurshazwany Zamani
  - d) Mohd Azizi Ahmad Radzi
- TM Research and Development Sdn. Bhd.  
**TM Copper Line Qualifier (COP-LQ)**

## E. KATEGORI HAKCIPTA

### Tempat Pertama

Melvin Wong Hwang

**Fantasy Football Software Application Running On Devices With Google Android Operating System**

### Tempat Kedua

- a) Prof. Madya Dr. Noraziah Ahmad
- b) Ainul Azila Che Fauzi
- c) Noriyani Mohd Zin
- d) Azlina Zainuddin

Universiti Malaysia Pahang (UMP)

**Preserving Fragmented Database Replication Consistency Using Binary Vote Assignment On Grid Quorum**

### Tempat Ketiga

- a) Goh Kim Nee
- b) Prof. Madya Dr. Jafreezal Jaafar
- c) Dr. Emy Elyanee Mustapha
- d) Davindren Arumugam
- e) Eddy Goh Tik Earn

Universiti Teknologi Petronas (UTP)

**AALDS-Automatic Accident Location Detection System**

## F. KATEGORI PEREKACIPTA MUDA HARTA INTELEK

### Tempat Pertama

- a) Muhammad Nur Azzi Kamardin
  - b) Khairunnisa Zullkuffli
- SMK Seri Kenangan Segamat  
**FG – Bioplastic**

### Tempat Kedua

- a) Syakir Zufairi Zuraidi
- b) Muhammad Ezzat Hilmi Sholikhin
- c) Aiman Amierul Jaafar
- d) Muhammad Irfan Izzuddin Sallehuddin
- e) Mohd Iqbal Mohamad

Sekolah Dato' Abdul Razak  
**Automated Watering System (AWAS)**

### Tempat Ketiga

- a) Khairuddin Khalid
  - b) Ahmad Fadhli Abdul Malek
- MRSM Langkawi  
**Solvemanda**



# IP AROUND THE WORLD

## EUROPEAN UNION

**CJEU: No Exhaustion Rule for Transformed Works**  
23 January 2015  
(Source: worldipreview.com)



The judgement of the Court of Justice of the European Union (CJEU) stated that the EU law that governing the exhaustion of a distribution right cannot be applied when a copyrighted work has been transformed from its original form. CJEU was ruling on a case between AllPosters, which sells poster online and offers clients reproductions of copyright protected posters on canvases, and Pictoright, a Dutch collecting society, which manages copyright for a host of artists.

In this case, AllPosters offers a service to produce an image on canvas by applying a synthetic coating (laminated) to a paper poster depicting the chosen work. The image is then transferred from the paper to a canvas through a chemical process. Pictoright opposed the reproduction of its clients' works without their consent and called on AllPosters to stop offering the service.

The CJEU was requested to issue guidance on the exhaustion doctrine of distribution rights outlined under article 4(2) of the EU's directive on the information society (InfoSoc). CJEU ruled that the Article 4(2) of the directive must be interpreted as meaning that the rule of exhaustion of the distribution right does not apply in a situation where a reproduction of a protected work has undergone an alteration of its medium, such as the transfer of that reproduction from a paper poster onto a canvas, and is placed on the market again in its new form.

## INTERNATIONAL

**Changes to Madrid Protocol Come into Effect**  
8 January 2015  
(Source: murgitroyd.com)



During the 48th session of the Madrid Union Assembly held in September in Geneva, changes made to the Common Regulation were approved and came into effect on 1 January 2015.

The latest amendments to the Madrid Protocol cover application processes, international registrations and changes to renewal fees for international registrations. The international bureau, which administers the Madrid system, will use new guidelines when processing an application. The bureau can continue processing the application if the applicant demonstrates a legitimate reason for its late supplying of necessary information for its application. Reasons can include technical problems in electronic submissions.

Under the new changes, trademark owners that apply for protection in a different jurisdiction for only some of the goods and services covered by their international registration can apply for renewed protection without having to pay a fee.

## AUSTRALIA



Accelerating Commercialisation - New Assistance for IP Commercialisations  
12 January 2015 (Source: [lexology.com](http://lexology.com))

The Australian government has launched a new program titled “Accelerating Commercialisation” (AC) which provides financial and other business and legal assistance as well as specialist advice and mentoring to individuals and businesses for the commercialisation of intellectual property (IP).

AC is a program designed to assist researchers, entrepreneurs, start-up companies and small to medium sized businesses. The program provides financial assistance up to \$1,000,000 or up to \$250,000 in the case of commercialisation officers and eligible partner entities to cover legal fees in respect to the protection of IP, licensing costs, clearance searches and related training, travel and labour costs. However, the financial assistance is not available for the purposes of defending IP.

The program is not limited to any particular area of technology or industry. However, priority will be given to applications made in respect to specific growth sectors such as food and agribusiness; medical technologies and pharmaceuticals; mining equipment, technology and services; oil, gas and energy resources; and advanced manufacturing. The service under this program also includes access to an Expert Network, which assists with various aspects including capital raisings and establishing new markets. The Expert Network comprises members who have a variety of relevant skills, contacts and experience in areas such as commercialisation, business development, management and access to capital markets.

## EUROPEAN UNION

EU: CJEU Approves Patenting Of Embryonic Stem Cell Technologies Using Unfertilised Human Ova 15 January 2015 (Source: [inventa.com](http://inventa.com))

The Court of Justice of the European Union (CJEU) has issued a decision in a patent case, giving a fresh interpretation to the restrictions on patentability. The case has involved a dispute between International Stem Cell Corporation (ISCO) and the United Kingdom Intellectual Property Office regarding the patentability of processes covering the use of parthenogenetically-activated human ova.

The Directive on the legal protection of biotechnological inventions, according to the article 6(2)(c), inventions shall be considered unpatentable for uses of human embryos for industrial or commercial purposes.

The CJEU has interpreted this provision that an unfertilised human ovum whose division and further development have been stimulated by parthenogenesis does not constitute a ‘human embryo’. Within the meaning of that provision, that ovum does not have the inherent capacity of developing into a human being, in the light of current scientific knowledge.

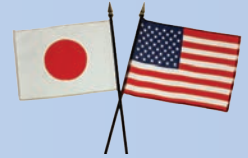
This decision was a good news for biotechnologies inventions that open the doors for stem cell patents, being a strong incentive to the development of this industry that has lived with some pessimism due to the restrictions on the patentability established in the Biotechnology Inventions Directive.

## UNITED STATES OF AMERICA & JAPAN

### United States of America, Japan Join International Design System

13 February 2015

(Source: WIPO)



The United States of America (US) and Japan have joined the Hague System for the International Registration of Industrial Designs, adding two of the world's biggest economies to a WIPO-administered registry that supports creators worldwide.

Designers in Japan and the United States can now readily protect and promote their industrial designs in other countries which are Hague members. The Hague System will mean more filing efficiencies and potential cost savings for US and Japan applicants in pursuing protection for their innovative industrial designs around the world, as well as the designers from the contracting parties now have easier access to protection in two of the largest global economies.

According to WIPO statistics, 7.1% of the world's design applications were filed in 2013 with the national offices in the US (3.8%) and Japan (3.3%). 12.9% of all design applications worldwide were filed by applicants from the US (8.2%) and Japan (4.7%).

The accession of the US and Japan is expected to boost further expansion of the Hague System and encourage other countries to consider joining the Hague Agreement.

### WIPO to Accept Chinese & Japanese Characters as International Trademarks

6 March 2015

(Source: lexology.com)

The World Intellectual Property Organization (WIPO) is changing the trademark registration system to accept Chinese and Japanese characters as international trademarks. The new system may take place in 2015's autumn at the earliest.

Asian economies play an increasingly prominent role in the world, the current system that allows registration of international trademarks in Latin script only falls short of providing adequate global protection for Asian and other non-western brands.

In light of this, WIPO will be working on the revision of existing registration system for international trademarks over the next five years. Currently, trademarks using non-Latin alphabets are not acceptable for registration as international trademarks, though local languages may be used in trademarks for registration on national level.



## SINGAPORE AND CAMBODIA

Patents and Industrial Designs Registered In Singapore to Gain Recognition in Cambodia  
23 January 2015

(Source: IPOS)



On 20 January 2015, Singapore Intellectual Property Office (IPOS) and Cambodia's Ministry of Industry and Handicraft (MIH) have signed a Memorandum of Understanding (MoU) on IP cooperation aims to make IP protection more accessible to businesses and creators with closer tie-ups between the IP regimes of the two countries.

The MoU allows both countries to recognise patent and industrial design filed at each other's office. An applicant seeking IP protection for patents and industrial designs in Cambodia will soon be able to do so by filing with IPOS and thereafter being recognised in Cambodia.

The arrangement between IPOS and MIH complements ongoing patent work-sharing programmes like the ASEAN Patent Examination Cooperation (ASPEC), to support businesses seeking faster IP protection in the region. Under the MoU, IPOS' patent search and examination reports will be recognised by the Cambodian authority. By having a simplified front-end registration, and similar back-end examination system, businesses will benefit from the ease of application and consistent outcome.





Intellectual Property Corporation of Malaysia



MyIPO with the collaboration of the European Union–ASEAN Project on the Protection of Intellectual Property Rights (ECAP III Phase II) are proud to present this ASEAN Jewellery Design Competition 2015 to stimulate research, creativity and excellence in the field of high jewellery design creations in ASEAN.

- The Competition will be divided into two phases;
- i. the Malaysia National Selection Phase (semi-finals) and
  - ii. the ASEAN Regional Selection Phase (finals)

The top 5 entries from Malaysia and the rest of the ASEAN countries will be selected to enter the Regional Phase to be held in Bangkok, Thailand in September 2015.

#### AWARDS :

1. The winners' podium will have the chance to show their selected jewels in a collective exhibition during the 56th BKK Gem & Jewellery fair taking place in Bangkok (Thailand) in September 2015.
2. A trophy.
3. The winners will be awarded with a "study visit" for in a well known jewellery company in ASEAN namely John Hardy company in Bali, Indonesia.

#### SUPPORTED BY :

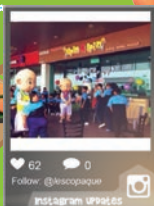


CLOSING DATE : 20 MAY 2015

Application Forms and Conditions are available at : [www.myipo.gov.my](http://www.myipo.gov.my)

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Tunggal

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Keperluan Pelanggan

**MyLLP**  
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Perkongsian Liabiliti Terhad

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Pembedanan Syarikat  
Pendaftaran Perniagaan

Perkhidmatan e-Info SSM

**e-Info**  
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Perkhidmatan Atas Talian  
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PERKHIDMATAN e-LODGE MENT SSM  
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SSM e-LODGE MENT SERVICES

Perkhidmatan Serah  
Simpan Dokumen  
Berkanun Secara  
Atas Talian

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eXtensible Business Reporting Language

Sistem Pelaporan  
Kewangan  
Korporat

**Akta Baharu  
Skim  
Kepentingan**

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