



An agency under  
Ministry of Domestic Trade,  
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# TPPA

Trans-Pacific Partnership Agreement (TPPA)



## Its Impact on the Intellectual Property Industry in Malaysia



- SUMMARY OF THE TRANS-PACIFIC PARTNERSHIP AGREEMENT
- TRADE MARK – GEOGRAPHICAL INDICATION LINKAGE
- DANA PEMBIAYAAN PEMFAILAN HARTA INTELEK UNTUK PELAJAR, BELIA DAN KOMUNITI SETEMPAT/TEMPATAN
- TECHNOLOGY INNOVATION SUPPORT CENTRE MALAYSIA (TISC)
- INTELLECTUAL PROPERTY IN INTERNATIONAL BUSINESS



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JANUARY 2016

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## Editor's Note

Dear Readers,

We meet again in this eleventh edition of MyIP Bulletin. This edition proudly presents a whole slew of articles covering hot topics such as Trans-Pacific Partnership Agreement (TPPA), Trade Mark-Geographical Indication Linkage (TMGI Linkage) and Technology Innovation Support Centre (TISC) Malaysia, as well as other interesting topics. Keep on reading to find out more.

Following the signing of TPPA on 4 February 2016 in New Zealand, it has become the talk of the town and has received extensive media coverage. To keep abreast with the issue, readers are presented with a comprehensive article on TPPA which discusses its impact on the intellectual property industry in Malaysia, along with the summary of the agreement.

On top of that, readers are also presented with a detailed article on Trade Mark-Geographical Indication Linkage. The article explains on the principle behind the development of the search and examination system of trade marks and geographical indications and the importance of having a linkage between these two IP components.

If you are still figuring out what TISC is all about, an article on page 20 explains the idea of having TISC as a basis for communication and cooperation between the community, host institutions and MyIPO. TISC enables universities and research institutes becoming the hotspots of innovation to scout, attract, access, absorb, use and produce technologies.

Apart from the above hot topics, we also feature several other interesting articles such as IP filing fund for students, youths and local community, as well as significance of protecting intellectual property in international business. Readers can also check out our IP News section for new insights into the global intellectual property development. Meanwhile, IP Facts and Figures brings you exciting updates on intellectual property around the world.

So, with that, read on and we hope that you will enjoy this edition as much as we have enjoyed putting it together.

Until you hear from us again, Happy Reading!

**MyIP Bulletin Editor.**



# TRANS-PACIFIC PARTNERSHIP

Auckland, New Zealand



## SUMMARY OF THE TRANS-PACIFIC PARTNERSHIP AGREEMENT

On October 5, 2015, Ministers of the 12 Trans-Pacific Partnership (TPP) countries – Australia, Brunei Darussalam, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, United States, and Vietnam – announced conclusion of their negotiations. The result is a high- standard, ambitious, comprehensive, and balanced agreement that will promote economic growth; support the creation and retention of jobs; enhance innovation, productivity and competitiveness; raise living standards; reduce poverty in our countries; and promote transparency, good governance, and enhanced labor and environmental protections. We envision conclusion of this agreement, with its new and high standards for trade and investment in the Asia Pacific, as an important step toward our ultimate goal of open trade and regional integration across the region.

### KEY FEATURES

Five defining features make the Trans-Pacific Partnership a landmark 21st-century agreement, setting a new standard for global trade while taking up next-generation issues. These features include:

- Comprehensive market access. The TPP eliminates or reduces tariff and non-tariff barriers across substantially all trade in goods and services and covers the full spectrum of trade, including goods and services trade and investment, so as to create new opportunities and benefits for our businesses, workers, and consumers.
- Regional approach to commitments. The TPP facilitates the development of production and supply chains, and seamless trade, enhancing efficiency and supporting our goal of creating and supporting jobs, raising living standards, enhancing conservation efforts, and facilitating cross-border integration, as well as opening domestic markets.
- Addressing new trade challenges. The TPP promotes innovation, productivity, and competitiveness by addressing new issues, including the development of the digital economy, and the role of state-owned enterprises in the global economy.
- Inclusive trade. The TPP includes new elements that seek to ensure that economies at all levels of development and businesses of all sizes can benefit from trade. It includes commitments

to help small- and medium-sized businesses understand the Agreement, take advantage of its opportunities, and bring their unique challenges to the attention of the TPP governments. It also includes specific commitments on development and trade capacity building, to ensure that all Parties are able to meet the commitments in the Agreement and take full advantage of its benefits.

- Platform for regional integration. The TPP is intended as a platform for regional economic integration and designed to include additional economies across the Asia-Pacific region.

## SCOPE

- The TPP includes 30 chapters covering trade and trade-related issues, beginning with trade in goods and continuing through customs and trade facilitation; sanitary and phytosanitary measures; technical barriers to trade; trade remedies; investment; services; electronic commerce; government procurement; intellectual property; labour; environment; 'horizontal' chapters meant to ensure that TPP fulfils its potential for development, competitiveness, and inclusiveness; dispute settlement, exceptions, and institutional provisions.
- In addition to updating traditional approaches to issues covered by previous free trade agreements (FTAs), the TPP incorporates new and emerging trade issues and cross-cutting issues. These include issues related to the Internet and the digital economy, the participation of state-owned enterprises in international trade and investment, the ability of small businesses to take advantage of trade agreements, and other topics.
- TPP unites a diverse group of countries – diverse by geography, language and history, size, and levels of development. All TPP countries recognize that diversity is a unique asset, but also one which requires close cooperation, capacity-



building for the lesser-developed TPP countries, and in some cases special transitional periods and mechanisms which offer some TPP partners additional time, where warranted, to develop capacity to implement new obligations.

## 18. Intellectual Property

TPP's Intellectual Property (IP) chapter covers patents, trademarks, copyright, industrial designs, geographical indications, trade secrets, other forms of intellectual property, and enforcement of intellectual property rights, as well as areas in which Parties agree to cooperate. The IP chapter will make it easier for businesses to search, register, and protect IP rights in new markets, which is particularly important for small businesses.

The chapter establishes standards for patents, based on the WTO's TRIPS Agreement and international best practices. On trademarks, it provides protections of brand names and other signs that businesses and individuals use to distinguish their products in the marketplace. The chapter also requires certain transparency and due process safeguards with respect to the protection of new geographical indications, including for geographical indications recognized or protected through international agreements. These include confirmation of



understandings on the relationship between trademarks and geographical indications, as well as safeguards regarding the use of commonly used terms.

In addition, the chapter contains pharmaceutical-related provisions that facilitate both the development of innovative, life-saving medicines and the availability of generic medicines, taking into account the time that various Parties may need to meet these standards. The chapter includes commitments relating to the protection of undisclosed test and other data submitted to obtain marketing approval of a new pharmaceutical or agricultural chemicals product. It also reaffirms Parties' commitment to the WTO's 2001 Declaration on the TRIPS Agreement and Public Health, and in particular confirms that Parties are not prevented from taking measures to protect public health, including in the case of epidemics such as HIV/AIDS.

In copyright, the IP chapter establishes commitments requiring protection for works, performances, and phonograms such as songs, movies, books, and software, and includes effective and balanced provisions on technological protection measures and rights management information. As a complement to these commitments, the chapter includes an obligation for Parties

to continuously seek to achieve balance in copyright systems through among other things, exceptions and limitations for legitimate purposes, including in the digital environment. The chapter requires Parties to establish or maintain a framework of copyright safe harbors for Internet Service Providers (ISPs). These obligations do not permit Parties to make such safe harbors contingent on ISPs monitoring their systems for infringing activity.

Finally, TPP Parties agree to provide strong enforcement systems, including, for example, civil procedures, provisional measures, border measures, and criminal procedures and penalties for commercial-scale trademark counterfeiting and copyright or related rights piracy. In particular, TPP Parties will provide the legal means to prevent the misappropriation of trade secrets, and establish criminal procedures and penalties for trade secret theft, including by means of cyber-theft, and for cam-cording.

Source:[http://fta.miti.gov.my/miti-fta/resources/Summary\\_of\\_The\\_Trans-Pacific\\_Partnership\\_Agreement.pdf](http://fta.miti.gov.my/miti-fta/resources/Summary_of_The_Trans-Pacific_Partnership_Agreement.pdf)

# Trans-Pacific Partnership Agreement (TPPA)

- Its Impact on the Intellectual Property Industry in Malaysia

By: Wong Jin Nee, Partner of Wong Jin Nee & Teo  
Dated 7 April 2016

Malaysia together with 11 other countries, namely Australia, Brunei, Canada, Chile, Japan, Mexico, New Zealand, Peru, Singapore, Vietnam and the United States of America signed the Trans-Pacific Partnership Agreement (TPPA) in Auckland, New Zealand on 4 February 2016.

Unlike a traditional Free Trade Agreement (FTA), the TPPA is intended to foster and strengthen IP protection by harmonising the IPR regimes, rules and disciplines within these integrated markets. All of these obligations are generally aimed at expanding the legal protection of IPR holders and more specifically, to extend the protection period, to broaden the scope, to facilitate enforcement and to ease requirements for obtaining IPR.

It is not surprising that Malaysia's accession to the TPPA has attracted extensive coverage and support on one hand and controversies, hostilities and oppositions on the other. Many IP sceptics, NGOs and activists argued that TPPA is a way for the IPR holders from developed countries to expand their

monopoly powers over knowledge, creative works and traditional medicines in developing countries, thereby ignoring the value of public domain and adversely affecting consumer rights. Proponents of stronger IP protection argue that TPPA will lead to increased foreign direct investment and technology transfer, stimulate innovation and ultimately economic growth in our country.

It is undeniable that TPPA would have positive impacts for the IP industry and the entire IP value chain and IP ecosystem, from research and development to monetisation, commercialisation and exploitation of IPR in Malaysia. What would be considered as the

IP Industry? Aren't all industries dependent on IP protection? Well, there are some industries that are more dependent than IP than others and they are accordingly referred to as IP intensive industries. These industries include entertainment, creative, high tech, R&D, content based and pharmaceuticals.

Regardless of whether they are IP industries or IP intensive industries, there are many positive and strategic impacts and benefits of TPPA. Some of these include the following:

- As Malaysian businesses will enjoy improved access to extensive markets as the countries involved in the TPPA made up 40% of the world's economic production, it would certainly stimulate economic development, attract foreign direct investment, lead to GDP growth, increase higher value exports and create higher skilled labour force;
- it would encourage more investments to be expended into R&D by various sectors including the research institutes, universities, private and public organisations;
- it would stimulate more innovative developments in SMEs;
- it would enhance attractiveness of Malaysia to higher-tech activities and investments, leading to more developed infrastructures;
- it would promote entrepreneurship and creation of new enterprises and start-ups;
- consequently, more international and local organisations would file their IP in Malaysia;
- this would result in more international and local organisations engaging in more transactions to monetise, commercialise and exploit their IPs in Malaysia; and
- as a nation, we can offer our services as a global hub for IP dispute resolution so that companies can litigate or arbitrate their disputes expeditiously and effectively.



All the above activities would provide a robust platform and conducive environment for all key players and stakeholders involved directly and indirectly in IP. Needless to say, such vibrant activities would equip the locals with special skill sets required to develop a more vibrant workforce including IP professionals, IP advisors and IP consultants who could export their services overseas. This would certainly provide Malaysia with a competitive edge in competing with other nations in being recognised as Asia's IP hub. In conclusion, there are a myriad of positive impacts and benefits of TPPA on the IP industries.



# TRADE MARK

## - GEOGRAPHICAL INDICATION LINKAGE

AZAHAR ABDUL RAZAB  
BAHAGIAN CAP DAGANGAN & PETUNJUK GEOGRAFI

### 1. LATAR BELAKANG

Malaysia telah menyertai dan terlibat secara aktif dalam pertubuhan-pertubuhan antarabangsa berkaitan perlindungan hak-hak harta intelek. Antara pertubuhan utama yang disertai ialah *World Intellectual Property Organization* (WIPO) dan *World Trade Organization* (WTO). Perjanjian terpenting disertai Malaysia di bawah WIPO ialah *Paris Convention* (1967). Manakala di bawah WTO pula ialah *Agreement on Trade-Related Aspects of Intellectual Property Rights* (1994) atau lebih dikenali sebagai *TRIPs Agreement*. Melalui penyertaan dalam kedua-dua perjanjian tersebut, Malaysia mempunyai obligasi dan tanggungjawab untuk memberi perlindungan sewajarnya ke atas komponen harta intelek seperti cap dagangan, paten, reka bentuk perindustrian, petunjuk geografi, hakcipta dan rekabentuk susun atur litar bersepadu.

Article 1 *Paris Convention* menyatakan bahawa:

- (1) *The countries to which this Convention applies constitute a Union for the protection of industrial property;*
- (2) *The protection of industrial property has as its object patents, utility models, industrial designs, trademarks, service marks, trade names, indication of source or appellations of origin, and the repression of unfair competition.*

Manakala *Part II - Standard Concerning Availability, Scope and Intellectual Property Rights* Perjanjian *TRIPs* menyatakan bahawa:

**"This Part of TRIPs Agreement consist of eight Sections (Copyright and Related Rights, Trademarks, Geographical Indication, Industrial Design, Patents, Layout-Designs (Topographies) of Integrated Circuits, Protection of Undisclosed Information dan Control of Anti-Competition Practice in Contractual Licences) .....**"

Bagi memenuhi tuntutan obligasi tersebut, Malaysia telah mewujudkan perundangan harta intelek yang berkaitan seperti Akta Cap Dagangan 1976, Akta Paten 1983, Akta Hakcipta 1987, Akta Reka Bentuk Perindustrian 1996, Akta Petunjuk Geografi 2000, Akta Rekabentuk Susun Atur Litar Bersepadu 2000, Akta Perihal Dagangan 2011 dan Akta Perlindungan Varieti Baru Tumbuhan 2004. Melalui akta-akta tersebut, perlindungan ke atas hak-hak harta intelek telah diberikan sama ada melalui kewujudan sistem pendaftaran ataupun secara automatik tanpa melalui mekanisme pendaftaran.

Artikel ini bertujuan membincangkan secara umum kaitan antara perlindungan cap dagangan dan petunjuk geografi. Tidak syak lagi jika ditinjau di peringkat antarabangsa, kebanyakan negara khususnya negara-negara ahli WIPO dan WTO telah mengadakan satu sistem pendaftaran khusus bagi cap dagangan. Negara-negara tersebut menyediakan prosedur permohonan dan pendaftaran cap dagangan secara terperinci bagi membolehkan proses pendaftaran dilaksanakan di negara-negara mereka. Manakala bagi perlindungan petunjuk geografi pula, tidak semua negara mempunyai perundangan khusus untuk perlindungan petunjuk geografi kerana ia dilindungi di bawah perundangan cap dagangan sebagai Cap Dagangan Perakuan atau Cap Dagangan Kolektif. Manakala terdapat negara yang mempunyai sistem pendaftaran petunjuk geografi berasingan daripada sistem pendaftaran cap dagangan. Malaysia merupakan salah satu negara yang mempunyai sistem pendaftaran secara berasingan bagi cap dagangan dan petunjuk geografi. Walaupun terdapat dua sistem pendaftaran yang berasingan, pertalian dan hubungan yang wujud diantara cap dagangan dan petunjuk geografi tidak pula diabaikan dan diketepikan.



## 2. HUBUNGAN ANTARA CAP DAGANGAN - PETUNJUK GEOGRAFI DALAM KONTEKS MALAYSIA

Akta Cap Dagangan 1976 telah diwartakan pada 24 Jun 1976 dan dikuatkuasakan pada 1 September 1983 yang antara lain memberi perlindungan ke atas cap dagangan, cap dagangan perakuan dan cap dagangan pertahanan. Penguatkuasaan Akta ini telah mewujudkan satu sistem pendaftaran cap dagangan bagi seluruh Malaysia dengan menyatukan sistem pendaftaran Malaya, Sabah dan Sarawak yang wujud sebelumnya. Apa yang termasuk sebagai cap dagangan mengikut kehendak Akta adalah seperti di bawah:

**'cap' termasuklah suatu tanda, jenama, kepala, label, tiket, nama, tandatangan, perkataan, huruf, angka, atau apa-apa gabungannya;**

**'cap' dagangan kecuali berkenaan dengan Bahagian XI, ertinya suatu cap yang digunakan atau dicadang untuk digunakan berhubung dengan barang-barang atau perkhidmatan bagi maksud menunjukkan atau supaya**

**menunjukkan suatu hubungan dalam perjalanan perdagangan di antara barang-barang atau perkhidmatan itu dengan seorang yang berhak sama ada sebagai tuan punya atau sebagai pengguna berdaftar bagi menggunakan cap itu .....**

Pindaan-pindaan yang bersesuaian telah dibuat dari semasa ke semasa bagi memastikan Akta tersebut sentiasa memenuhi keperluan dan menepati amalan antarabangsa. Manakala Akta Petunjuk Geografi 2000 pula telah diwartakan pada 15 Jun 2000 dan dikuatkuasakan pada 15 Ogos 2001 yang antara lain memberi perlindungan ke atas petunjuk geografi bagi seluruh Malaysia. Akta Petunjuk Geografi 2000 ini juga telah dipinda bagi mengemaskini serta mengukuhkan prosedur pendaftaran petunjuk geografi. Definisi petunjuk geografi mengikut Akta Petunjuk Geografi 2000 ialah:

**“Petunjuk geografi ertinya suatu petunjuk yang mengenal pasti apa-apa barang sebagai berasal dari suatu negara atau wilayah atau kawasan atau tempat di dalam negara atau wilayah itu, jika suatu kualiti, reputasi atau ciri lain tertentu barang itu adalah pada dasarnya boleh dianggap berpunca dari tempat asal geografinya.”**

Secara mudahnya pengertian petunjuk geografi tersebut boleh dirumuskan sebagai satu tanda yang mengenalpasti bahawa suatu produk itu adalah berasal daripada suatu lokasi tertentu berdasarkan keistimewaan kualiti, reputasi atau lain-lain karakter yang boleh dikaitkan dengan lokasi berkenaan. Lokasi tersebut boleh terdiri daripada negara, wilayah, kawasan, bandar atau suatu tempat yang menghasilkan sesuatu produk.

Umumnya terdapat perbezaan di antara sistem pendaftaran cap dagangan berbanding sistem pendaftaran petunjuk geografi mengikut kehendak akta masing-masing. Akta Cap Dagangan 1976 secara jelas memberi hak eksklusif kepada pemilik berdaftar sesuatu cap dagangan. Hak eksklusif tersebut dan perlindungan hanya diberikan kepada pemilik cap dagangan yang didaftarkan di bawah Akta ini sahaja. Sedangkan pendaftaran petunjuk geografi pula tidak memberi hak secara eksklusif kepada pemiliknya sebaliknya pengeluar-pengeluar di kawasan geografi berkaitan berhak untuk menggunakan petunjuk geografi yang sama selagi menepati ciri-ciri dan kriteria sepertimana pendaftaran. Perlindungan juga tidak terhad kepada petunjuk geografi yang telah didaftarkan di bawah Akta Petunjuk Geografi 2000 sahaja sebaliknya perlindungan termasuk juga petunjuk geografi yang tidak berdaftar.

## Prosedur Pemeriksaan Cap Dagangan

Perkara-perkara yang menjadi asas pertimbangan semasa pemeriksaan ke atas permohonan pendaftaran cap dagangan akan melibatkan aspek-aspek seperti berikut:

- Memenuhi definisi cap dagangan
- Memenuhi salah satu kriteria kedistinktifan
- Tidak termasuk sebagai tanda-tanda yang dilarang
- Tidak menyerupai cap-cap terdahulu

Akta Cap Dagangan 1976 secara umumnya menerima pakai prinsip “First in time, first in right” dimana permohonan cap dagangan terdahulu atau terawal akan memperolehi hak pendaftaran. Oleh itu jika pemunya yang berlainan membuat permohonan untuk mendaftarkan cap dagangan yang menyerupai atau hampir menyerupai cap dagangan yang telah didaftarkan atau yang dipohon lebih awal, bantahan di bawah Seksyen 14 (1)(a) atau Seksyen 19 Akta Cap Dagangan 1976 akan dikenakan. Disamping

itu Akta ini juga memperlihatkan hubungan di antara cap dagangan dan petunjuk geografi dimana terdapat beberapa peruntukan yang menyentuh mengenai petunjuk geografi ataupun sekurang-kurangnya nama geografi. Akta Cap Dagangan 1976 mempunyai peruntukan yang secara umumnya menghalang pendaftaran nama geografi sebagai cap dagangan sebagaimana terdapat pada Seksyen 10(1)(d), yang menyatakan bahawa:

Untuk membolehkan sesuatu cap dagangan (lain daripada cap dagangan perakuan) didaftarkan dalam Daftar, cap dagangan itu hendaklah mengandungi atau mempunyai sekurang-kurangnya satu daripada butir-butir yang berikut:-

(d) ....., iaitu perkataan yang mengikut ertinya yang biasa bukan suatu nama berdasarkan tempat atau satu nama keluarga;

Manakala Hakim Mahkamah Rayuan, Mahader Shanker di dalam kes Lim Yew Sing v Hummel International Sports & Leisure A/S pula menyatakan:

**“Pausing here, let it be noted that Madrid being the name of a place and Olsen being a Scandinavian surname will not be registrable in Malaysia. There can be no property in a mark which is not registrable.”**

Berdasarkan peruntukan akta dan keputusan Mahkamah Rayuan, pegawai pemeriksa cap dagangan akan mengambil pendekatan untuk membantah permohonan nama geografi sebagai cap dagangan.

Di samping itu Akta Cap Dagangan 1976 juga menghalang pendaftaran cap dagangan yang didapati mengandungi atau memberikan gambaran tidak benar mengenai petunjuk geografi termasuk wain dan spirit kerana ianya boleh menyebabkan kekeliruan dikalangan orang ramai. Manakala Seksyen

14A(1)&(2), Akta Cap Dagangan 1976 pula secara tidak langsung mengkehendaki carian dan semakan dibuat ke atas bukan sahaja daftar Petunjuk Geografi Malaysia tetapi juga petunjuk geografi yang dilindungi di luar negara. Seksyen 14A(1)&(2), ACD 1976 memperuntukan seperti berikut:

(1) Sesuatu cap dagangan tidak boleh ditolak pendaftarannya menurut kuasa perenggan 14(f) dan (g) jika permohonan untuk pendaftarannya telah dibuat dengan suci hati, atau jika cap dagangan itu telah digunakan secara terus-menerus dengan suci hati dalam perjalanan perdagangan oleh pemohon untuk pendaftarannya atau pendulunya dalam hak milik, sama ada -

(a) sebelum permulaan kuat kuasa Akta Petunjuk Geografi 2000 [Akta 602];

atau

(b) sebelum petunjuk geografi yang berkenaan diberi perlindungan di negara asalnya.

(3) Sesuatu cap dagangan tidak boleh ditolak pendaftarannya menurut perenggan 14(f) dan (g) jika petunjuk geografi yang berkenaan—

(a) tidak lagi dilindungi; atau

(b) telah tidak digunakan lagi, di negara asalnya.

Carian dan semakan ke atas petunjuk geografi merupakan *Standard Operating Procedure* (SOP) yang dipraktikkan dalam proses pemeriksaan cap dagangan. Tegasnya, walaupun tiada peruntukan khusus di bawah Akta Cap Dagangan 1976 untuk mendaftarkan petunjuk geografi tetapi peruntukan-peruntukan yang ada khususnya Seksyen 10(1)(d), Seksyen 14(1)(f)&(g) dan Seksyen 14A(1)&(2) memberi perlindungan yang kuat ke atas petunjuk geografi.



## Prosedur Pemeriksaan Petunjuk Geografi

Manakala sistem pendaftaran petunjuk geografi yang diwujudkan berdasarkan Akta Petunjuk Geografi 2000 didapati tidak memperuntukkan aspek carian dan pemeriksaan bagi mengenalpasti sama ada wujudnya petunjuk geografi atau cap dagangan yang sama atau hampir sama oleh pemunya yang berlainan. Sesuatu permohonan petunjuk geografi boleh didaftarkan sekalipun menyamai atau hampir menyamai cap dagangan yang telah pun didaftarkan sebagai cap dagangan oleh tuan-punya berlainan. Tiada carian dibuat ke atas Daftar Cap Dagangan. Pendaftaran petunjuk geografi hanya berdasarkan sama ada sesuatu permohonan itu memenuhi definisi dan spesifikasi sebagai petunjuk geografi. Akta Petunjuk Geografi menyatakan bahawa:

**“petunjuk geografi yang boleh dilindungi ertinya petunjuk geografi yang tidak termasuk dalam mana-mana kategori petunjuk geografi yang dinyatakan dalam seksyen 4”**

Seksyen 4, Akta Petunjuk Geografi 2000 tersebut tidak menyentuh apa-apa halangan ke atas petunjuk geografi yang menyerupai atau hampir menyerupai petunjuk geografi atau cap dagangan yang lebih awal. Ini sudah tentu tidak mengikut prinsip “First in time, first in right” yang turut menjadi amalan di peringkat antarabangsa. Boleh dikatakan bahawa peruntukan Akta Petunjuk Geografi 2000 tidak memperlihatkan hubungan yang ketara dengan hak perlindungan cap dagangan

### 3. MEWUJUDKAN TRADEMARK GEOGRAPHICAL INDICATION LINKAGE (TMGI LINKAGE)

Untuk memastikan prinsip “First in time, first in right” boleh dilaksanakan dengan berkesan, sistem Trademark Geographical Linkage (TMGI Linkage) perlu diwujudkan. Linkage ini akan menentukan tindakan dan pendekatan yang boleh dilaksanakan oleh sistem pendaftaran cap dagangan atau sistem pendaftaran petunjuk geografi jika persamaan tersebut berlaku. TMGI Linkage akan membantu menentukan sama ada perlindungan atau hak pendaftaran boleh diberikan jika suatu permohonan cap dagangan didapati sama atau hampir sama dengan petunjuk geografi yang telah didaftarkan lebih awal. Begitu juga sebaliknya jika terdapat permohonan petunjuk geografi yang sama atau hampir sama dengan cap dagangan yang telah didaftarkan lebih awal. Oleh itu kewujudan TMGI Linkage akan menjadi begitu signifikan apabila berlaku persamaan antara cap dagangan dan petunjuk geografi.

Bagaimanapun, kemungkinan terdapat keperluan untuk meminda Akta Cap Dagangan 1976 dan Akta Petunjuk Geografi 2000 sekiranya TMGI Linkage ingin diwujudkan secara berkesan dan signifikan. Pindaan kedua-dua akta adalah untuk menjadikan carian silang antara cap dagangan dan petunjuk geografi sebagai satu tugas statutori semasa pemeriksaan permohonan cap dagangan dan petunjuk geografi. Pindaan tersebut juga adalah untuk memastikan ianya selaras dengan amalan antarabangsa yang dapat menjamin prinsip kesaksamaan dan keadilan serta prinsip “First in time, first in right” dapat diaplikasikan dalam sistem pendaftaran cap dagangan dan sistem pendaftaran petunjuk geografi. Pemeriksaan komprehensif secara silang perlu dilakukan antara daftar cap dagangan dengan daftar petunjuk geografi untuk menjamin tiada berlaku kesilapan dan pertindihan dalam pemberian hak pendaftaran bagi kedua-duanya. Di samping pindaan perundangan tersebut terdapat juga keperluan untuk membangunkan prasarana

teknologi maklumat dengan satu sistem carian yang cekap dan berkesan serta pemeriksaan yang komprehensif di bawah TMGI Linkage.

#### Pembangunan Sistem Carian TMGI Linkage

Untuk merealisasikan sistem pemeriksaan komprehensif, MyIPO perlu membangunkan satu sistem carian dan pemeriksaan cap dagangan dan petunjuk geografi. Sistem Carian dan Pemeriksaan sedia ada merupakan sistem “stand alone” dan tidak mempunyai integrasi antara satu sama lain. Carian dan pemeriksaan bagi permohonan cap dagangan yang menggunakan sistem MyISS dan ITMS sedia ada tidak dapat melaksanakan carian dan pemeriksaan serentak ke atas data dalam sistem petunjuk geografi. Begitu juga sebaliknya, Pegawai Pemeriksa Petunjuk Geografi hanya boleh melakukan carian dan pemeriksaan terhadap kepada sistem petunjuk geografi sahaja. Oleh itu, adalah sangat penting Sistem TMGI Linkage dapat dibangunkan dengan menggabungkan kedua-dua sistem carian tersebut. Sistem yang akan dibangunkan ini juga bukan sekadar menghubungkan atau menggabungkan sistem carian sedia ada semata-mata tetapi memerlukan penambahbaikan yang dapat meningkatkan sistem tersebut dari segi kapasiti, kecekapan, ketepatan dan stabil serta kebolehpercayaan.

Sistem TMGI Linkage membolehkan pemeriksaan komprehensif secara silang dilakukan ke atas permohonan cap dagangan dan juga permohonan petunjuk geografi. Ini adalah sangat penting untuk memastikan tiada berlaku kesilapan dimana cap dagangan dan petunjuk geografi yang sama atau hampir sama mungkin diberikan hak pendaftaran kepada pemunya yang berlainan. Melalui Sistem TMGI Linkage ini, prinsip “First In Time, First In Right” boleh digunapakai secara berkesan dalam proses pemeriksaan bagi kedua-dua sistem pendaftaran cap dagangan dan petunjuk geografi. Pembangunan TMGI Linkage melibatkan implikasi kewangan bagi memperolehi perisian bersesuaian, perkakasan dan sebagainya. Untuk tujuan

membangunkan sistem carian TMGI Linkage ini, MyIPO telah menerima peruntukan di bawah RMKe11.

#### 4. Trans Pacific Partnership Agreement (TPPA) dan TMGI LINKAGE

Di samping cadangan melaksanakan TMGI Linkage, penelitian juga sedang dijalankan terhadap keupayaan *linkage* tersebut untuk memenuhi obligasi di bawah Trans Pacific Partnership Agreement (TPPA) khususnya berkaitan perlindungan cap dagangan dan petunjuk geografi. *IP Chapter* dalam TPPA menyatakan bahawa:

**“Each party shall also provide that signs that may serve as geographical indications are capable of protection under its trademark system”**

Berdasarkan peruntukan tersebut, terdapat kemungkinan bahawa petunjuk geografi perlu didaftarkan di bawah sistem pendaftaran cap dagangan. Jika benar perkara ini, TMGI Linkage yang akan diwujudkan adalah tidak mencukupi. Terdapat keperluan untuk membuat pindaan ke atas Akta Cap Dagangan 1976 bagi membolehkan petunjuk geografi didaftarkan di bawah akta tersebut. Pilihan yang ada ialah sama ada membenarkan petunjuk geografi didaftarkan sebagai cap dagangan perakuan ataupun didaftarkan di bawah cap dagangan kolektif (tiada peruntukan dalam Akta Cap Dagangan 1976).

Jika ini berlaku, adakah sistem pendaftaran petunjuk geografi di bawah Akta Petunjuk Geografi 2000 perlu dihapuskan? Tindakan ini mungkin merencatkan hasrat dan usaha untuk menggalakkan pendaftaran petunjuk geografi oleh pemilik tempatan. Ini kerana pendaftaran melalui Cap Dagangan Perakuan mempunyai syarat-syarat yang ketat dan berlainan mungkin tidak dapat dipenuhi oleh pemilik petunjuk geografi tempatan. Secara umumnya cap dagangan perakuan di

Malaysia hanya diberikan kepada pihak yang mempunyai autoriti untuk mengeluarkan perakuan mengenai kualiti atau standard sesuatu produk. Begitu juga pemunya berdaftar cap dagangan perakuan tidak menjalankan perniagaan barang-barang yang didaftarkan tetapi sebaliknya hanya mengeluarkan perakuan ke atas barang-barang tersebut. Perkara-perkara ini mungkin membataskan peluang pemilik petunjuk geografi untuk mendaftarnya sebagai cap dagangan perakuan. Pemilik petunjuk geografi secara perseorangan mungkin juga tidak dibenarkan untuk mendaftarkan petunjuk geografi sebagai cap dagangan kolektif kerana tidak dikira sebagai sebuah persatuan yang secara umumnya menjadi syarat kepada pendaftaran cap dagangan kolektif. Pertimbangan yang ada ialah untuk mengekalkan sistem pendaftaran petunjuk geografi sedia ada di samping membenarkan pendaftaran petunjuk geografi di bawah sistem pendaftaran cap dagangan sama ada sebagai cap dagangan perakuan atau cap dagangan kolektif.

#### 5. PENUTUP

Dengan mewujudkan TMGI Linkage yang merupakan satu keperluan kepada MyIPO bukan sahaja untuk dilihat selaras dengan amalan pemeriksaan antarabangsa berkaitan perlindungan cap dagangan dan petunjuk geografi, tetapi juga untuk memenuhi obligasi negara dalam perjanjian-perjanjian antarabangsa tertentu seperti Paris Convention, TRIPs dan TPPA. TMGI Linkage membolehkan prinsip “First In Time, First In Right” diaplikasikan bukan sahaja dalam sistem pendaftaran cap dagangan tetapi juga dalam sistem pendaftaran petunjuk geografi. Dalam melaksanakan *linkage* ini terdapat keperluan prasarana tertentu yang mungkin melibatkan pindaan undang-undang di samping peningkatan prasarana teknologi maklumat.

## DANA PEMBIAYAAN PEMFAILAN HARTA INTELEK UNTUK PELAJAR, BELIA DAN KOMUNITI SETEMPAT/TEMPATAN



Pendaftaran harta intelek adalah penting untuk melindungi hasil kreativiti pencipta atau pereka cipta melalui sistem perlindungan harta intelek di Malaysia. Pelbagai usaha telah dilakukan oleh Kerajaan melalui Perbadanan Harta Intelek Malaysia (MyIPO) untuk memupuk budaya kreativiti dan inovasi serta menyebarkan maklumat mengenai kepentingan perlindungan hak harta intelek di seluruh negara secara berterusan bagi menggalakkan pendaftaran harta intelek.

Walaupun bagaimanapun, statistik pendaftaran harta intelek dari tahun 2005 sehingga 2015 menunjukkan permohonan harta intelek tempatan secara keseluruhannya masih rendah berbanding dengan permohonan dari luar negara. Hanya 41% daripada keseluruhan permohonan harta intelek adalah dari permohonan tempatan berbanding dengan 59% adalah permohonan dari luar negara. Permohonan paten daripada pemohon tempatan mencatatkan peratusan yang paling rendah di antara komponen harta intelek yang lain iaitu 17% berbanding dengan 83% permohonan dari luar negara.

Daripada jumlah 41% permohonan harta intelek yang dipohon oleh pemohon tempatan, kurang 30% daripada jumlah permohonan tersebut difailkan oleh pelajar dan belia walaupun golongan ini mempunyai idea dan inovasi yang kreatif.

Antara faktor yang telah dikenalpasti kurangnya permohonan harta intelek daripada golongan pelajar dan belia adalah kerana mereka tidak mempunyai dana yang mencukupi untuk membiayai kos pemfailan harta intelek. Kos yang tinggi diperlukan terutamanya bagi perkhidmatan pendrafan spesifikasi paten oleh pihak luar yang berkemahiran dalam bidang perundangan dan teknikal untuk mendaftarkan harta intelek mereka.

Kreativiti dan inovasi yang dihasilkan oleh para pelajar perlu dilindungi melalui pendaftaran harta intelek terutamanya bagi pelajar yang menyertai pertandingan inovasi dalam dan luar negara. Pendedahan harta intelek yang tidak berdaftar kepada umum adalah berisiko kepada peniruan atau penyalahgunaan oleh pihak-pihak yang tidak bertanggungjawab.

Di bawah Rancangan Malaysia ke-11 (RMKe11), Kerajaan telah memperuntukkan RM500,000 setahun dari 2016 hingga 2020 sebagai dana bantuan pemfailan permohonan harta intelek untuk pelajar dan belia. Dana ini juga akan ditawarkan kepada komuniti setempat/tempatan yang layak untuk permohonan petunjuk geografi. Inisiatif ini bermatlamat untuk menggalakkan lebih banyak inovasi dan pengkomersilan harta intelek di kalangan pelajar, belia dan komuniti setempat/tempatan.

Pewujudan dana ini juga dijangka akan meningkatkan bilangan permohonan harta intelek tempatan di Malaysia. Peningkatan ini penting sebagai salah satu faktor penentu kedudukan Malaysia dalam Global Innovation Index (GII) dari segi harta intelek di mana permohonan harta intelek tempatan akan diambil kira semasa penentuan GI. GI ini diterbitkan dengan kerjasama Cornell University, INSEAD dan World Intellectual Property Organization (WIPO). Berdasarkan kedudukan pada tahun 2014, Malaysia menduduki tangga yang ke-33 dalam senarai GI dan ke-32 bagi tahun 2015 daripada keseluruhan 141 negara.

### Kriteria Kelayakan

Individu-individu yang ingin memohon dana pembiayaan permohonan harta intelek mestilah memenuhi syarat-syarat berikut:

Warganegara Malaysia;

“Belia” (berumur antara 18 sehingga 40 tahun) yang juga merupakan usahawan/pereka cipta/pencipta atau;

“Pelajar” sekolah rendah/ sekolah menengah/ kolej/ institusi kemahiran yang diiktiraf oleh kerajaan atau;

“Komuniti Setempat/tempatan” (pertubuhan atau persatuan yang dianggotai oleh masyarakat/penduduk di sesebuah kawasan) bagi permohonan petunjuk geografi sahaja.



### Skop Pembiayaan

- Dana ini khusus untuk permohonan pendaftaran harta intelek berikut:
  - o Paten
  - o Perbaharuan Utiliti
  - o Cap Dagangan
  - o Petunjuk Geografi
  - o Reka Bentuk Perindustrian
  - o Pemberitahuan Sukarela Hakcipta
- Pembiayaan merangkumi kos pemfailan fi kepada MyIPO (seperti yang disenaraikan di dalam Jadual Perihalalan Fi yang dibiayai Dana) dan juga kos perkhidmatan ejen paten berdaftar (pemilihan ejen paten berdaftar adalah tertakluk kepada keputusan MyIPO).
- Dana terhad kepada satu (1) komponen Harta Intelek bagi setiap penerima;
- Dana hanyalah untuk permohonan harta intelek yang baharu dan belum difailkan di MyIPO.
- Tidak mendapat mana-mana dana lain untuk pemfailan harta intelek bagi permohonan yang berkaitan.
- Dana akan diberi dalam bentuk baucar.

Jadual Perihalhan Fi Yang Dibiayai Dana

Jenis Harta Intelek	Perihalhan Fi
Paten/ Perbaharuan Utiliti	Fi Permohonan Pendaftaran Paten/Perbaharuan Utiliti; Borang No. 1/14
	Fi Permohonan Pemeriksaan Substantif; Borang No. 5
	Fi Perlantikan Ejen Paten; Borang No. 17
	Fi Penyataan Justifikasi Hak Pemohon Ke Atas Paten/Perakuan; Borang No. 22
Cap Dagangan	Fi Permohonan Pendaftaran Cap Dagangan; Borang TM5
	Fi Permohonan Pengiklanan Cap Dagangan; Borang TM31
Reka Bentuk Perindustrian	Fi Permohonan Pendaftaran Reka Bentuk Perindustrian; Borang ID1
	Fi Sudut Pandangan (Maksimum 4 Sudut Pandangan)
Hakcipta	Fi Pemberitahuan Karya; Borang CR-1 atau
	Fi Pemberitahuan Karya Terbitan; Borang CR-2
	Fi Pengemukaan Karya (Pembiayaan Maksimum: RM50)
	Fi Permintaan Sijil Pemberitahuan Hak Cipta; Borang CR-5
Petunjuk Geografi	Fi Permohonan Pendaftaran Petunjuk Geografi; Borang GI 1
	Fi Iklan bagi Pendaftaran; Borang GI 3

PROSES PERMOHONAN DANA PEMFAILAN HARTA INTELEK (PATEN)

Permohonan Dana



Saringan Pertama : Urusetia Dana  
Saringan Kedua : Laporan Carian

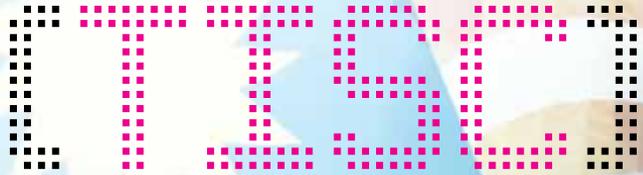
PROSES PERMOHONAN DANA PEMFAILAN HARTA INTELEK (BUKAN PATEN)

Permohonan Dana



Saringan Pertama : Urusetia Dana

# TECHNOLOGY INNOVATION SUPPORT CENTRE MALAYSIA



## Penubuhan TISC

Perbadanan Harta Intelek Malaysia (MyIPO) telah melancarkan pusat sokongan kepada inovasi dan teknologi di Malaysia yang dikenali sebagai *Technology Innovation Support Centre* (TISC) pada 2015. TISC merupakan salah satu inisiatif dibawah *Cluster A: Technical Assistance and Capacity Building, WIPO Development Agenda*. TISC seterusnya menjadi salah satu inisiatif di bawah *ASEAN Intellectual Property Rights Action Plan 2011-2015*.

Sehubungan itu, satu Memorandum Persefahaman (MOU) telah ditandatangani antara MyIPO dan *World Intellectual Property Organization* (WIPO) di Geneva pada 9 Oktober 2015 oleh YBhg. Dato' Shamsiah Kamaruddin, Ketua Pengarah MyIPO dan Francis Gurry, Ketua Pengarah WIPO. MOU ini mengesahkan pelantikan MyIPO sebagai koordinator TISC di Malaysia.

## Agenda Negara

Bagi menjayakan agenda inovasi melalui program TISC di Malaysia, MyIPO akan bekerjasama dengan pusat pengajian tinggi, pusat penyelidikan dan agensi kerajaan yang akan dilantik sebagai *host institution* yang berperanan menyebarkan maklumat inovasi dan harta intelek kepada *stakeholder* mereka. Mereka akan dilatih dalam pelbagai

bidang harta intelek oleh MyIPO dan WIPO sama ada secara *Distance Learning* atau *on-site training* dengan matlamat mewujudkan pakar rujuk harta intelek di setiap *host institution*.

Melihat kemampuan TISC dalam menjayakan agenda inovasi negara, Jabatan Perkhidmatan Awam (JPA) telah menjadikan TISC sebagai salah satu program di bawah Pelan Tranformasi Perkhidmatan Awam 2016.

## Kemajuan TISC

Sehingga 21 Mac 2016, pihak MyIPO telah menandatangani MOU bersama lapan pusat pengajian tinggi yang terdiri daripada Universiti Malaya, Universiti Sains Malaysia, Universiti Kebangsaan Malaysia, Universiti Malaysia Sabah, Universiti Sains Islam Malaysia, Universiti Pertahanan Nasional Malaysia dan Terengganu Advanced Technical Institute University College. Manakala sebuah pusat penyelidikan yang terlibat dalam program ini adalah Pusat Penyelidikan Perhutanan Malaysia.

Penyertaan sebagai *Host Institution* buat masa ini masih dibuka kepada agensi yang berminat.



## Bengkel IP Hub

Lanjutan daripada itu, pihak MyIPO dengan kerjasama WIPO telah mengadakan satu bengkel peringkat kebangsaan bertajuk *Workshop on Increasing the Capacity and Pace for Technology Scouting, Absorption, Adaptation Through a "Hub and Spoke" Structure (IP Hub)* pada 21 Mac 2016 di MyIPO. Bengkel tersebut disertai oleh 30 organisasi yang terdiri daripada universiti dan institusi penyelidikan tempatan. Seminar ini dikendalikan oleh tiga pakar yang terdiri daripada Pengarah Serantau Asia Pasifik WIPO, Pensyarah Cornell University, Amerika Syarikat dan seorang pakar dari Perancis.

Pada 22 hingga 23 Mac 2016 bersempena dengan Bengkel IP Hub, pihak WIPO juga telah mengadakan satu sesi temubual bertajuk "WIPO Assessment Mission For The Intellectual Property Hub Project" bersama *stakeholders* tempatan. Hasil daripada maklumbalas yang diterima dari sesi ini akan digunapakai bagi penyediaan rangka kerja untuk menjadikan Malaysia sebagai IP Hub di rantau ASEAN.

## Program Berkala TISC

### i) Pembelajaran Jarak Jauh (Distance Learning)

WIPO telah menerima seramai 40 orang pegawai dan kakitangan *Host Institutions* bagi menyertai *Distance Learning Programme* yang diadakan secara atas talian dengan tawaran biasiswa WIPO Academy. Kursus pertama akan bermula pada April hingga Julai 2016.

### ii) Attachment Programme

Bagi meningkatkan kefahaman mengenai pengurusan harta intelek satu *Attachment Programme* telah diadakan di MyIPO Kuala Lumpur pada November 2015 yang telah dihadiri oleh 6 pegawai *Host Institution*.

## Pembangunan Komuniti

MyIPO akan bekerjasama dengan *Host Institution* dalam membangunkan komuniti berteraskan inovasi dan harta intelek terutama peniaga kecil, industri kecil dan sederhana (SME) dan lain lain.

Dengan kepakaran harta intelek yang ada, *Host Institution* juga berupaya menjadi pusat rujukan bagi komuniti tersebut dalam menyelesaikan permasalahan dalam konteks harta intelek. Secara tidak langsung program ini akan mendekatkan MyIPO dan *Host Institution* dengan masyarakat.

## Penutup

Melalui penubuhan TISC di Malaysia, ianya membuktikan komitmen Kerajaan dalam menjana kekayaan baharu melalui harta intelek.

## INTELLECTUAL PROPERTY IN INTERNATIONAL BUSINESS

By: Mohd Faiizudin bin Mohd Sharuji  
Research and Development Division

### An Overview

Protecting the intellectual property (IP) is important to encourage innovation and growth of a country's economy. There are six main components in IP namely Copyright, Patents, Trademarks, Industrial Designs, Geographical Indications and Layout Design of Integrated Circuit. The Intellectual Property Rights (IPR) gave the IP owners the rights to protect their IP work from being infringed by irresponsible parties.

The protection of IP rights are territorial and are only valid in the country or region in which they have been granted. Therefore, should the IP owners have an intention or plan to enter the international market, they should approach and apply for IP protection in each desired country.

The international registration of IP rights can be obtained over several routes that are administered by World Intellectual Property Organization (WIPO). WIPO administers international registrations of trademarks, designs and patents through the Madrid

Protocol, Hague System and PCT System, respectively.

Inventors may choose other regional routes available through European Patent Office (EPO) for Patent rights and Office for the Harmonization of the Internal Market (OHIM) for trademarks and designs protections besides other routes available in each desired country.

Many counties in the world have adopted an open policy for foreign trade and investment and made remarkable progress in infrastructure development, education, economic growth, technology acquisition and development. These recent growth offer more business responsibilities and opportunities to both local and international business organization. New innovation and ideas has increased tremendously which has indirectly introduced conducive and improved quality of life. IP protection is a powerful economic tool, which is crucial especially in a rapid developing market. It is recommended

## The companies that own these brand names have numerous IP portfolios under their companies namely trademarks, patents, industrial designs and copyright.

that organizations safeguard their products and new ideas through protection of IP rights to avoid any misconducting use and infringement.

### Globalization of Intellectual Property

Forbes, a leading source for reliable business news and financial information has come with a list of the world's most valuable brands in 2015. The companies that own these brand names have numerous IP portfolios under their companies namely trademarks, patents, industrial designs and copyright. These brands are international brands that are traded in the international market and known all over the world. Globalization of the economy made it possible for some of these IP components to enter most of the countries in the world and offer employment to the local people.

While importing and exporting activities are one of the major ways to gain benefits and selling products globally, challenges to sustain in the global market is essential and steps should be taken to overcome these challenges.

IP crime occurs daily and genuine products are replicated by unscrupulous businessman and sold to meet the demand of customer for similar products or services with lower prices. Nonetheless having a good IP management team is a great bonus to the IP owners.

Several brand representing different countries that appear in the Forbes list are:

#### i. Apple Inc.

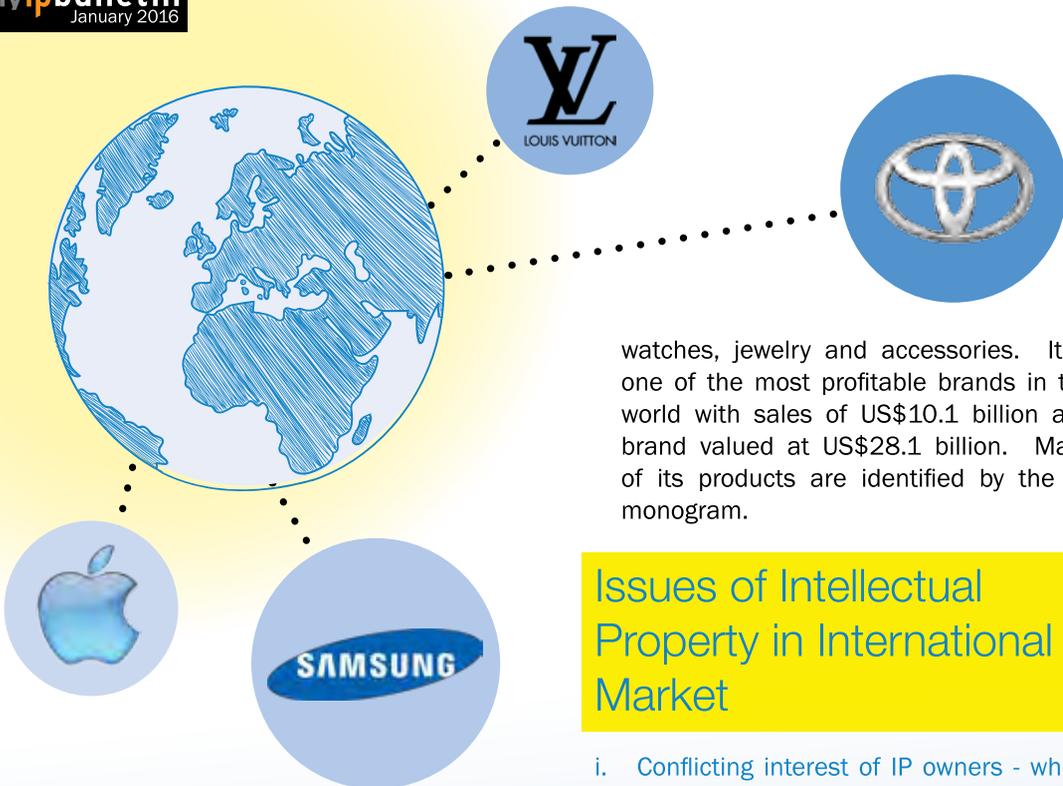
Number one in Forbes's list and number one in the United States of America. An American multinational technology company founded on 1976. It is the world largest information technology company in revenue and technology company in total assets besides being the second biggest mobile phone manufacturer.

Presently the company employs 115,000 employees with retail stores in seventeen countries and worldwide totaled annual revenue for the year 2015 was US\$233 billion. The 2014 edition of the Interbrand Best Global Brands reported Apple Inc. as the world's most valuable brand with a value of US\$118.9 billion.

#### ii. Samsung Electronics Co., Ltd

Number seven in Forbes's list and number one in South Korea. A South Korean multinational electronics company founded on 1969 and involve in the manufacture and sale of electronic products. It has assembly plants and sales networks in 80 countries and employs around 370,000 people.

Samsung made a sales of US\$195.89 billion in 2015 through its business divisions namely Consumer Electronics (CE), Information Technology & Mobile



watches, jewelry and accessories. It is one of the most profitable brands in the world with sales of US\$10.1 billion and brand valued at US\$28.1 billion. Many of its products are identified by the LV monogram.

## Issues of Intellectual Property in International Market

### i. Conflicting interest of IP owners - who's right, who's wrong

There is a rising number of conflicts involving multinational technology and software corporations as one smartphone involves 700 components with 200,000 patents and designs (David Drummond Google Chief Vice President).

The continuing smartphone business conflict or smartphone patent and designs licensing and litigation battle between smartphone manufacturers involving Sony, Apple Inc., Samsung, Microsoft, Google, Nokia, Motorola, HTC, Huawei, is one example of the conflict faced by IP owners.

Source: Korea Intellectual Property Office

### ii. Monetizing of IP Portfolio

IP is considered as tangible assets that can be used as collateral in obtaining financial facilities. However not many financial institutions in the world are acceptable to this new method of obtaining financing. The method of valuing an IP portfolio is very subjective which are unenthusiastically acceptable

Communications (IM), and Device Solutions (DS). Its brand is value at US\$37.9 billion.

### iii. Toyota Motor

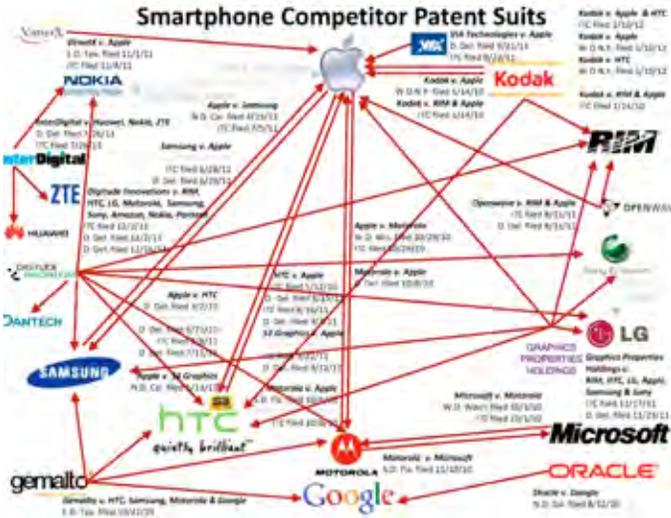
Number eight in Forbes's list and number one in Japan. A Japanese multinational company founded on 1937 and an automotive manufacturer. It employees 338,875 people worldwide and as February 2016 is placed 13th as the world highest in total revenue.

Toyota Motor Corporation is involve in the manufacture and sale of motor vehicles and parts. Its automotive operations division designs, manufactures, assembles and sells minivans, trucks, passenger cars along with parts and accessories of vehicle. The value of the brand is US\$37.8 billion.

### iii. Louis Vuitton

Number fourteen in Forbes's list and number one in France. A French company founded in 1854. Its products comprise leather goods, handbags, trunks, shoes,

SMARTPHONE COMPETITOR SUIT



as a means of getting a loan. Therefore, it is important that IP rightful owner create an optimum strategy for IP Portfolio specifically sales, define which IP to license, make annuity or renewal decisions besides expanding their IP portfolio.

iii. Business transaction goes wrong

Businesses should ensure due diligence are done before entering into any purchase agreement to safeguard purchaser from the various IP complicated issues which may arise including title and transfer of large and worldwide intellectual property portfolios.

In the example of Volkswagen, it acquired Rolls Royce and Bentley automobile assets for \$800 million in 1998. It included practically everything for the making of a Rolls Royce namely the plant at Crewe, the designs and machinery. Regrettably Volkswagen did not oversee that these assets did not include the IP right of the Rolls Royce trademark. Rolls Royce had sold the rights for the usage of Rolls Royce mark on automobiles to BMW. As a settlement to avoid litigation, BMW decided to allow Volkswagen to make cars using the Rolls Royce trademark until December 31, 2002.

iv. Infringement of IP in International Market

Cases of IP infringement occur globally despite stringent enforcement done by the authorities to curb these activities. Infringement activities does not only affect the IP owner rights but the country's economy where national revenue are affected due to counterfeiting.

The counterfeit products are often relabeled to make them appear as genuine in the market. According to a report by OHIM, 12.7 percent of luggage sales and 13.5 percent of jewellery and watches sales in the European Union (EU) are lost due to counterfeiting.

The EU were not the only countries that faces the IPR infringement cases. China faces increasing number of infringement cases and have handled the most patent application for inventions than other country. The State Intellectual Property Office of China (SIPO) dealt with 87,000 cases of infringement within the period of 2011 to 2015.

The activities of taking advantage on the consumer's ignorance is also found with Geographical Indication (GI) products which are copied and sold as genuine product in the market. This is done

especially to unsuspecting tourist or purchaser who believe the quality based on the locality of the region as labelled in the packaging.

The United States Trade Representatives (USTR) are responsible to identify countries which does not provide adequate and effective protection for its intellectual property annually. In its Special Report 2015, 13 countries were listed under the Priority Watch List and 24 countries under the Watch List. Fortunately Malaysia is not in either of the list which could affect the business environment and the economy as a whole.

In Australia, the Government has taken measures to reduce the online infringement. The downloading of materials from various media and content based industry is considered as a normal norm by society without any concern on its legal status. Television and music industry faces piracy issues, the book publishing company faces impact of unlicensed digital books and software and games piracy have started to encroach into their market. The Australian Government had recently developed an industry code involving industry rights holders, internet service providers (ISPs) and consumer group so as to change consumer's behavior. A copyright Amendment (Online Infringement) Bill 2015 were also introduced as a deterrent.

#### iv. IP issues in Trans-Pacific Partnership Agreement (TPPA)

Access to medicine and healthcare arising from increase of pharmaceutical prices may burden the country. Longer patent protection term means the country will have limited access of the said drugs in the country.

Malaysia have raised objections towards proposals that could delay entry of generic drugs into the market. This is to avoid higher prices of medicine and Malaysia believe that Trans-Pacific Partnership

(TPP) Agreement 2015 offers a platform to affordable drugs and healthcare access. TPPA will also hopefully create a balanced between the protection and enforcement of IPR.

## Conclusion

There are more issues faced by IP owners who are actively involved in the international market. Nevertheless, they are not addressed or settled in the way that gives satisfaction to the IP rights' owner or holder.

It is always adviseable and important to businesses before considering trading overseas or globally, either selling over the internet or direct approach in the desired country, to get the rightful protection in the country.

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# IP NEWS



## Australian High Court Rules Gene Patents Unpatentable

19 October 2015  
(Source: Mondaq)

- The High Court of Australia has determined that Myriad's patents directed to purified and isolated DNA molecules encoding the BRCA genes are unpatentable, holding that non-naturally occurring cDNA molecules encoding the genes are also unpatentable.
- This decision reversed decades of precedent that recognized the patentability of particular nucleic acid sequences that are isolated from nature and overturned a decision by the Full Federal Court of Australia that had confirmed the patentability of such molecules.
- The Full Federal Court had held that because the claimed BRCA gene molecules differed from naturally occurring counterparts both structurally and functionally as a result of their isolation, the claims were directed to patentable subject matter.
- The High Court, however, focused on the information encoded by the molecules, rather than functional and structural differences, and found that since the same information was contained in both the isolated genomic DNA and in cDNA that retained the relevant sequence of exons, neither constituted patentable subject matter.
- Since the High Court found that structural differences between cDNA and its naturally occurring counterpart are insufficient to render the cDNA as patent-eligible subject matter, one must wonder how much structural modification would be sufficient.
- In the meantime, the High Court has called into the question the validity of literally thousands of issued Australian patents. The extent to which this uncertainty serves to chill investment in biotechnology and other industries in the country remains to be seen.



## World's Poorest Countries Allowed to Keep Copying Patent-Protected Drugs

24 November 2015

(Source: The Conversation Media Group)

- The World Trade Organisation (WTO) has agreed to extend a waiver, which was due to expire in January 2016, has now been extended to 2033 that allows poor countries to copy patented medicines.
- The countries that will benefit from the waiver are the 48 poorest nations, classified by the United Nations as Least Developed Countries (LDCs), include many African and some Asian countries.
- The waiver is critical for the least developed countries. Compared with richer countries, they have a much higher disease burden, especially infectious diseases such as HIV and malaria.
- Countries such as Uganda, Cambodia and Rwanda have already taken advantage of the WTO's temporary waiver and begun to develop their own pharmaceutical industry. This has been helped by investments from drug companies in the developing world.

- Developing and strengthening manufacturing capacities in LDCs is important as these countries are often unable to import cheap copies of patent protected drugs from countries like India.
- The extension of the waiver is important, but it is only temporary. Least developed countries and some NGOs would have preferred an indefinite extension or at least an extension until a country is no longer classified as a least developed country, rather than the set date of 2033.
- The exemption could be dropped once countries that have benefited from it have developed enough, and the industry reaches a self-sustaining size.



## US Copyright Office Approves Fair Use Hacking In Automobiles

28 October 2015

(Source: World IP Review)

- The Library of Congress, which oversees the US Copyright Office, approved requests filed by the Electronic Frontier Foundation (EFF) and the University of Southern California Gould School Of Law to relax copyright restrictions on automobile software for certain uses.

- The exemptions approved on 20 October 2015 will not take effect for another year.
- Drivers can hack into a car's computer software for the purposes of repair and security research, despite opposition from automobile groups and manufacturers.
- Under the exemption, car owners are not liable for copyright infringement when circumvention is a necessary step undertaken by the authorised owner of the vehicle to allow diagnosis, repair or lawful modification of a vehicle function.
- Furthermore, the office approved car owners circumventing the restrictions on accessing software in an automobile for the purpose of good-faith security research.
- Before the ruling, drivers were prohibited under the Digital Millennium Copyright Act (DMCA) from accessing their car's software, stops anybody circumventing a "technological measure that effectively controls access to a work".



## UK Government Seeking Views on Extending Copyright Design Term

16 December 2015

(Source: World IP Review)

- The government is conducting a review into how long it should take to repeal section 52 of the Copyright, Designs and Patents Act 1988 and the effect it will have on UK businesses.
  - Section 52 provides 25 years of protection for copyrighted designs, beginning at the end of the calendar year in which the product is first marketed. The government is proposing that the protection for designs be extended to 'life plus 70 years', the current term of protection for other copyrighted works.
  - It is also seeking views on the impact of the repeal on works manufactured before 1957 and the issue of compulsory licensing.
  - The consultation is set to end on 23 December 2015. The publication of the consultation and the final proposals are expected to be released in April 2016.
  - In March 2015, the government announced it would implement a "commencement order" as part of the Enterprise and Regulatory Reform Act 2013, removing the section 52 provision. It said the change would come into effect on 6 April 2020.
  - However, the commencement order was revoked in July following a judicial challenge. The government accepted that the five-year transitional period for implementing the changes was too long.
- The UK government is proposing to bring the copyright protection term for designs into line with other existing works and is seeking the views of the public on how it should be implemented.



## EU Trade Secrets Reforms Take One Step Forward

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16 December 2015

(Source: World IP Review)

- Reforms to European trade secrets law took a step forward after the European Council and representatives from the Parliament came to a provisional agreement on the legislative package.
  - New measures harmonising trade secrets laws across the EU will include a Europe-wide definition of what constitutes a trade secret and penalties for the unlawful disclosure of confidential information.
  - Some commentators have been critical of the measures, which they had complained would limit the work of journalists and whistle-blowers in exposing corporate wrongdoing.
  - A member of the European parliament (MEP) for the Pirate Party, described the reforms as adopting an “excessively broad definition of trade secrets” which will open the door to all kinds of abuse.
  - The council said there will be no new limitations on investigative journalists and whistle-blowers sharing information in the general public interest will also be protected.
- In September 2015, a MEP for the European People’s Party told that the legislation was intended to create an efficient tool to protect businesses and companies.
  - The Deputy Prime Minister and Minister for Economic Affairs in Luxembourg said that there is great diversity of systems and definitions in member states as regards the treatment and the protection of trade secrets nowadays. This new instrument will bring legal clarity and a level playing field to all European companies. It will also help increase their interest in the development of research and innovation activities.
  - Before becoming law the agreement needs to be approved by the committee of permanent representatives of the council before heading to a full vote at the parliament in the New Year 2016.



## Electronic IP Filings Will Soon Be Available At the Indonesian IP Office

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6 January 2016

(Source: Globe Business Media Group)

- The Indonesian IP Office will soon accept electronic filing for new trademark applications, trademark renewal applications, patent applications, and industrial design applications. The Office is expecting to launch the electronic filing by the end of 2016.

- As a preparation to implement the forthcoming new Trademark Law and in order to allow the Indonesian IP Office and IP practitioners to prepare for the accession of the Madrid Protocol, the Indonesian IP Office has developed the infrastructure and procedure for online electronic filing. The registration procedure will be streamlined and the trademark registration process will take less time.
- IP practitioners will be able to file and track the current status of their applications through the Indonesian IP Office's website, as the system promises real-time updating of database after the electronic filing system is launched.
- Under the new system, all supporting documents of a trademark application will be submitted online to the Indonesian IP Office, while original supporting documents will be kept by the IP consultant. Foreign applicants will still be required to provide original supporting documents to their Indonesian IP consultants, as there are several procedures which require the original documents to be acceptable to the Indonesian IP Office.
- This administrative efficiency seems to be heading in the right direction as it speeds up IP registration procedures. However, infrastructure development and training for both Indonesian IP Office officers and end users will be required to fully implement the system



## Indian Government Taking Steps to Protect Yoga Postures

14 January 2016

(Source: Asia IP Law)

- The Indian government is taking steps to protect the country's traditional knowledge, including yoga, an ancient Hindu philosophical, spiritual and physical practice, which is not fully protected as traditional knowledge, particularly on the cultural side.
- In 2011, Choudhury, a former All-India National Yoga Champion and the owner of Bikram's Yoga College of India in Los Angeles, sued Yoga to the People, a competing yoga studio founded by a former student of Bikram's and with a location near one of the Bikram Yoga studios in New York. As a result of that lawsuit, the United States Copyright Office issued a clarification that asanas (yoga postures) could not be copyrighted in the way claimed by Bikram, and that Yoga to the People and others could continue to freely teach these exercises.
- Choudhury later filed a patent application for "hot yoga," which takes place in hot and humid rooms, but the attempt was blocked by the Indian government.
- According to a IP expert in UK, since 2009, a council that sits within India's Ministry of Science and Technology has been attempting to document centuries-old yoga techniques, which have been classified as 'traditional knowledge' (TK).
- Experts from India's Traditional Knowledge Digital Library (TKDL) have identified over 1,500 yoga techniques from the literature available from the ancient texts.
- Patent protection for yoga is difficult, since most patent applications are required to prove that the invention is novel and inventive. Patents should be granted for new and inventive ideas only, and that as yoga practice does not generally fulfill these requirements.

- Under the provisions of the Indian Patents Act, TK does not constitute a patentable subject matter. The Indian government has allowed access to the TKDL data base to foreign patent offices so as to prevent patenting of yoga postures, yoga postures are not patentable. This effort is an attempt of the Indian Government to prevent yoga piracy.



### EU's Trademark Law: India Fears Pharma Exports Will Be Hit

31 January 2016

(Source: The Hindu Business Line)

- New Delhi has raised concerns about the European Union's (EU) new trademark legislation that stipulates stricter enforcement measures, as it fears that this might lead to confiscation of legitimate Indian medicines being shipped to other destinations via European ports or airports.
- The EU recently made its trademark law more stringent by introducing enforcement measures on goods in transit within its territories. This means that not only will goods with logos similar to the ones registered in the EU countries be disallowed from being sold in the bloc, but such items could also be seized by customs officials at EU ports and airports even if they are meant for a third country.
- The EU trade division tried to convince India that the new laws would not impact India's pharmaceutical exports, while

India maintained that the threat of confiscation was real. More meetings are required to sort out the issue.

- India said that it is wrong to seize such items while in transit to other markets on the ground that it violates trademark protection given to a particular item in the transit country.
- India also fears that the new law could be an attempt to check its exports of cheap generics to markets in Latin America and Africa as large pharma companies, many of them based in the EU, feel threatened by the country's cheap but high-quality medicines.
- In 2008, shipments of generics from India on transit to other markets were seized at certain European airports on the grounds that the patents for these were held by multinational companies in Europe. The seizures happened despite the fact that the patents had expired both in India and the market where the generics were being shipped. The EU stopped such seizures only after India cried foul and took up the issue at the World Trade Organization.



### The US Chamber of Commerce Released 4th Annual International IP Index

23 February 2016

(Source: Asia IP Law)

- The US Chamber of Commerce released its 4th annual International IP Index on 10 February 2016, produced by the Chamber's Global Intellectual Property

Center (GIPC), found that half of the 38 economies benchmarked recognized the benefits of IP and strengthened their IP system, in turn improving their overall score from last year's Index. The US ranks first.

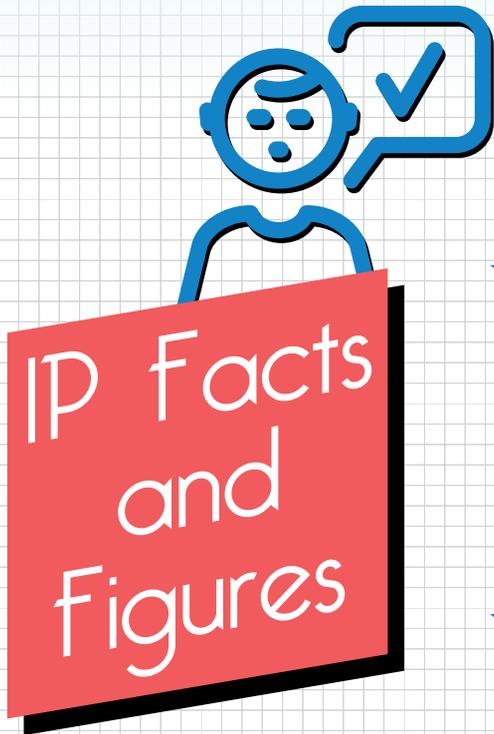
- The 38 economies benchmarked in the 2016 Index accounts for nearly 85% of global gross domestic product. The Index is based on 30 measurable criteria critical to innovation including, patent, copyright and trademark protections, enforcement, and engagement in international treaties, among others.
- The President and CEO of GIPC said that the Index illustrates that many countries embraced the upward momentum in the global intellectual property environment, and continued to take steps to improve their IP systems. IP creates the infrastructure to deliver new innovative technologies to markets around the world, and the U.S. Chamber Index provides economies with a roadmap to furthering this legal framework.
- The Index was created so that countries around the world can hear directly from the business community on the IP-related issues important to them when considering investing in new markets said Mark Elliot, executive vice president of GIPC.
- The Index has become a must-read for government officials in countries near and far who recognize the important connection between IP and innovation, and who wish to grow their countries knowledge-based economies.
- Malaysia ranks 17th in 4th Edition of annual International IP Index.

## Hong Kong Government Drops Controversial Copyright Legislation

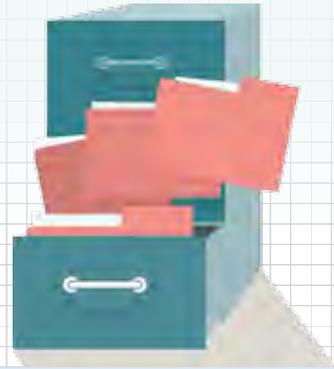
3 March 2016

(Source: Variety Media)

- The Hong Kong government announced that it had dropped its long-running attempt to introduce new copyright legislation.
- The government said that if it could not get the draft law passed in the Legislative Council, Hong Kong's mini parliament that it would withdraw the bill.
- Opponents of the bill continued to use filibustering, quorum calls and other parliamentary delaying tactics to use up all the available time for debate. The government which theoretically has a majority in LegCo chose not to force through the bill for fear of further stoking anti-government and anti-China feeling at a time when Hong Kong politics has become highly polarized.
- Much of the local film and TV industry had expressed support for the copyright amendment bill, arguing that the territory's legislation was years out of date and allows widespread piracy. Opponents of the bill argued that it endangered freedom of expression and creativity, especially online, that the bill poorly drafted and would be out of date the moment it became law.
- Hong Kong's Government had promised a period of public consultation if the bill was passed. It now appears likely that yet another consultation will have to be launched before the government can try again possibly in July.
- In addition to the copyright bill's failure, liquidators are expected to dismiss all the remaining staff at beleaguered free-to-air broadcaster Asia Television (ATV).



# IP Facts and Figures

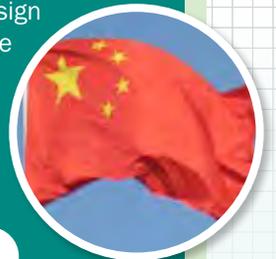


Global filing activity for patents and trademarks grew in 2014, representing the fifth consecutive year that applications have increased for these two IP rights. However, applications for utility models and industrial designs decreased for the first time in over a decade.

Source: WIPO

The estimated 2.7 million patent applications filed worldwide in 2014 represent growth of 4.5% on 2013. Trademark filing activity rose by 6% – similar to the growth rate witnessed in the previous two years. For the first time since 1998, utility model (UM) applications decreased by 3% in 2014 because fewer applications were received by the top six offices. In 2014, industrial design filing activity fell by 8.1%, due mainly to a sharp decrease in filings by Chinese residents in China.

Source: WIPO





Compared to other ASEAN countries such as Thailand, Philippines and Vietnam, Malaysia received lesser applications for Utility Model with 140 applications in 2014.

Source: WIPO

The manufacture of counterfeit jewellery, watches, handbags and luggage costs EU businesses €3.5 billion each year. Two new reports from the Office for Harmonization in the Internal Market (OHIM), the EU's largest intellectual property agency, reveal that 13.5% of sales of jewellery and watches and 12.7% of sales of handbags and luggage in the EU are lost due to counterfeiting

Source: OHIM



The Chinese government has published the first trademark application for a sound and said it expects it to be approved.

Since China started accepting sound trademarks two years ago, the CTMO said that it has received 450 applications. Sound marks were introduced under amendments to the Chinese trademark law that came into force in May 2014.

Source: worldipreview.com

WIPO reported that the EU trademark reforms, including reduction in renewal fees and a re-branding of the Office for Harmonization in the Internal Market to the European Union Intellectual Property Office, had been implemented.

Community trademarks are now known as European Union trademarks, and renewal fees have been reduced from €1,500 (\$1,680) to €850 for electronic filing, and €1,500 to €1,000 for paper filing.

Source: worldipreview.com

Patent litigation brought by so-called "non-practicing entities" continued to flourish in 2015, according to a new study, despite repeated attempts to curtail it.

According to a report, released by RPX Corp., NPEs filed over 3,600 patent cases in 2015. NPEs, also referred to derisively by some as "patent trolls," buy up patents and seek to make money from them through licensing and litigation.

NPEs filed 3,604 cases last year, a sharp increase over 2014, in which NPEs filed 2,891.

Source: Wall Street Journal

# WHO ACCOUNTED FOR THE MOST HAGUE DESIGN FILINGS IN 2015?

16,435

Number of designs contained  
in applications

+ 13,8%

Growth in 2015

## TOP 5 CLASSES

Number of registrations and growth rate 2014-15

Recording and  
communication  
equipment

387 +111.9%



Clocks and  
watches

324 +17.8%



Means of  
transport

264 +10.9%



Packages and  
containers

249 +3.8%



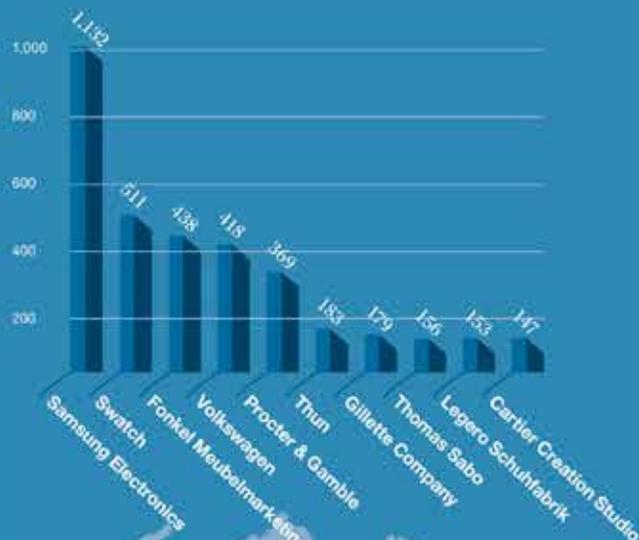
Furnishing

249 +7.3%



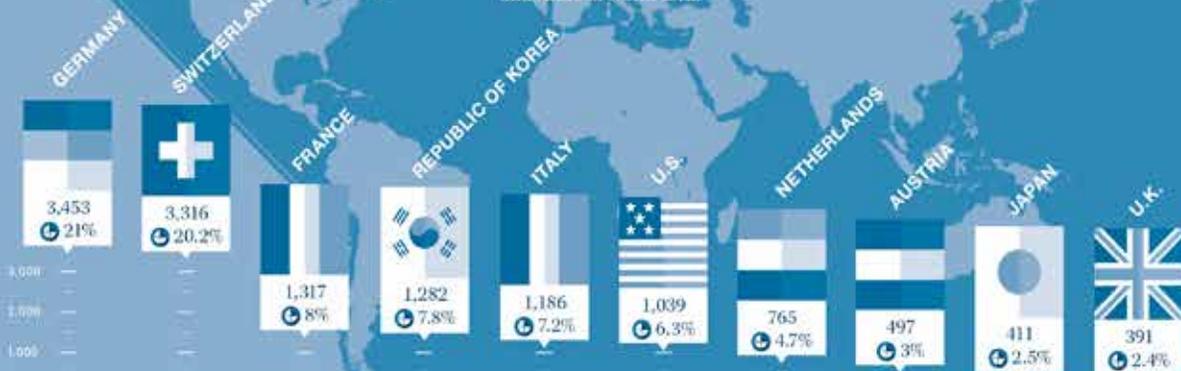
## TOP 10 HAGUE APPLICANTS

Number of designs contained in applications



## TOP 10 COUNTRIES

Number of designs contained in applications  
and share of world total



# WHO FILED THE MOST MADRID TRADEMARK APPLICATIONS IN 2015?

49,273

Number of applications

+ 2.9%

Growth in 2015

## TOP 5 CLASSES

Number of classes specified in International registrations  
and growth rate 2014-15

Computers and  
electronics

12,436 +27.7%



Services for  
business

10,482 +23.8%



Technological  
services

7,741 +26.2%



Clothing

6,227 +18.6%



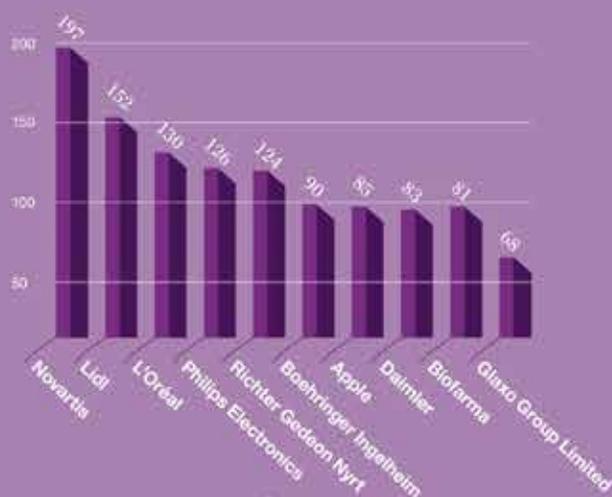
Leisure, education  
and training

6,182 +21.6%



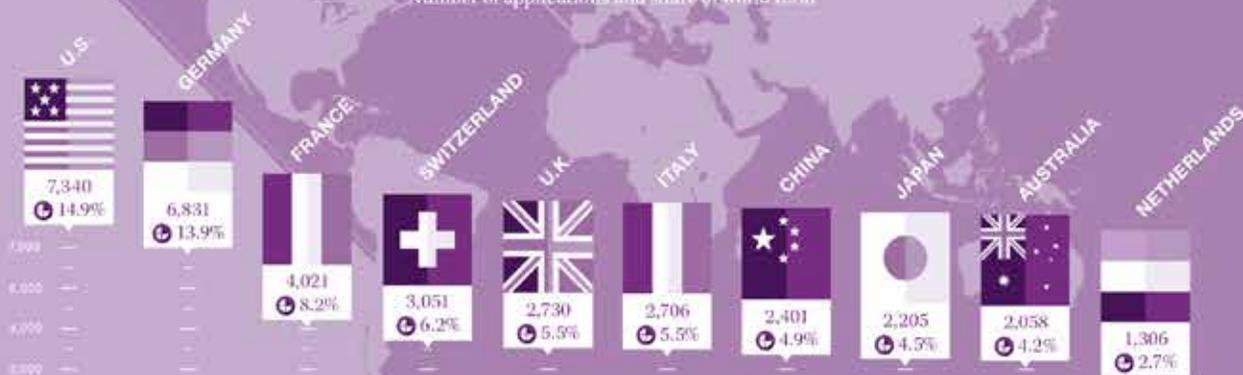
## TOP 10 MADRID APPLICANTS

Number of Madrid applications



## TOP 10 COUNTRIES

Number of applications and share of world total



# WHO FILED THE MOST PCT PATENT APPLICATIONS IN 2015?

218,000

Number of applications

+ 1.7%

Growth in 2015

## TOP 5 FIELDS OF TECHNOLOGY

Number of published applications and share of total

Computer technology  
16,385 ↓ 8.2%



Digital communication  
10,047 ↑ 8%



Electrical machinery, apparatus and energy  
14,612 ↓ 7.3%



Medical technology  
12,053 ↑ 6.3%

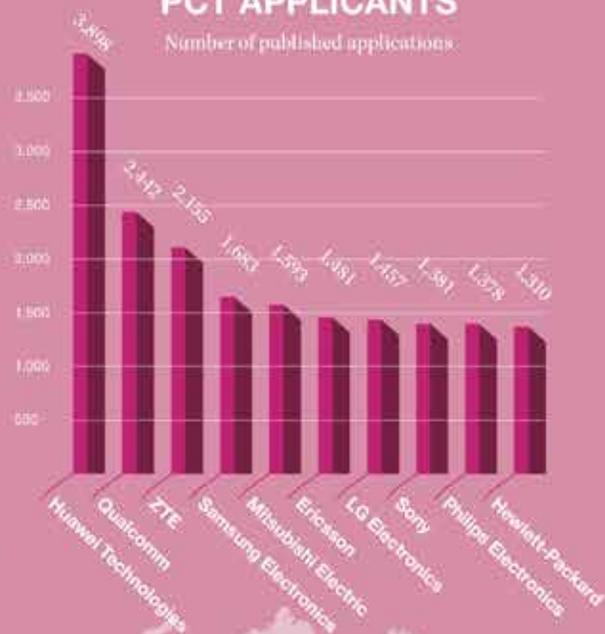


Transport  
8,622 ↑ 1.1%



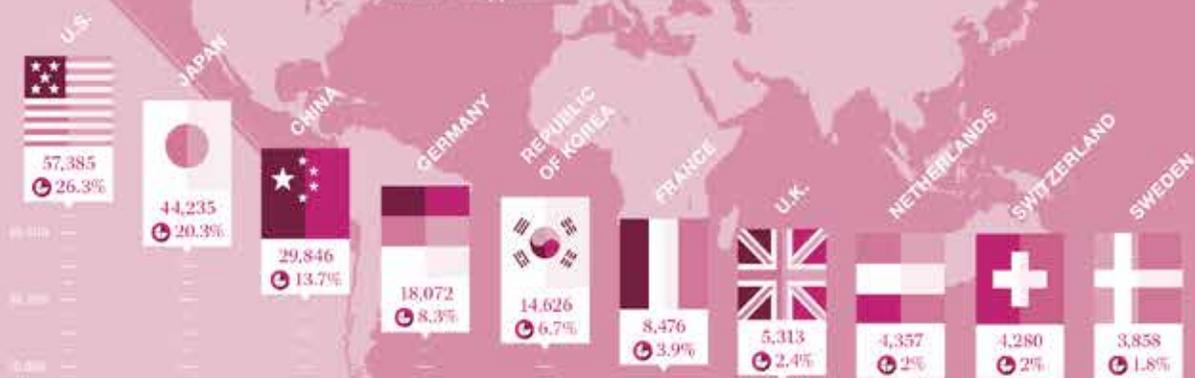
## TOP 10 PCT APPLICANTS

Number of published applications



## TOP 10 COUNTRIES

Number of applications and share of world total





(Agensi dibawah KPDNKK)

# DANA PEMFAILAN HARTA INTELEK

## BELIA, PELAJAR & KOMUNITI SETEMPAT



CAP  
DAGANGAN



PATEN



REKA BENTUK  
PERINDUSTRIAN



PETUNJUK  
GEOGRAFI



HAKCIPTA

# 2016



### SIAPA YANG LAYAK?

- ✓ Usahawan Belia (15-40 Tahun)
- ✓ Pelajar (Pusat Pengajian diiktiraf)
- ✓ Komuniti setempat/Penduduk

### SKOP PEMBIAYAAN

- Paten
- Cap Dagangan
- Reka Bentuk Perindustrian
- Hakcipta
- Petunjuk Geografi

Untuk maklumat lanjut, layari [www.myipo.gov.my](http://www.myipo.gov.my)

**15 MAC - 30 JUN 2016 (FASA PERTAMA)**

**MOHON SEGERA. TAWARAN ADALAH TERHAD!**

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