

Government IP authorities deserve applause

In recent years, the Thai government has pursued a series of free trade area (FTA) negotiations with a number of noteworthy overseas trading partners. Free trade pacts have already been concluded with China, Australia, New Zealand and India, while others are still being negotiated.

Among the most hotly debated of these is the Thailand-US FTA agreement, with the next round of negotiations scheduled to start on Monday in Hawaii.

It is widely expected that a key chapter of the agreement will contain a number of obligations on Thailand to modernise its intellectual property (IP) regime in line with international trends and to ensure enforcement of IP rights in compliance with original obligations under the Trips (Trade-Related Aspects of Intellectual Property Rights) agreement in the World Trade Organisation.

FTA agreements provide a familiar and practical framework for trading partners to reduce or remove tariffs on goods moving between the respective states. The United States has, as a matter of trade policy, insisted on fundamental protections of intellectual property as a core component in its FTA model. Recent US accords with Jordan and Australia include substantive provisions requiring the amendment and reform of outdated IP laws in those countries.

One of the most interesting examples

of an FTA in respect of IP legal reform can be seen in the US-Singapore agreement, which was the first trade pact negotiated by the US with a Southeast Asian nation and will likely serve as the model for the Thailand negotiations.

There is general consensus that ultimately the agreement will require Thailand to forge ahead with its plans to join the Patent Co-operation Treaty and the Madrid Protocol in the near future. The political will to fully comply with Trips obligations in a real and practical sense will also be required, for example, by ensuring that effective enforcement of IP takes place. There are signs that this is taking place already.

The Thai Department of Intellectual Property (DIP), under the Commerce Ministry, has been on the leading edge of public institutions carrying out progressive policies to promote a better and clearer understanding of the benefits that IP protection bring. Its efforts to educate the Thai population are commendable.

Perhaps of equal importance, the department has worked closely with small and medium-sized enterprises (SME) to promote registration of Thai-owned IPRs in Thailand and around the world as a way of adding value and attracting in-

CORPORATE **Counsellor**

TILLEKE & GIBBINS

vestment. Many Thai companies are just beginning to see the value of branding, patent protection, trade secret protection and copyright as they launch new businesses within these core industries.

Of particular interest is the DIP's support of IP enforcement designed to encourage investment in industries tapped by the Thaksin administration for growth, such as automobiles, health care, food, ecotourism, fashion, film and animation. In recent months, prominent companies in many of these industries, including fashion and automobiles, have approached the DIP with initiatives to train law enforcement and Customs officers, support plans for IP education festivals and offer other support to the public sector.

It is simplistic to look at the abundance of fake goods in some tourist areas and conclude that the public sector is not doing enough to suppress counterfeiting and piracy. One has to recognise the limited resources of public-sector agencies. It is only through collaboration and co-operation by the public and private sectors that Thailand may lose the label of "a counterfeiter's paradise."

The DIP has done its part to support these initiatives, at times in close collab-

oration with the private sector. Its successes tend to go unnoticed in public reports but not by companies with millions of dollars invested in Thailand's economy. Companies with rights to copyrighted works, trademarks and brands, patents and trade secrets have come to recognise the DIP as an "honest broker" in potential or actual disputes over copycat or counterfeit products.

In many cases, police and enforcement officials as well as private companies have come to rely on the DIP for well-reasoned and well-informed opinions in respect of infringement, which opinions carry such weight that many cases may be settled on the basis of an opinion from the DIP alone without resorting to expensive and time-consuming litigation.

The DIP has also been the source of useful and practical insight in respect of intellectual property reforms sought by the US in the FTA negotiations. As the country prepares for the Hawaii talks, it is important to remember that institutions such as the DIP are out ahead of the wave and leading the path to modernisation and reform.

Vipa Chuenjaipanich is a partner and managing director of Tilleke & Gibbins' IP department. Edward J. Kelly is a partner of Tilleke & Gibbins. Please send comments and suggestions to Marilyn Tinnakul at marilyn@tillekeandgibbins.com