

Act on the Establishment of and Procedure for Intellectual Property and International Trade Court, B.E. 2539 (1996)

Translation

BHUMIBOL ADULYADEJ, REX.

Given on the 14th Day of October, B.E. 2539;

Being the 51st Year of the Present Region.

His Majesty King Bhumibol Adulyadej has been graciously pleased to proclaim that:

Whereas it is expedient to establish intellectual property and international trade court as well as the procedure for intellectual property and international trade cases,

Be it, therefore, enacted by the King, by and with the advice and consent of the National Assembly, as follows:

Section 1

This Act shall be called the "Act on the Establishment of and Procedure for Intellectual Property and International Trade Court B.E. 2539 (1996)".

Section 2

This Act shall come into force from the date following the date of its publication in the Royal Gazette.

Section 3

In this Act:

"Intellectual Property and International Trade Courts" mean the Central Intellectual Property and International Trade Court and Regional Intellectual Property and International Trade Courts.

"Intellectual Property and International Trade Cases" mean civil and criminal cases under the jurisdiction of the intellectual property and international trade courts.

Section 4

The Minister of Justice shall be in charge of this Act and shall be empowered to issue Ministerial Regulations for the implementation of this Act.

Ministerial Regulations shall come into force after their publication in the Royal Gazette.

Chapter 1

Intellectual Property and International Trade Courts

Section 5

The Central Intellectual Property and International Trade Court shall be established. Royal Decree shall proclaim the date on which it shall be inaugurated.

The Central Intellectual Property and International Trade Court shall have jurisdiction throughout Bangkok Metropolis; Samutprakarn, Samutsakorn, Nakorn Pathom, Nonthaburi and Pathumthani Provinces. However, any intellectual property and international trade cases arising outside the jurisdiction of the Central Intellectual Property and International Trade Court may be filed with the Central Intellectual Property and International Trade Court. It shall be the discretion of the Central Intellectual Property and International Trade Court to determine whether to reject such cases.

Section 6

The establishment of a regional intellectual property and international trade court shall be made by an Act, which shall also specify its jurisdiction and location.

Section 7

The intellectual property and international trade courts shall have jurisdiction over the following matters:

- (1) criminal cases regarding trademarks, copyrights and patents;
- (2) criminal cases regarding offences under Sections 271-275 of the Criminal Code;
- (3) civil cases regarding trademarks, copyrights, patents and cases arising from agreements on technology transfers or licensing agreements;
- (4) civil cases in connection with offences under Sections 271-275 of the Criminal Code;
- (5) civil cases regarding international sale, exchange of goods or financial instruments, international services, international carriage, insurance and other related juristic acts;
- (6) civil cases regarding letters of credit issued in connection with transactions under (5), inward or outward remittance of funds, trust receipts, and guarantees in connection therewith;
- (7) civil cases regarding arrest of ships;
- (8) civil cases regarding dumping and subsidization of goods or services from abroad;
- (9) civil or criminal cases regarding disputes over layout-designs of integrated-circuits, scientific discoveries, trade names, geographical indications, trade secrets and plant varieties protection;
- (10) civil or criminal cases that are prescribed to be under the jurisdiction of the intellectual property and international trade courts;
- (11) civil cases regarding arbitration to settle disputes under (3) - (10).

Cases falling under the jurisdiction of juvenile and family court shall not be under the jurisdiction of intellectual property and international trade courts.

Section 8

Once an intellectual property and international trade court is inaugurated, no other courts of first instance shall accept a case that falls under the jurisdiction of the intellectual property and international trade courts for adjudication.

Section 9

Where there is a dispute as to jurisdiction, whether the dispute arises in the intellectual property and international trade court or in other courts of justice; the court shall stay the proceedings and submit the matter to the President of the Supreme Court for a ruling. Such ruling shall be final.

Section 10

Parties in a case which is pending in a regional intellectual property and international trade court may agree to file a petition with such court to transfer the case to the Central Intellectual Property and International Trade Court for adjudication, provided that such court shall not grant the request without prior consent of the Central Intellectual Property and International Trade Court.

Section 11

The intellectual property and international trade courts shall be the courts of first instance under the Law Governing the Organization of Courts of Justice. The provisions of the Law Governing the Organization of Courts of Justice shall apply to the intellectual property and international trade courts *mutatis mutandis*.

Chapter 2

Judges in the Intellectual Property and International Trade Courts

Section 12

The Minister of Justice shall determine the number of judges and associate judges in an intellectual property and international trade court.

Section 13

In the Central Intellectual Property and International Trade Court and each Regional Intellectual Property and International Trade Court, there shall be a Chief Justice for each court. The Deputy Chief Justices of the Central Intellectual Property and International Trade Court and of each Regional Intellectual Property and International Trade Court shall be in such number as determined by the Minister of Justice.

Section 14

Judges of the intellectual property and international trade courts shall be appointed by the King from the judicial officials under the Law on Judicial Service who possess competent knowledge of the matters relating to intellectual property or international trade.

Section 15

Associate judges shall be appointed by the King from intellectual property or international trade proficient selected by the Judicial Service Commission under the Law on Judicial Service, in accordance with the rules and methods prescribed in the Ministerial Regulations. An associate judge shall possess the qualifications specified in (1) to (4), and shall have none of the prohibited characteristics specified in (5) to (9), as follows:

- (1) having Thai nationality;
- (2) being not less than thirty years of age;
- (3) having been trained in the purposes of the intellectual property and international trade court and on judicial duties in accordance with the rules and methods prescribed in the Ministerial Regulations;
- (4) having knowledge and expertise in intellectual property or international trade;
- (5) having bad behavior or lacking good morals;
- (6) being insolvent;
- (7) having been imprisoned by a final judgment, except for an offence committed by negligence or a petty offence;
- (8) being incompetent, quasi-incompetent, mentally infirm, physically or mentally unfit for the position of associate judge or having contracted disease as specified in the Ministerial Regulations;
- (9) being a political official, a committee member or staff of any political party, a member of the National Assembly, an administrator or a member of the Bangkok Metropolitan Assembly, a local administrator or a member of any local council, a public prosecutor, a police officer or an attorney.

Each associate judge shall hold office for term of five years, but may be reappointed by the King to hold office for a successive term.

Prior to taking office, associate judges shall make a solemn declaration before the Chief Justice of the Central Intellectual Property and International Trade Court that they shall impartially perform their duties and preserve official secrets.

Section 16

An associate judge shall cease office upon:

- (1) expiration of one's term;
- (2) death;
- (3) resignation;
- (4) lack of qualifications or possession of any prohibited characteristics under Section 15;
- (5) absence from one's assigned duties for three consecutive times without justification;
- (6) misbehavior rendering oneself unfit to be associate judge.

The cessation of office by virtue of (2) or (3) shall be reported to the King. The cessation of office by virtue of (4), (5) or (6) shall be approved by the Judicial Committee under the Law on Judicial Service and shall be tendered to the King for removal.

Section 17

Where a position of an associate judge is vacant by virtue of any grounds apart from the expiration of one's term under Section 16(1), the King shall appoint a person selected by the Judicial Committee to fill the vacancy. If the remaining term is less than one hundred and eighty days, a new associate judge may not be appointed. The replacing associate judge shall hold office for the remaining term of the associate judge whom he replaced.

Section 18

Where the replacing associate judge is not appointed or has been appointed but has not taken office, the leaving associate judge whose term has expired shall continue to perform his duties and be empowered to adjudicate the cases that he has been hearing until such cases are disposed of, but shall not retain his office for more than sixty days after the expiration date of his term.

Section 19

Subject to the provisions of Section 20 and Section 21, at least two judges and one associate Judge shall be present to form a quorum for the adjudication. Judgment or order of the court shall require a majority vote.

Section 20

A judge of the intellectual property and international trade court shall be empowered to conduct any proceedings or issue any orders, in addition to the adjudication.

Section 21

Where the intellectual property and international trade court deems it appropriate, it may empower another court or its court officer to take any evidence on its behalf. Such taking of evidence may be conducted in or outside the court.

In case where evidence to be taken under paragraph one is the taking of evidence of the plaintiff in a criminal case, it shall not be conducted in the absence of the accused. The accused shall also be given full opportunity to cross-examine the witness or to oppose other evidence, save in case where the evidence may be examined in the absence of the accused by virtue of Section 172 bis of the Criminal Procedure Code.

Section 22

The Chief Justice of the Central Intellectual Property and International Trade Court or the Chief Justice of a Regional Intellectual Property and International Trade Court, as the case

may be, or the person acting on his behalf shall arrange a quota for associate judges to perform their duties in court.

An associate judge who hears any case shall sit in that case until it is disposed of, unless he is unable to perform his duties because of illness or other necessity. In such a case, the person empowered under paragraph one shall call on another associate judge to replace him.

An associate judge shall receive allowance, transportation and accommodation expenses and other remuneration as prescribed by the Royal Decree.

Section 23

The provision on the Challenge of Judges under the Civil Procedure Code shall apply *mutatis mutandis* to associate judges.

Section 24

An associate judge shall be a judicial officer under the Criminal Code.

Section 25

The provisions on Discipline and Disciplinary Actions of Judicial Officials under the Law on Judicial Service shall apply *mutatis mutandis* to associate judges.

Chapter 3

Procedure of Intellectual Property and International Trade Cases

Section 26

Proceedings in the intellectual property and international trade courts shall be in accordance with the provisions of this Act and the Rules issued under Section 30. Where there are no such provisions and Rules on the issue, the provisions of the Civil Procedure Code, the Criminal Procedure Code or the Act for the Establishment of Kwaeng Court and its Criminal Procedure Code shall apply *mutatis mutandis*.

Section 27

The intellectual property and international trade court shall proceed with the hearing without adjournment until the hearing is over, save in case of unavoidable necessity. After the hearing is over, the court shall promptly render a judgment or an order.

Section 28

Where a person apprehends that the evidence on which he may have to rely in the future will be lost or become difficult to produce when an intellectual property or intellectual trade case is filed, or where a party to a case apprehends that the evidence on which he intends to rely will be lost before he can adduce it in court or become difficult to adduce at a later stage, such person or party may apply to the court by petition or motion for an order directing such evidence to be taken at once.

Upon receipt of such application, the court shall summon the applicant and the opposing party or the third person concerned. After hearing such persons, the court shall decide on the application as it deems it appropriate. If the application is granted, the evidence shall be taken as prescribed by law. Reports and other documents relating thereto shall be kept by the court.

Section 29

In case of emergency, when an application is filed under Section 28, the applicant may simultaneously file a motion to the effect that the court may issue an order or a writ without delay. Where necessary, the applicant may also request the court to seize or

attach the documents or materials that will be adduced as evidence upon any conditions as the court deems it appropriate.

The provisions of Section 261 to Section 263 and Section 267 to Section 269 of the Civil Procedure Code shall apply *mutatis mutandis* to the cases referred to in paragraph one.

Section 30

In order to ensure convenience, expediency and fairness in proceedings, the Chief Justice of the Central Intellectual Property and International Trade Court shall be empowered, subject to the approval of the President of the Supreme Court, to issue Rules on proceedings and hearing of evidence in the intellectual property and international trade courts provided that such provisions shall not impair the right of defense of an accused in a criminal case.

Such Rules shall come into force after their publication in the Royal Gazette.

Section 31

The intellectual property and international trade court may call any knowledgeable persons or experts to appear and give opinions for its consideration. The court shall notify all parties of such calling and shall not prejudice the right of the parties from requesting the court to call their knowledgeable persons or experts to give opinions on their behalf in order to give contradictory or additional opinions to the opinions of such knowledgeable persons or experts.

Section 32

The knowledgeable persons or experts whom the intellectual property and international trade court calls to appear and give opinions shall be entitled to allowance, transportation and accommodation expenses in accordance with regulations prescribed by the Ministry of Justice.

Section 33

In a civil case, a party may appoint any person who domiciles in the jurisdiction of the intellectual property and international trade court to receive pleadings or documents on his behalf by submitting a request to the court before which the case is pending. After the approval of the court, such pleadings or documents may be served on the appointed person.

If the party has no domicile or place of business in the jurisdiction of the intellectual property and international trade court before which the case is pending, the court may, for the sake of convenience, order that party to appoint a person whose domicile is in the jurisdiction of the court to receive pleadings or documents on that party's behalf within the prescribed period.

If the concerned party fails to comply with the court order issued under paragraph two, service of pleadings or documents may be conducted by posting them at the court before which the case is pending notifying the parties concerned to collect such pleadings or documents from the court in lieu of service by other means. Pleadings or documents served by such means shall be effective after fifteen days have elapsed from the posting date.

Service of pleadings or documents to the appointed person may be conducted in the same manner as service to the parties or conducted by such other means provided in the Civil Procedure Code. Service of pleadings or documents to the person appointed as aforesaid shall be effective after seven days have elapsed from the date of service or after fifteen days have elapsed from the date of service by other means.

Section 34

In a civil case, when the intellectual property and international trade court has notified a party of the hearing date and such party does not appear in court on the scheduled date,

such party shall be obligated to inquire the court about the next hearing date. Without such inquiry, that party shall be deemed to have acknowledged the next hearing date.

Section 35

In a criminal case where a single act violates several offences, and one of the offences falls within the jurisdiction of the intellectual property and international trade court, the court shall also accept other offences for adjudication

Section 36

In a criminal case where several acts violate several related offences, and some of the offences are not within the jurisdiction of the intellectual property and international trade court, the court may accept all offences for adjudication or reject any one or more of the offences which falls outside its jurisdiction, so that the plaintiff may file a new charge with the competent court. In doing so, the court shall regard convenience and fairness as its prime consideration.

Section 37

The intellectual property and international trade court may, where necessary and in the interest of justice, shorten or extend the period of time prescribed in this Act or fixed by it, when the court deems it appropriate or upon application of any party concerned.

Chapter 4

Appeal

Section 38

Subject to the provisions of this Act, the Civil Procedure Code or the Criminal Procedure Code, an appeal against any judgment or order of the intellectual property and international trade court shall be submitted to the Supreme Court within one month from the date of its pronouncement.

Section 39

In a criminal case where the maximum penalty prescribed by law does not exceed three years imprisonment or sixty thousand bath fine or both, no appeal shall lie against any judgment of the intellectual property and international trade court in a question of fact, except in the following cases where the accused may appeal against the judgment even with respect to the question of fact:

- (1) the accused is sentenced to imprisonment or is detained in lieu of imprisonment;
- (2) the accused is sentenced to imprisonment, but the imprisonment is suspended;
- (3) the court convicts the accused, but suspend the sentence;
- (4) the accused is fined for more than five thousand Baht.

Section 40

In a case where appeal is not allowed under Section 39, if a judge who sat in the case or affixed his signature in the judgment or gave a dissenting opinion certifies that there is reason to appeal or in a case where the prosecutor exercises the right to appeal, the Attorney General or the prosecutor delegated by the Attorney General certifies in the appeal that there is reason to appeal, then that appeal shall be accepted.

Section 41

In a civil case where the value of the asset or the amount in dispute on appeal does not exceed two hundred thousand bath or does not exceed the amount prescribed in the Royal Decree, no party shall appeal against a judgment of an intellectual property and

international trade court with respect to a question of fact, unless the judge who sat in the case has made a dissenting opinion or has certified that there is reason to appeal. In the absence of such dissenting opinion or certification, written approval of the Chief Justice of the Central Intellectual Property and International Trade Court or the Chief Justice of a regional intellectual property and international trade court as the case may be required.

Section 42

In requesting a judge who sat in a case to certify that there is reason to appeal or in requesting the permission of the Chief Justice of the Central Intellectual Property and International Trade Court or the Chief Justice of a regional intellectual property and international trade court, the appellant shall file a motion with any of the judges who sat in the case or the Chief Justice, as the case may be, together with the appeal to the intellectual property and international trade court. After receipt of the motion, the court shall forward the motion and the dossier of the case to the judge or the Chief Justice concerned.

Section 43

The President of the Supreme Court shall set up an Intellectual Property and International Trade Section in the Supreme Court for the adjudication of intellectual property and international trade cases that may be appealed to the Supreme Court. In this regard, a judgment or an order shall be given promptly.

Section 44

In a case where the intellectual property and international trade court has accepted an appeal for submission to the Supreme Court, if the Supreme Court holds that such appeal is prohibited by law, the Supreme Court shall dismiss the appeal. On the other hand, if the Supreme Court deems it appropriate, for reason of fairness, to rectify the error, the Supreme Court may adjudicate the appeal that is prohibited by law.

Section 45

The provisions of this Act and of the Civil Procedure Code or the Criminal Procedure Code governing the adjudication of cases in the Court of Appeal and the Supreme Court shall apply *mutatis mutandis* to the adjudication of intellectual property and international trade cases in the Supreme Court.

Transitional Provisions

Section 46

Cases within the jurisdiction of the intellectual property and international trade court which are pending in a court of first instance on the inauguration date of the intellectual property and international trade court established in accordance with Section 5, shall be adjudicated and disposed of by the said court of first instance and shall not be deemed intellectual property and international trade cases under this Act. However, if all parties agree within one hundred and eighty days from the inauguration date of the Central Intellectual Property and International Trade Court to request that their case be transferred to the intellectual property and international trade court that has jurisdiction over the case, such court shall accept the case for adjudication.

Section 47

During the period when a regional intellectual property and international court has not been opened, the Central Intellectual Property and International Trade Court shall have jurisdiction in the locality. In a civil case, the plaintiff may file a plaint with the provincial court where the defendant domiciles or with the provincial court where the cause of action occurred. In a criminal case, the plaintiff may file a charge with the provincial court where the offence was committed, alleged, or believed to be committed, or where the accused

domiciles or was arrested or where the inquiry official has interrogated the accused. The provincial court shall then notify the Central Intellectual Property and International Trade Court of the matter. After the Central Intellectual Property and International Trade Court have accepted the case for adjudication, it may conduct preliminary examination, hearing and render judgment at the relevant provincial court or at the Central Intellectual Property and International Trade Court, as the Court deems it appropriate.

Where necessary, the Central Intellectual Property and International Trade Court may request the provincial court where the plaintiff has filed the plaint or any other provincial court to conduct any proceedings which do not amount to giving a ruling on the issue in dispute. In this event, the provincial court shall apply the procedure of intellectual property and international trade cases under Chapter 3 to the proceedings in such case.

The provincial court where the prosecution has been instituted or such other provincial court as is referred to in paragraph two shall be empowered to issue a warrant of detention or grant provisional release of the alleged offender or the accused.

Countersigned by

Mr. Banharn Silapa-Acha

Prime Minister

Remark: The reason for the promulgation of this Act is whereas an intellectual property and international trade case has a particular character different from other general criminal and civil cases, if they are tried by the judges who, with having participated by the competent outsiders, possess competent knowledge in the matters relating to intellectual property and international trade, the proceedings will be more expeditious and appropriate. It is deemed expedient to establish the intellectual property and international trade court by having particular procedures in order to make the proceedings more convenient, expeditious and fair. It is, therefore, necessary to enact this Act.

Published in the Royal Gazette, Volume 113, Section 55 kor, Page 1

Dated 25th October, B.E. 2539 (1996).

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