Outline

of

Seminar Presentations

before the

Lawyers Association of Thailand

in

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on

I) The Nature and Importance of Intellectual Property

and

II) Intellectual Property Licensing/Technology Transfer in East Asia

by

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I. Intellectual Property: Reflections on its Nature and Importance

By way of introduction and to set perspectives and clear up misconceptions the following points will be presented and amplified.

- The defense of intellectual property rights today is the new frontier as were the human rights yesterday.
- An effective intellectual property system is indispensable to technological and cultural development which in turn is indispensable to economic growth and social welfare.
- An intellectual property system should be part of a country's infrastructure from the outset, as was the case in the U.S., rather than something thought about after reaching a fairly advanced stage of development.
- The intellectual property system is the only system that is compatible with a free market system; there are no viable alternatives.
- An intellectual property system does benefit nationals, not just foreign corporations; after all, there is genius and creativity everywhere but they need nurture.
- "Everything under the sun made by man is patentable" according to the 1980 *Chakrabary* decision of the U.S. Supreme Court; hence, there should virtually be no exclusions of subject matter from patentability
- Subject matter that is viewed as too important to be protected, like pharmaceuticals and products of biotechnology, is, on the contrary, too important not to be protected.
- A patent and other intellectual property are property and are not and cannot be monopolies, primarily for the reason that a monopoly is something in the public domain that the government takes away from the public and gives to a person or a company; an invention, on the contrary, is something novel, something that did not previously exist and was not in the public domain but will, as soon as the patent expires, enter into the public domain and be freely available to all.
- Protection for trade secrets is also indispensable inasmuch as trade secrets and patents are not mutually exclusive but, on the contrary, dovetail, overlap and are complementary, even synergistic.
- Of the several incentives provided by the intellectual property system, namely, to invent or create, to disclose, and to invest, the incentive to invest is the most important.
- There is a solid correlation between the quantity of investments a country can attract and the quality of its IP system.
- Technology transfer, licensing and investments are ever so much easier to carry out and accomplish via patents and other IP as vehicles or bases.

II. Intellectual Property Licensing/Technology Transfer in East Asia

As a second part of the seminar presentations, intellectual property licensing/technology transfer law and practice will be covered in terms of significant cultural and legal differences and with particular reference to Japan but also Korea and China. Reverse technology transfer will also be adverted to. More particularly, the following points will be discussed.

- Japan showed the way — its success formula is worthy of emulation.
- The Japanese experience also teaches that importation of foreign technology serves as a catalyst to promote local innovation.
- Importation of technology leads not only to export of products manufactured via the imported technology but also to export of improved and modified technology ("reverse technology transfer").
- In dealing with the Japanese and others in the region, certain hidden cultural differences have to be kept in mind.
- There are, in particular, three hidden differences or syndromes, namely,
    - The Black Hole syndrome
    - The Totem Pole syndrome
    - The Blackship syndrome
- Specially pronounced differences exist as regards the legal systems and the roles lawyers play.
- Relationships, friendships and patience are all-important in dealing with Japanese negotiation partners.
- Appreciation of differences in the concept of time — polychronic versus monochromic — is also very useful in negotiations.
- Quite similar attitudes, concepts, conditions, creeds, principles, systems are encountered in other countries in the region, such as Korea, China, etc.
- Respecting cultural and legal differences facilitates achieving win/win resolutions in IP licensing/technology transfer negotiations.