

Thesis Title : Wrongful Use of Patent by Patent Holder
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 Degree : Master of Law (Business Law)
 Academic Year : 2011
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ABSTRACT

As a result of economic growth and technology development worldwide which was changed in feature of Trade Competition between entrepreneurs intensively in the market, patented technology has increasingly disseminated among entrepreneurs through their manufacturing and sale process purposing to acquire outstandingly product which is different from other product. Once such entrepreneurs become patentees whom has exclusive right, however, there are numerous disputes and complaints concerning the wrongfully exercises of those who are patent holders, such as enforcement patents to enhance or monopolize the control of markets, which shall be lead to unfair competitions and affect to fair trade competition in the market. In the event that such case occurring in Thailand, the Court and Unfair Trade Competition Committee shall bring laws and regulations relating patent infringements; firstly, the Patent Act B.E. 2522 and the Ministerial Regulation No. 25 B.E. 2542 which came into force under Section 39 (1) of the Patent Act, and secondly, The Competition Act B.E. 2542, to judge disputes thereunder. Within this thesis, Thai courts and Office of the Trade Competition Commission (OTCC) are government entities responsible for patent violations cases in Thailand. The question is that, when those organizations examine an infringement of the rights, which regulation is well thought-out for the consideration. This thesis aims to investigate laws which governed patent violations, as well as to perform comparative studies of international concepts, principles but not limited to the Supreme Court decision of foreign Court and considering

the main concept of law and judiciary.

The studies found that the Thai Patent Act B.E. 2542 refers to the case where patentee impose upon the license restriction which propose the patentee an absolute control of the market therefore excessively put forward anti-competitive stating in section 39 (1) of said Act. Such conditions, restrictions or terms which are unjustifiably anti-competitive shall be prescribed in the Ministerial Regulations No. 25 B.E. 2542. Notwithstanding, it can be argued that aforesaid Ministerial Regulation is unable to provide the complete response to the violation of patent act by patentees themselves. Although the core principle of such Act and Ministerial Regulation tends to protect and support new technological inventions, cases where patent holders commit the violation by creating competition on unfair trade have not yet been pointed out. In this case, the Competition Act B.E. 2542 has prone to be a suitable law for the complaints where trade policy is concerned. Hence, the Competition Act B.E. 2542 shall be suitable for solving said dispute similarly in U.S.A. and Japan which had been brought their Competition Act in considering or hearing the case.

Nonetheless, in the present time, the Competition Act B.E. 2542 would be suited for solving the aforesaid dispute regarding the patentee misuse the exclusive right thereunder. Event though, it has been criticized that the Competition Act B.E. 2542 is correct one but there still be gap of law. There is no article in said Act referred to the infringements of patent by patent holders, as well as there is no regulation granting and empowering the Trade Competition Commission to investigate said claim. We, therefore, need some concept of law to dispose this gap of law. Consequently, in order to implement an appropriate patent measure, specific regulations concerning the violation of patent by patentee need to be established, along with the abolishment of the Ministerial Regulation No. 25 of 1999 to avoid any confusion of using law thereafter.