

Protecting Business Interest Against Intellectual Property Rights Infringement Through Interim Injunction in Malaysia

Khadijah Mohamed

School of Law, Universiti Utara Malaysia, Sintok, 06010 Kedah, Malaysia

Abstract: Intellectual Property Rights (IPRs) play an important role in contributing into the income and profits of a business and economic growth of many countries. However, IPRs infringement may destroy such benefits. In order to effectively combat infringement activities, it is important for such actions to be covered not only as protected rights under the relevant substantive laws but also necessary to assess which legal procedures and remedies are available to enforce such rights. In Malaysia, IPRs-holders may bring legal action against infringer (s) either through civil or criminal proceedings, administrative action or combinations thereof. This study analyses the interim injunction as one of the civil remedies that may be enforced by them. The objective is to examine how interim injunction may function as appropriate remedy for IPRs-holders to obtain equivalent compensation and as a weapon to discourage future infringement. The study employs socio-legal method in examining the issue at hand by adopting qualitative approach as a tool for data collection in identifying the scale of infringement and using legal approach to analyze the provisions of relevant laws and decided cases. The study finds that civil proceedings, particularly interim injunction do assist right-holders in protecting their rights and contribute to the overall effectiveness of the business and the IP system. However, the study identifies that outdated legal provisions and expensive procedures are among the obstacles faced by businesses in this proceedings and recommends and kort gedings procedures as practised in the Netherlands may be considered by the Malaysian authorities to overcome the limitations.

Key words: Business, infringement, innovation, intellectual property rights, interim injunction

INTRODUCTION

IP exploitation has played an increasingly important role in the global economy particularly in the age of information economy: an economy based on information as its primary resource when business activity has shifted from traditional manufacturing activities to IP intensive activities (Aplin and Davis, 2013). Oswald and Pagnattaro (2015) claimed that IP intensive activity has grown as a leading contributor to the economic success of many nations, both in terms of jobs and in terms of value added to Gross Domestic Product (GDP). This fact is even recognized earlier by the World Intellectual Property Organization (WIPO) which believes that IP has contributed to the progress of societies through recognition and rewards associated with ownership of inventions and creative works that stimulate further inventive and creative activity which in turn, stimulates economic growth (Idris, 2003).

In 2013 for instance, research indicates that about 70-80% of a company's market capitalization comes in the form of intangible assets which include intellectual assets such as patents, trademarks, copyrights and other business knowledge and know-how (Hadzima, 2013). This is evidenced by the growth of the economy and

government revenues in some developed countries. In 2012 for instance, the US commerce department released a comprehensive report which found that IP intensive industries directly accounted for 2.1 million jobs and supported over 12.9 million additional jobs that contributed more than USD5 trillion to (or 34.8% of) US GDP in 2010 while in 2013, the European Union (EU) reported that IP intensive industries contributed almost 77 million direct or indirect jobs (35.1%) that generated almost 39% of GDP in the EU valued at 4.7 trillion for the period between 2008 and 2010 (Oswald and Pagnattaro, 2015).

Since, IP Rights (IPRs) had a significant effect on economic value of a nation, their creation, protection and exploitation therefore are assuming increasing importance for all businesses, especially for innovative or "high-tech" industries. This is in line with the growing importance of knowledge management in business since innovation processes depend strongly on knowledge and profiting from knowledge is a crucial aspect of innovation management, especially in high-tech firms (Candelin-Palmqvist *et al.*, 2012). As mentioned earlier, the bulk of business assets today are shifted into and held in the form of intangible property as opposed to the land, factories and machines of earlier decades. IP law

therefore becomes of immense importance to protect this kind of intangible property from infringement activities that have increasing on a global scale and impacts negatively the companies, consumers and governments (Mohamed, 2012).

This study discusses how legitimate companies may protect their business interest in IPRs against infringement activities through legal proceedings. In Malaysia, rights conferred by the law to IPRs-holders entitle them to bring actions against any persons who infringe those rights either through civil or criminal proceedings, administrative action or combinations thereof. The discussion begins with the concept of IPRs and the scale of the widespread IPRs infringement globally and in the country. The study then analyses the interim injunction as one of the civil remedies conferred to right-holders that may be imposed on parties responsible for infringement activities. The objective is to examine how interim injunction may function not only as an appropriate remedy in infringement cases so that IPRs-holders obtain equivalent compensation but also as an essential weapon to discourage future infringement. The discussion will then examine the key obstacle that may arise in the way of this action. Comparison is therefore made with other jurisdictions such as the United Kingdom (UK) and the Netherlands to identify the relevant strength and weakness of the proceedings so that possible recommendation may be made to improve the practice of interim injunction in Malaysia.

MATERIALS AND METHODS

This study employs socio-legal method in collecting the relevant data. Socio-legal research basically refers to studies of law that relate to social phenomena and adopt methods from the social sciences that is, either qualitative or quantitative research approaches to obtain some kind of empirical data (Mohamed, 2012). Empirical legal research is valuable in revealing and explaining the practices and procedures of legal, regulatory, redress and dispute resolution systems and the impact of legal phenomena on a range of social institutions, business and citizens (Genn *et al.*, 2006). Banakar and Travers (2005) claimed that the “socio” in socio-legal studies does not refer to sociology or social sciences but represents “an interface with a context within which law exists”.

This approach is particularly important because the aim of this study is to examine the scale of IPRs infringement and how legal measures may be used to effectively deal with the problem. The scale of infringement is derived from the seizure data issued by the World Customs Organization (WCO, 2014) and the

Malaysian authority emphasizing both on the worldwide and domestic scenario. The data for this part is discussed in greater detail in 4.0 below. Thus, the use of social theory for the purpose of analysis in legal research most often tends to address the concerns of law and legal studies as stressed by Yaqin that “where the true factors for the emergence or existence of a problem or issue are identified by empirical inquiry, law where it is applied and enforced with the necessary will commitment and appropriate strategies, can serve as an effective mechanism of control, regulation, change and reform”.

In analyzing the legal primary data that is the statutes and case law, the study adopts legal research method. Siems (2008) claimed that one of the prominent features of legal research method is that it is more concerned with an accurate and coherent description of the law rather than scientific theories about it. Legal research method thus important in this study to examine the substantive laws and legal procedures for fighting IPRs infringement in Malaysia and other jurisdictions through the analysis of legal rules, court judgments and statutes.

RESULTS AND DISCUSSION

Brief concept of Intellectual Property Rights (IPRs): IP basically refers to a property that is a product of the mind or a product of intellectual capital. According to Article 2, para viii, convention establishing the World Intellectual Property Organization (WIPO) 1967 (WIPO Convention), IP includes the rights relating to literary, artistic and scientific works, performances of performing artists, phonograms and broadcasts, inventions in all fields of human endeavor, scientific discoveries, industrial designs, trademarks, service marks and commercial names and designations, protection against unfair competition and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields (WIPO official website). From this provision, it may be deduced that while the source, goals and forms of IP are different, they can all be seen as protecting and encouraging creative efforts of the creators and innovators to make a living from their new works and products.

In this regard, IP law deals with the protection of rights of those who create original works by granting exclusive rights for the creators to profit from the value of their innovative work. In exchange, the creative work is made public so that others may build on and benefit from the work of the original creator (Wiens and Jackson, 2015). These rights both recognize the moral entitlements (moral rights) of creators and innovators over their works and provide an economic incentive to creators and

Table 1: List of statutes governing IPRs in Malaysia

| Types of IPR | Statutes |
|--------------------------------------|---|
| Copyright | Copyright Act 1987 |
| Trademark | Trade Marks Act 1976 |
| Patents | Patents Act 1983 |
| Industrial designs | Industrial designs Act 1976 |
| Layout design of integrated circuits | Layout design of integrated circuits at 2000 circuits |
| Geographical indications | Geographical indications Act 2000 |

innovators to produce IP (Landes and Posner, 2003; Christie, 2011). The exclusive rights give researchers and inventors the possibility to recoup their investment by ensuring that they are the only ones to be allowed to sell their creations and inventions on the market for some time. In other words, they have a legal monopoly on their endeavors for a limited period of time, after which these inventions and creations fall into the public domain and can be used by all freely (Derclaye and Taylor, 2015). IP law therefore is a set of laws that protect creative and innovative products through legal rights such as copyrights, patents and trademarks. For example, copyright protects creative expression, a patent protects new invention and a trademark identifies and distinguishes the source of goods of one party from another.

Most economies have legal measures in place to protect IPRs. At international level, Article 27 of the United Nation Universal Declaration of Human Rights recognizes the fundamental human rights to IP by providing the protection of both the “moral and material interests” of those who create “scientific, literary or artistic” works. In Malaysia, all branches of IP are protected under specific statutes as summarized in Table 1. All these statutes conferred legal protection to the owners of IPRs against infringement.

The scale of IPRs infringement: “Infringement” of IPRs generally occurs when a product, creation or invention protected by IP laws are exploited, copied or otherwise used without having the proper authorization from owner of those rights or their representative. This includes “counterfeiting” activities which usually refers to the “unauthorized reproduction of goods that is identical with or substantially indistinguishable from the genuine product which infringe the rights of IP proprietors” (Blakeney, 2006). The requirement that counterfeit goods must infringe the rights of IP proprietors renders the term counterfeit as a subset of IPRs infringement.

IPRs infringement causes significant financial losses for rights holders and legitimate businesses around the world by undermining businesses comparative advantages in innovation and creativity, damaging the businesses and workers and in some cases, endangers the

Table 2: WCO regional data on IPRs detentions by number of cases

| Reports | No. of cases (2007) | No. of cases (2008) | No. of cases (2009) | No. of cases (2010) | No. of cases (2011) |
|--|---------------------|---------------------|---------------------|---------------------|---------------------|
| WCO Regional Intelligence Liaison Offices (RILO) region | | | | | |
| Western Europe | 4,963 | 6,615 | 7,066 | 6,744 | 6,281 |
| North America | 0 | 4,021 | 8,653 | 10,950 | 9,762 |
| Asia/pacific | 1,407 | 1,810 | 3,527 | 6,084 | 1,212 |
| CIS region | 51 | 459 | 199 | 178 | 362 |
| Eastern and Central Europe | 1,615 | 1,641 | 1,161 | 886 | 693 |
| South America | 265 | 259 | 475 | 194 | 219 |
| Eastern and Southern Africa | 33 | 79 | 25 | 245 | 24 |
| Middle East | 15 | 49 | 825 | 1,232 | 1,992 |
| North Africa | 65 | 44 | 4 | 20 | 76 |
| West Africa | 2 | 4 | 5 | 1 | 0 |
| Total | 8,416 | 14,981 | 21,940 | 27,606 | 20,932 |

public (USTR, 2015; Mohamed, 2012). These negative impacts subsequently reducing economic growth as governments lose tax revenue thus weaken the nationands competitiveness, decrease job creation (Casey, 2012) and harm the consumers when they purchase infringed goods of lower quality some of which such as counterfeit medicines, foodstuff or vehicle parts may pose health or safety risks (Mohamed, 2012).

Most studies on infringement of IPRs seem to suggest that the proliferation of this activity especially in counterfeiting is rampant in most countries across the world (Mohamed, 2012). However, it is difficult to obtain the accurate data, either on the extent of the phenomenon or the amount of loss suffered by the parties involved due to a clandestine nature of IPRs infringement. The data used in this study is based on seizures of counterfeit IPRs goods for the period of 2007 until 2013 reported by the WCO and the relevant authorities in Malaysia as reported by the Ministry of Domestic Trade, Co-operative and Consumerism (MDTCC) to identify trends both at international and domestic levels respectively. In Malaysia, the competent authority for the enforcement of IP matters is the MDTCC but the implementation of enforcement also involves several government agencies including the Royal Malaysian Customs, the Royal Malaysian Police and the local authorities, according to the provisions of the relevant IP statutes.

From the data gathered, the international trends for the period of 2007-2011 can be summarized as in Table 2 which shows the outcome of Customs seizures and offences of IPRs infringement worldwide (WCO, 2014). The data is based on the results submitted by members to the Customs Enforcement Network (CEN), a reporting framework developed by customs agencies through the WCO. Seizure data contained in CEN has been entered and validated by the WCO Members and the eleven Regional Intelligence Liaison Offices (RILOs) (WCO, 2014). For the reports then were filtered by the

Table 3: MDTCC data on seizure of counterfeit goods by number of cases and seizure value

| Years | No. of cases | Seizure value |
|-----------------|--------------|---------------|
| 2004 | 3,914 | 98,166,687.27 |
| 2005 | 2,606 | 12,212,808.55 |
| 2006 | 2,018 | 42,686,237.69 |
| 2007 | 1,936 | 56,169,682.09 |
| 2008 | 1,528 | 23,463,304.88 |
| 2009 | 409 | 3,570,857.51 |
| 2010 | 1,328 | 13,783,735.83 |
| As at June 2011 | 317 | 6,127,663.03 |

WCO and only considered those seizures involving at least 50 articles and/or 10,000 authentic market value in any individual case in order to maintain the balance and consistency of all data in the report. This means that seizures involving <50 articles were not taken into account.

For the period of 2011-2013, the trend of infringement is classified according to the departure and destination countries by number of cases where China emerged and remained as the main departure country for counterfeit goods. Reported seizures for this purpose include only those made by customs, joint customs and police units and other law enforcement agencies that have customs powers (WCO, 2014).

Table 3 illustrates the results of seizures of counterfeit goods in Malaysia by the MDTCC for the period of 2004 until June 2011 (MDTCC official website) but there is no official data issued from June 2011 onwards.

However, Malaysia is still reported by a few international authorities as one of the provenance countries of counterfeit goods and copyright piracy. In 2013 for instance, the WCO (2014) reported that Malaysia is listed among top 15 departure countries in terms of quantity of detained infringed commodity. In 2014, the detention cases by the EU Customs identified Malaysia as one of the provenance countries for packaging materials from where infringing IPRs goods were sent to the EU (European Union, 2014) while in 2015, the USTR (2015) reported that media box-based piracy whereby storage devices are loaded with large quantities of pirated works is growing in popularity in Malaysia together with a few other countries.

The results from the above data generally appear to show the increasing trend of IPRs infringement both at the international and domestic levels, affecting almost all countries across the world. It is worth noting here that there is limitation identified in examining the data used in this study. The available data both by the WCO and MDTCC might be affected by level of notification, possibly rendering them incomplete because the authorities do not measure items which escape seizure. Since, the data only estimates figures based on reported

cases, there is a possibility that the extent of this phenomenon might be understated if unreported cases are also sizeable. This is due partly to the illicit nature of IPRs infringement which renders the probability of bias in the data sources. However, it is argued that while the selection of data is not exhaustive, it does cover the most important and relevant issues for the purpose of examining the trend of IPRs infringement in this study.

The finding while tentative, suggests that the problem of IPRs infringement will continue to increase for a relatively long period and therefore should be considered as a serious problem that needs to be addressed. Recognizing the increasing trend and negative impacts of IPRs infringement, effective legal protection and enforcement are therefore necessary to counter the problem. It is argued that while effective enforcement is crucial for ensuring the sustainability of the business of rights-holders and in developing national economies, it is also fundamental in supporting consumer choice in purchasing goods, protecting their safety and preventing any anticipated further harm. For this purpose, it is not only important that infringement activities are covered under the scope of protected rights pursuant to the relevant substantive laws but is also necessary to assess which legal procedures and remedies are available to enforce such rights.

The discussion that follows focuses on interim injunction as one of important alternatives available under civil remedies for owners of IPRs. The discussion refers to the provisions of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) as a basis for all signatories of the World Trade Organization (WTO) which Malaysia has been a member since 1 January 1995. Comparison with the UK and the Netherlands is included on an issue-by-issue approach.

Interim injunction: In IPRs infringement actions, civil remedies are generally used to interrupt and stop infringing acts and to recover any possible damage occurred. Section 3 Part III of the TRIPS agreement establishes general standards for member countries in implementing civil remedies into their national laws in a suitable manner determined by the country concerned. Article 50 of the TRIPS Agreement specifically deals with provisional measures and contains important procedural rules to prevent infringement from occurring or being continued, particularly in preventing infringed goods from entering commercial channels. It obliges member countries to grant their judicial authorities the power to impose provisional measures which are generally known as preliminary or interim injunctions in order to preserve

evidence *inaudita altera parte* (also known as *ex parte*: referring to the interests of one party) where appropriate. Malaysia has complied with this requirement where provisions on remedies can generally be found from statutory and the principles of common law and equity (Mohamed, 2012).

Due to the nature of IPRs infringement, prompt and decisive actions are necessary for right-holders once they learned that their rights have been violated. This is particularly important in preserving relevant evidence or assets to prove their case where interim injunction play an important role for this purpose. Interim injunction is a court order directing that certain acts do or do not take place pending the final determination on the merit of the case by the court. As a provisional measure, it is usually applied at an early stage in the proceedings before a trial takes place and without a full examination by the court of the facts stated in the application. In *Izzap Limited v Sanmaru Overseas Marketing Sdn. Bhd.* (2010) 1 LNS 1171, the court observed that the objective of interim injunction is to maintain the status quo in order to prevent injustice or irremediable harm.

This is particularly important in infringement cases as the gap between the discovery date and the date of final injunction will provide ample opportunity for infringers to hide or destroy the relevant evidence essential in establishing the right-holder's case. Indeed, the importance of the interim injunction in providing an effective and quick way to stop infringement probably makes it the most frequently sought remedy in IP cases (Mohamed, 2012) and is considered to be a relatively cheap way of procuring temporary redress (Cornish *et al.*, 2010) and final redress if it leads to settlement.

In Malaysia, the rules setting the practice and procedure for interim injunctions are set out in section 51(1) of the Specific Relief Act (SRA) 1950 and the Rules of Court (RC) 2012.

Application of interim injunction and problem of delay:

An interim injunction is an equitable remedy that is awarded at the court's discretion (Section 50 SRA 1950). In exercising its discretion, the court, however is still bound to comply with equitable principles. One of the requirements here is that an application for interim injunctions must be sought immediately once the plaintiff becomes aware of the infringement since it may be denied if no reasonable explanation is given to the court even for a short period of delay. It should normally be made at the same time as or shortly after, a suit is filed in court (Order 29 RC 2012).

This requirement is even emphasized by courts in Malaysia. In *Leo Pharmaceutical Products Ltd. v Kotra*

Parma (M) Sdn. Bhd. (2002) 6 CLJ 465, the plaintiff had not taken any action for 25 months from the time they knew of the existence of the contentious trademarked products. In delivering the judgment, Low Hop Bing J said that: this considerable delay reflected their uncertainty of the defendant's alleged infringement. Thus, their application was dismissed as the relief sought is equitable in nature and it is trite law that delay defeats equity.

However, Abdul Wahab Said JC in *Intel Corporation v Intelcard Systems Sdn Bhd* (2004) 1 CLJ 550 held that if the plaintiff has taken the initiative to resolve the dispute amicably with the defendant but to no avail such delay will not prevent the court from granting the interim injunction.

Order 29 of the Rules of Court 2012 provides that an application for an interim injunction is often made without notice to the other party (*ex parte*) when there is a need for secrecy or in cases of urgency. The injunction order granted in this situation is only on a temporary basis with an early return date to allow the defendant to state his case.

Principles for granting interim injunctions: Whilst *ex parte* application in most situations give an advantage to the plaintiff, there is an extensive legal implication for the blameless defendant since an injunction, although it is interim, may lead to potential commercial risks when he is refrained from doing business (Romeu, 2010). Thus to balance the rights and to assure justice between parties, basic guidelines for the granting of interim injunctions have been established by the House of Lords in a patent case, *American Cyanamid Co v Ethicon Ltd.* (1975) AC 396. In this case, Lord Diplock states that the governing principles in determining whether to grant an interim injunction are whether or not: There is a serious question to be tried. The applicant is required to satisfy the court that he has a cause of action; a claim that is being capable of being heard by the court. The court at this stage must not try to resolve conflicts of evidence or to decide difficult questions of law.

The balance of convenience is in favour of granting the order. The court should consider whether if the plaintiff were to succeed at trial establishing his right to a permanent injunction, he would be adequately compensated by an award of damages for the loss sustained as a result of the defendant's continuing to do what was sought to be enjoined between the time of the application and the time of trial. If damages would be an adequate remedy and the defendant would be in a financial position to pay them, no interim injunction should normally be granted, however strong the plaintiff's claim appeared at that stage. The court must

also consider whether damages would be an adequate remedy for defendant under the cross undertaking in damages required from the plaintiff.

A debate on these principles and other factors has developed since then on their applicability in IP matters. As a result, the initial threshold principles in some instances vary from case to case. For example, the matter was revisited by Laddie J in *Series 5 Software v Clarke* (1996) 1 AER 853 where he declared that the most important factor to be taken into account by the court was the strength of each party's case. He also concluded that when considering whether or not to exercise its discretion in granting interim relief, the court should consider the following points:

- The grant of an interim injunction is a matter of discretion and all the facts of the case must be considered
- When exercising this discretion, the rule is that there are no fixed rules
- The court should rarely attempt to resolve disputed issues of fact or law
- Important factors to be borne in mind are
- The extent to which damages are likely to be an adequate remedy to either side and the ability of the other party to pay
- The balance of convenience
- The maintenance of the status quo pending the full trial and
- Any clear view the court may reach as to the relative strength of the parties and cases

Although Laddie J's reformulation has met with a mixed reception, it at least provided a valuable reminder of the background to and basic message contained in the American Cyanamid case. The message in this case is that applications for interim injunctions cannot be a mini trial of disputed issues but rather that the court would have to reduce the risk of granting a decision which would ultimately produce an unjust result. This means that the plaintiff, in pursuing his action, must show at least an arguable case against the defendant.

Regardless of this debate, the American Cyanamid principles continue to be authoritative for the most part and have consistently been affirmed in Malaysia. Vincent Ng J in *Aventis Farma Sa (Malaysia) Sdn Bhd v Rohibul Sabri Abas* (2008) 7 CLJ 525 stressed that the current position in Malaysia on the law pertaining to interim injunctions is the same; that is, the principles enunciated in the American Cyanamid case are still good law in Malaysia and have been consistently affirmed.

However, it is also worth to consider the Netherlands' system in handling IPRs infringement issue. Being one of the most significant trading nations, the Netherlands is also probably in the top three for volume of IP litigation in Europe together with the UK and Germany. While its litigation system is effective and competent, its courts have also practiced the expedient *kort geding* procedure, an inter partes preliminary injunction which is important for use in urgent IP disputes such as infringement or counterfeiting as the court make speedy decisions based on an evaluation of the merits of both parties. The procedure takes only a few days and for urgent cases, the hearings are sometimes even held over the weekend. As a result, *kort geding* becomes more efficient and less expensive than normal proceedings (Luginbuehl, 2011). This practice thus illustrates the importance of speedy and efficient IP proceeding in Netherlands and perhaps Malaysian authorities and even the WCO or relevant international authorities may learn from this system to effectively deal with IPRs infringement issue.

Obstacles in interim injunction: In pursuing an interim injunction, it is expected that some rules of procedure and practice may stand as obstacles in the way of such actions. This may include outdated provisions and expensive procedures.

It is understood that most of the Malaysian statutes are heavily based on the English provisions, including most of the IP statutes. Although, most of the UK IP statutes and the rules of court in England and Wales have been revamped several times, the majority of the Malaysian IP statutes remain primarily unchanged. Hence, most of the substantive provisions in the IP statutes are considered outdated. For example, there is no express provision on remedies in the Trade Marks Act 1976, although it is understood that Malaysia adopts the principles of common law in this matter. It is argued that a clear provision on remedies is necessary not only to assist all parties in the litigation process in understanding the rights granted to them but that it is also important for foreign businesses, especially those from non-common law countries, to know what kind of legal protection is available to them if they invest in Malaysia. Thus, new or improved provisions are necessary in this respect to correspond to current needs in addressing IP infringement problems.

Apart from this, it is also undoubtedly true that the plaintiff in civil proceedings has more choice in pursuing actions against the defendant. However, the proceedings involve quite a complex process that requires specialist advice and the expertise of attorneys as well as

Table 4: Estimated cost in interim injunction in Malaysia

| Stage in proceeding | Cost |
|--|---|
| Matter concluded at an interim hearing | Interim injunction (ex parte): RM10,000-15,000 (inter parte): RM15,000-30,000 |

prosecutors and witnesses. Thus, civil proceedings including interim injunction in many cases are expensive. Although, the cost which one should expect to incur varies widely and is also subject to factors such as the complexity of the case, the number of parties involved or the amount of preparatory work required, it is still generally true that quite substantial amounts of money are involved. The estimated cost in Malaysia is summarized in Table 4.

Thus, a review of the issue of cost is significant because it also contributes to the effectiveness of enforcement efforts in combating counterfeiting activities.

CONCLUSION

Businesses should aware to identify and protect their IPRs because they hold such high value especially in current increasingly knowledge-based economy. It is therefore crucial for businesses to prevent others from deriving their IPRs value by enforcing their legal rights. This study has identified that an effective legal enforcement regime depends on a number of different elements, including the remedies available that may be enforced by the right-holders and the involvement of a number of persons, including attorneys, prosecutors and witnesses which usually involve expensive procedures. Despite this, right-holders have a range of choices including the interim injunction to use against those involved in the production, distribution and sale of infringing goods. Taking this into account, it is argued that civil proceedings particularly the interim injunction do assist right-holders in protecting their rights and contribute to the overall effectiveness of the business and the IP system.

In terms of cost, it is identified that the more complex the case, the higher the cost involved. One way to overcome this problem would be to introduce clear procedures or simplify the law which could have a significant impact on the proceedings for all parties. Cabrillo and Fitzpatrick (2008) for example, indicate that where the law is clear, it become easier to monitor actions and less costly to resolve disputes. Simple rules can assists courts in resolving a controversy at lower costs. Moreover, fewer cases should ever go to trial as parties can more easily assess their expected costs or gains and thus settle.

If these difficulties can be overcome, civil proceedings including the interim injunction could be the

best choice among the available enforcement mechanisms in addressing infringement of IPRs. In the meantime, however, civil actions in general should be aimed at the larger-scale infringers who have extensive financial wealth or resources. In cases involving those who either have infringed on a small scale or do not appear to have significant assets, the right-holders perhaps may be better served by criminal proceedings which are brought by the state.

REFERENCES

- Aplin, T. and J. Davis, 2013. *Intellectual Property Law: Text, Cases and Materials*. 2nd Edn., Oxford University Press, Oxford, UK., ISBN-13: 9780199643301, Pages: 894.
- Banakar, R. and M. Travers, 2005. *Theory and Method in Socio-Legal Research*. Hart Publishing, Oxford, ISBN: 9781841136257, Pages: 376.
- Blakeney, M., 2006. *The Phenomenon of Counterfeiting and Piracy in the European Union: Factual Overview and Legal and Institutional Framework*. In: *Enforcement of Intellectual Property Rights through Border Measures: Law and Practice in the EU*, Vrins, O. and M. Schneider (Eds.). Oxford University Press, Oxford, pp: 3-34.
- Cabrillo, F. and S. Fitzpatrick, 2008. *The Economics of Courts and Litigation*. Edward Elgar Publishing Ltd., Cheltenham, ISBN: 9781848442740, Pages: 288.
- Candelin-Palmqvist, H., B. Sandberg and U.M. Mylly, 2012. Intellectual property rights in innovation management research: A review. *Technovation*, 32: 502-512
- Casey, B., 2012. *The impact of intellectual property theft on the economy*. Report the U.S. Congress Joint Economic Committee Chairman' Staff. http://www.jec.senate.gov/public/_cache/files/aa0183d4-8ad9-488f-9e38-7150a3bb62be/intellectual-property-theft-and-the-economy.pdf.
- Christie, A., 2011. *Innovation and Creativity: A Legal Perspective*. In: *Creativity and Innovation in Business and Beyond: Social Science Perspectives and Policy Implications*, Mann, L. and J. Chan (Eds.). Routledge, UK., pp: 103-116.
- Cornish, W.R., D. Llewelyn and T. Aplin, 2010. *Intellectual Property: Patents, Copyright, Trade Marks and Allied Rights*. 7th Edn., Sweet and Maxwell, London.
- Derclaye, E. and T. Taylor, 2015. Happy IP: Replacing the law and economics justification for intellectual property rights with a well-being approach. *Eur. Intellectual Property Rev.*, 37: 197-209.

- European Union, 2014. Report on EU customs enforcement of intellectual property rights: Results at the EU border 2013. http://ec.europa.eu/taxation_customs/resources/documents/customs/customs_controls/counterfeit_piracy/statistics/2014_ipr_statistics_en.pdf.
- Genn, D.H., M. Partington and S. Wheeler, 2006. Law in the real world: improving our understanding of how law works. Final Report and Recommendations, The Nuffield Foundation, London.
- Hadzima, J.G., 2013. How to tell what patents are worth. *Forbes*. <http://www.forbes.com/sites/forbesleadershipforum/2013/06/25/how-to-tell-what-patents-are-worth/>.
- Idris, K., 2003. Intellectual Property: A Power Tool for Economic Growth. 2nd Edn., WIPO Publication, Geneva, ISBN: 97892805111130, Pages: 377.
- Landes, W.M. and R.A. Posner, 2003. The Economic Structure of Intellectual Property Law. Harvard University Press, Cambridge.
- Luginbuehl, S., 2011. European Patent Law: Towards a Uniform Interpretation. Edward Elgar Publishing, Cheltenham, ISBN: 9780857933218, Pages: 360.
- Mohamed, K., 2012. Trademark counterfeiting: Comparative legal analysis on enforcement within Malaysia and the United Kingdom and at their borders. Ph.D. Thesis, Newcastle University, Newcastle upon Tyne, England.
- Oswald, L.J. and M.A. Pagnattaro, 2015. Managing The Legal Nexus Between Intellectual Property And Employees. Edward Elgar Publishing Ltd., Cheltenham, ISBN: 9781783479269, Pages: 320.
- Romeu, F.R., 2010. An economic theory of the regulation of preliminary measures. *Eur. J. Law Econ.*, 30: 267-300.
- Siems, M.M., 2008. Legal originality. *Oxford J. Legal Stud.*, 28: 147-164.
- USTR., 2015. 2015 special 301 report. United States Trade Representative. <https://ustr.gov/sites/default/files/2015-Special-301-Report-FINAL.pdf>.
- WCO., 2014. Illicit trade report 2013. World Customs Organization, June 2014. http://www.wcoomd.org/en/~~/media/WCO/Public/Global/PDF/%20Topics/Enforcement%20and%20Compliance/Activities%20and%20Programmes/Illicit%20Trade%20Report%202012/ILLICIT%202013%20-%20EN_LR2.ashx.
- Wiens, J. and C. Jackson, 2015. How intellectual property can help or hinder innovation. *Entrepreneurship Policy Digest*. http://www.kauffman.org/~~/media/kauffman_org/resources/2015/entrepreneurship%20policy%20digest/april%202015/ip_policydigest_040715.pdf.