How Intellectual Property Law can protect the Inventor in Thailand

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Abstract

The intellectual property is an intangible asset of the firm or the inventor. The invention is required by many manufacturers in order for them to stay competitive in responding to the customers/consumer’s needs. World Intellectual Property Organization (WIPO) is the organization responsible for the intellectual property law among its country members. It is, therefore, important to learn how the intellectual property law can protect and reduce the imitation, piracy, and how the inventors can protect their invention. Intellectual property violation activity is a critical issue around the world including Thailand nowadays. This research, therefore, attempts to identify how the intellectual property law can help reduce the imitation and piracy of the invention in Thailand. The tool used in the research is the in-depth interview which was conducted with 50 companies creating the innovation products in Bangkok and its vicinity in Thailand. Based on the survey results, it is shown that the intellectual property law cannot reduce the intellectual property violation cases in Thailand.

Key words: Intellectual property; Intellectual property law; Intangible asset; Invention; Imitation; Piracy; Violation; WIPO

Introduction

The new inventions or innovations were created in response to the needs of consumers/customers/challenges faced by the inventors or innovators. They used their knowledge to create or invent new things for the society. Some inventions might be needed by many people for their daily lives which led to commercialization and involvement of many parties e.g. manufacturer, retailer, supplier, customer and inventor.

When there are many parties involved, it raises few challenging questions. Who owns the invention? Who should receive the benefits generated from the product? Hence, the Intellectual Property Law is involved.

Intellectual Property Definition

Stanford Encyclopedia of Philosophy, 2011 defines intellectual property (IP) as “generally characterized as non-physical property that is the product of original thought. Typically, rights do not surround the abstract non-physical entity; rather, intellectual property rights surround the control of physical manifestations or expressions of ideas. Intellectual property protects rights to ideas by protecting rights to produce and control physical instantiations of those ideas”.

World Intellectual Property Organization (WIPO) defines intellectual property as “creations of the mind: inventions, literary and artistic works, and symbols, names, images, and designs used in commerce.” (World Intellectual Property Organization, n.d)

Intellectual property is divided into two categories (World Intellectual Property Organization, n.d.) as follows:

1. Industrial property which includes inventions (patents), trademarks, industrial designs, and geographic indications of source
2. Copyright which includes literary and artistic works such as novels, poems and plays, films, musical works, artistic works such as drawings, paintings, photographs and sculptures, and architectural designs. Rights related to copyright include those of performing artists in their performances, producers of phonograms in their recordings, and those of broadcasters in their radio and television programs.

The core task of WIPO is to assist the innovator to protect the invention and expression of ideas. Many organizations around the world nowadays face the problem of the copy of the invention for commercialization in the market which leads to the decreasing sales volume. It is very difficult to prevent the copy of products even if the intellectual property law has been enacted. Therefore, WIPO can help the innovators to protect their innovation by registering the patent for their inventions. Furthermore, enforcement of the IP law is a must to punish the person who violates.

The piracy of innovation can occur in many ways i.e. theft of invention model, copy the new products in the market, imitation products. Hence, intellectual property law may not cover all cases of piracy of innovation.

**Fraud Definition**

Fraud can be defined in many meanings as described by Singleton et al., 2006 in Fraud Auditing and Forensic Accounting as the following:

“In short, we might say that fraud, intentional deception, lying, and cheating are the opposites of truth, fairness, and equity. Fraud consists of coercing people to act against their own best interests” (Singleton et al., 2006: 3). Hopwood, Leiner and Young (2009: 33) defined fraud as “Fraud (false pretense) involves intentional and material misrepresentation of one or more material facts with the intent of taking of property from a victim. The misrepresentation must be more than mere sales hyperbole.”

Albrecht et al. (2009: 7) defined fraud as “a generic term, and embraces all the multifarious means which human ingenuity can devise, which are resorted to by one individual, to get an advantage over another by false representations. No definite and invariable rule can be laid down as a general proposition in defining fraud, as it includes surprise, trickery, cunning and unfair ways by which another is cheated. The only boundaries defining it are those which limit human knavery”. Oxford, dictionary of law, 2003 defined fraud as “a false representation by means of a statement or conduct made knowingly or recklessly in order to gain a material advantage. If the fraud results in injury to the deceived party, he may claim damages for the tort of deceit. A contract obtained by fraud is on the grounds of fraudulent misrepresentation” (Matin, 2003: 211).

**Possible Causes for Fraud**

Human needs drive the motivation and the behaviors of the people. Based on Maslow’s hierarchy of needs, needs of people will increase based on their satisfaction of another need (Maslow, 1934). Maslow’s hierarchy of needs is shown in Figure 1.
Physiological needs which are needs for things like food, clothing and shelter are fundamental needs for all people. Once these basic needs are met, people will have more needs e.g. safety, love, esteem and self-actualization. To meet each hierarchy of needs, people have to put in efforts to make it happen; especially esteem needs and self-actualization. People who have “esteem needs” will seek recognition from others. The need to be recognized might lead people to steal “intellectual property” of others and hence became a fraudster (Cendrowski, Martin and Petro, 2007).

Fraud Triangle

Donald R. Cressey studied the “embezzlement” which he called “criminal violation of financial trust” for his doctorate in Criminology. He also called the embezzlers as “trust violators” instead of “white collar crime” which was introduced by Sutherland (Cressey, 1953).

The embezzlement occurs when an employee of the firm intends to commit fraud and the employee will become the embezzler (Wells, 2011). His study became known as “Fraud Triangle” (Figure 2) in many years later.

Pressure

Pressure (incentive or motivation) refers to something that motivates people to be a fraudster. It may come from financial stress, gambling or other factors like personal life style. However, it is not only poor person who would become a fraudster; there may be a possibility that a wealthy person or top management of the company could also commit fraud.
Opportunity
The management of the firm may know the weakness of the internal control process of the organization. With such knowledge, some managers may use it to perform a fraud as per Cressy’s research which stated that “fraudster always has the knowledge and the opportunity to commit the fraud” (cited in Singleton et al., 2006: 10).

Rationalization
Most of fraudsters do not have a criminal record (Albrecht et al., 2009; Association of Certified Fraud Examiners Report 2008). Actually white collar crime has a personal code of ethics. “It is not uncommon for a fraudster to be religious” (Singleton et al., 2006: 10). They steal the money or assets from the company and think that they will pay it back. Unfortunately, they never return the funds; hence, a fraud is committed.

According to the conclusion of Donald Cressey, the fraudulent activity will occur when there are three factors combined; pressure, opportunity and rationalization.

Intellectual Property Violation
Even WIPO try to enforce the intellectual property law to protect the piracy of inventions, violation still occurs in many places especially in China (Congressional Executive Commission on China, 2010; Goodman, 2005; International Intellectual Property Alliance (IIPA), 2011; Yu, 2001). The piracy of intellectual property is a critical issue around the world including Thailand nowadays (International Intellectual Property Alliance (IIPA), 2013). The piracy of intellectual property is a key factor which impacts the creation of new inventions including the economy of the country. Organisation for Economic Co-operation and Development (OECD) estimated that “international trade in counterfeit and pirated products grew steadily over the period 2000-2007 and could amount to up to USD 250 billion in 2007” (Organisation for Economic Co-operation and Development, 2009).

Thailand is a member of World Intellectual Property Organization (WIPO). Many intellectual property laws were enacted for many years in the country, for example, Copyright Act B.E. 2537 (A.D. 1994), Trademark Act B.E. 2534 (A.D. 1991), Patent Act B.E. 2535 (A.D. 1992) and The Act Controlling the Cassette Business and Television Devices B.E. 2530 (A.D. 1987). However, the violation of intellectual property law seems to be increasing given the number of materials seized in violation of the copyright. The Department of Intellectual Property in Thailand reported the violation cases of intellectual property as shown in Table 1.

<table>
<thead>
<tr>
<th>Offences Under</th>
<th>2006</th>
<th>2007</th>
<th>January - November 2008</th>
<th>Total</th>
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<tbody>
<tr>
<td></td>
<td>Arrests</td>
<td>Materials Seized</td>
<td>Arrests</td>
<td>Materials Seized</td>
</tr>
<tr>
<td>Copyright Act B.E. 2537 (A.D. 1994)</td>
<td>6,459</td>
<td>1,704,970</td>
<td>4,614</td>
<td>2,228,348</td>
</tr>
<tr>
<td>Trademark Act B.E. 2534 (A.D. 1991)</td>
<td>3,100</td>
<td>1,105,629</td>
<td>2,465</td>
<td>1,472,813</td>
</tr>
<tr>
<td>The Act Controlling the Cassette Business and Television Devices B.E. 2530 (A.D. 1987)</td>
<td>12</td>
<td>7,781</td>
<td>35</td>
<td>34,830</td>
</tr>
<tr>
<td>Total</td>
<td>9,575</td>
<td>2,823,588</td>
<td>7,118</td>
<td>3,746,036</td>
</tr>
</tbody>
</table>

Table 1: Statistics on suppression of intellectual property rights violation
From Table 1, it appears that the violation cases and material seized increased year on year. Intellectual property is an intangible asset of the firm or the owner who is the first person to generate the ideas and develop it to become either product or service. They have the rights to register their new products or service in the form of intellectual property to prevent others to imitate them. Therefore, it is important to know how the intellectual property law can enforce and help them from violation issues. Apart from that, it is important to know how the owners of the intellectual property cope with this issue and how they could address it.

This paper aims to discover whether the owners believe that the intellectual property law can protect their rights. It also wishes to find out how the owners of intellectual property protect their rights from imitation. The qualitative research attempts to study the effectiveness the intellectual property law in Thailand against the illegal act from the survey with 50 companies creating innovation products in Bangkok and its vicinity.

**Methods and Research Design**

Qualitative research was carried out with 50 companies creating innovation products in Bangkok and its vicinity, and they were selected using snowball method. The face to face interview provided the researchers with more details of the factual information based on their emotions and behaviors.

Research design for intellectual property fraud in Thailand is shown in Figure 3.

![Conceptual Framework](image)

**Figure 3 Research design for intellectual property fraud in Thailand**

In phase 1, the background and literature of intellectual property fraud were reviewed. The conceptual framework was built as shown in Figure 3. In phase 2, 50 companies in Bangkok and its vicinity were selected using snowball method. In-depth interviews were conducted to identify whether intellectual property law could protect and enforce the reduction of the violation or not. In phase 3, data analysis was performed to identify how the intellectual property law could prevent the illegal issue in Thailand. Induction method was used to analyze the information from the in-depth interview to generate the explanations.

One of the important elements of the research methodology was ethic. The information given by the participants from the interview was kept strictly confidential to protect their response. No source of information would be released to protect the participants from the impact on their profession/job and from psychological and social risks. In addition to that, the results of the study would be studied carefully and would not in anyway reflect the participants or caused them any harm.

**Conceptual Framework**

The conceptual framework for this research is shown in Figure 4.
Variables

Independent Variables

- **Human needs** which are psychological needs of people that may lead to fraudulent activities.
- **Fraud triangle** which consists of pressure, rationalization and opportunity. If these three components are matched, fraud will occur.
- **Intellectual property law** which is an important factor for reducing the fraudulent activities. If it is not well established and enforced enough, fraud may occur.

Dependent variables

Violation committed: In the event that human needs and fraud triangle are matched, violation is likely to be committed. However, if the intellectual property law is well established, it will make violation activities more difficult because people will be well aware of the punishment by law.

Data Collection

The qualitative research and the in-depth interviews were conducted with 50 companies creating innovation products in Bangkok and its vicinity to identify how the intellectual property law would help reduce the fraudulent activities.

Results of Qualitative Research

Attempts were made to select all participants from innovation companies in Bangkok and its vicinity.

a) Human needs

When asked about the human needs causing the intellectual property violation, participants stated that the competitiveness in the marketplace and demand from the customers/consumers based on their life styles drove the inventors and businesses to have more innovations, new invention resulting in the fraudulent activities of the prototype, design or even imitation.
b) Violation Type

When asked for the types of violation of intellectual property, all participants stated that 88% was imitation. 12% was asset misappropriation from employees within the organization by stealing the prototype or the blueprint.

c) Intellectual Property Law and Fraud Reduction

When asked if the intellectual property law could protect the violation of intellectual property, all of participants stated that they did not believe that the law could help them at all.

When asked about Patent Cooperation Treaty (PCT) which could be enforced within all country members, most of participants stated that they did not have enough knowledge about it. They did not receive consistent answers from the officers of Department of Intellectual Property in Bangkok with regards to the registration, the fee and the timeframe. They felt it was too difficult to register PCT. The fee was too expensive because they had to choose how many countries they wanted to register for and pay the fee based on the number of countries. They expressed a concern in having to choose the country to be enforced. They felt that WIPO should set only one rate and applied and enforced across all country members.

d) The Intellectual Property Process

When asked about the process to register the intellectual property, all of participants stated that it was very difficult to fill in the application form. They had to hire the officer from the Department of Intellectual Property to fill in the form and process it on their behalf so that the application would be processed faster and the officers would accept the application. Even if they hired the officer to fill in the application form; it still took about 5-7 years for patent approval.

e) Protection Against Violation or Frauds

When asked how they protected their intellectual property against violation or fraud at this moment, all participants stated that they did not have much hope with the intellectual property law in Thailand. Also, they did not understand the PCT enough and the officers at the Department of Intellectual Property could not explain to them clearly. Therefore, they could not do anything with the violation or frauds of their intellectual property. They had to create the new invention and hope that the persons who committed the fraud on their invention did not have the ability to do the imitation of their new products.

Discussion and Conclusion

It appears that the inventors and owners of businesses in Thailand did not pin their hope with the intellectual property law in Thailand. They did not feel they could rely on the Department of Intellectual Property either. They relied on themselves and generated new invention and hoped that it would not be copied.

To improve the situation, it is recommended that following actions be considered.

The Inventors/the Owners of Businesses

1. Register their product with PCT and coordinate with WIPO for better protection and enforcement of their intellectual property.
2. Set up the intellectual property function in the organization and have a person who understands clearly about the intellectual property law to manage the function.
3. Encourage all staff in the organization to know the importance of intellectual property as well as provide them with further education if needed.
Department of Intellectual Property

1. Department of intellectual property should educate business owners/inventors on Intellectual Property Law
2. Work closely with WIPO to reduce the process and time for filing the intellectual property application as well as develop the knowledge of officers for better understanding of the IP law.
3. Ensure enough resources i.e. no. of staff to cope with the demand of IP applications.

Limitation of Research

Samples were selected from Bangkok and its vicinity only. Intellectual property fraud might be better identified using samples from different demographics and background.

References