

Review of Singapore IP Dispute Resolution Development

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Preface

In recent years, advantage of capital and productivity are not enough for company to stand out from the business battle. Innovation and creation become the driver of business growth. Intellectual Property (“IP”) Right turns out to be the power to boost international competitiveness.

In March 2013, Singapore submitted 10-year IP Hub Master Plan to guide Singapore's development as a Global IP Hub in Asia. Six Strategies are identified from IP Hub Master Plan. This article focuses on strategy 4, developing Singapore as a choice venue for IP dispute resolution through a strong IP Court and deep IP alternative dispute resolution capabilities, to understand how Singapore attracts various stakeholders and hence create a hive of IP activities by adopting tailored processes to facilitate the resolution of IP cases and promoting alternative dispute resolution.

Key Points of IP Dispute Resolution

When it comes to IP issue, oblige will take either marketplace or area of IP application into account for choosing jurisdiction of dispute resolution. The major IP war occurs in America and China. Although Singapore deals with less IP case, the government considers itself as a transparent, efficient and neutral justice system, coupling with lots of transnational divisions in Singapore, which creates an opportunity to develop IP dispute resolution.

To achieve the goal, Singapore puts its hand to enhance capabilities of IP Court and IP alternative dispute resolution for bringing more IP litigations and IP alternative dispute resolution to Singapore.

1. Enhance Capabilities of IP Court

(1) Efficiency Processes

In September 2013, the Registrar of the Supreme Court released Circular 2 of 2013 on the issuance of the IP Court Guide, which will apply to all cases under the IP docket of the Supreme Court with immediate effect. An IP Judge will be assigned to hear all interlocutory appeals, milestone pre-trial conferences (“PTCs”) and the trial on liability.

The IP Court Guide provides for two milestone PTCs before set down for trial whereby the lead counsel must personally attend to address the IP Judge on certain specified issues. All other PTCs will be heard by the senior assistant registrar managing the IP docket. Subject to certain exceptions, an assistant registrar will hear all interlocutory applications arising in each IP case.

In addition, to support the IP Court's adjudication functions, the IP Court Guide provides for the appointment of assessors (for technical expertise) and amicus curiae (for legal expertise) for IP cases. Parties are encouraged to propose a single candidate by agreement. Otherwise, parties should agree on and propose a shortlist of candidates.

Due to improvement, it is more convenient for parties to track trial status. For IP Judges, they can get familiar with cases and related evidence through PTCs before entering trial process. On the whole, this change increases trial efficiency and quality.

(2) Set Up Singapore International Commercial Court

The Ministry of Law proposed amendments to the Constitution of the Republic of Singapore and the Supreme Court Judicature Act in October 2014. The new legislation and regulations laid the foundation of Singapore International Commercial Court (“SICC”), which was set up in January 2015.

The SICC, the only one International Commercial Court in Asia, is a division of the Singapore High Court and part of the Supreme Court of Singapore designed to deal with transnational commercial disputes including business issues and patent suits.

Key Features of the SICC:

A. SICC matters will be heard by a Panel comprising High Court Judges, associate Judges and foreign associate Judges with extensive experience and highly regarded reputation.

B. A party may be represented by a registered foreign counsel without any involvement of local Singapore counsel if the matter in question is considered to be an “offshore case”. An “offshore case” is defined in the amended Rules of Court as a case which has no substantial connection to Singapore either because

(i) Singapore law is not the law applicable to the dispute and the subject matter of the dispute is not regulated by or otherwise subject to Singapore law, or

(ii) The only connection between the dispute and Singapore are the parties' choice of Singapore as the law applicable to the dispute and the parties' submission to the SICC's jurisdiction (“Singapore Law-only Connection”).

C. The SICC will hear cases governed by Singapore law and by foreign law, with the Court taking judicial notice of the foreign law. In addition, the SICC is not bound by the domestic rules of evidence at all and may apply other rules of evidence whether they are found in a foreign law or otherwise, if the parties make an application for it.

2. Strengthen Capabilities of IP Alternative Dispute Resolution

Singapore International Arbitration Center (“SIAC”) and the WIPO Arbitration and Mediation Center Singapore Office were set up respectively in 1991 and 2001 to strengthen capabilities of IP arbitration. On the basis of these two centers, in order to enrich alternative dispute resolution, Singapore also established Singapore International Mediation Center (“SIMC”) and launched the service of arbitration-mediation-arbitration (“Arb-Med-Arb”) in November 2014.

Arb-Med-Arb is a process where a dispute is referred to arbitration before mediation is attempted. If the parties are able to settle their dispute through mediation, their mediated settlement may be recorded as a consent award. If the parties are unable to settle their dispute through mediation, they may continue with the arbitration proceedings. Arb-Med-Arb is definitely a better way for parties to reach a consensus on a dispute since arbitration is more costly and mediation is less powerful.

Conclusion

The SIMC and the SIAC are now collectively working on mediation, Arb-Med-Arb and arbitration and providing various IP alternative dispute resolutions. Moreover, the SICC and IP Court are charged with IP litigation. These make Singapore a comprehensive IP dispute resolution system.

In the process of revolution, Singapore puts itself up to breakthrough as to amendments and the Supreme Court Judicature Act, which establish legitimacy of SICC. The government also defines IP dispute resolution services, such as SIMC’s mediation, Arb-Med-Arb, arbitration as well as SICC features. Nevertheless, other than SIAC, SICC decision may be difficult to enforce transnationally due to lack of legislation.

To sum up, Singapore earns recognition for aggressively proposing amendments and assigning responsibilities after setting IP target and evaluating obstacles; however, it is better to pay special attention to that if the market can keep up with administrative efficiency or if the IP strategy could accord with the demands of the market.