

legalTAPS

AXCELASIA GROUP

KDN PP 13829/6/2007

The articles in this newsletter are also available on our website: www.taypartners.com.my

Malaysia's Accession to the Patent Cooperation Treaty

16 May 2006 marks a milestone for the development of intellectual property law in Malaysia, as our country became the 131st contracting state of the Patent Cooperation Treaty (PCT). The Malaysian *Patents Act 1983* has been amended by the *Patents (Amendment) Act 2003* to give effect to the provisions of PCT. The amendments are in force and will take effect on 16 August 2006 together with the publication of the regulations. A further *Patents (Amendment) Act 2006* which supplements the 2003 Act has been tabled in Parliament.

Malaysia will as of the enforcement date join the ranks of other contracting states such as the United States of America, the European countries, and countries in Asia such as China, Japan, Korea, Philippines, Indonesia, Vietnam and Singapore in offering patent applicants a choice to select Malaysia as a country for national protection of their invention. Similarly, by being a member of the PCT, Malaysian patent applicants can elect any of the contracting states for protection of their invention, under the procedures set out by the PCT.



The rights by an applicant for protection of an invention emanates from registration of the said invention. Patentability requirements such as the first to disclose principle (anywhere in the world), known as novelty, inventive step and industrial applicability are crucial to secure registration. Secondly, the rights granted for protection of patents are territorial in nature. Therefore, even though a patent is first disclosed in the USA and is duly registered in the USA, the enforcement rights of a patent owner's rights in any country in the world, for instance Malaysia, only comes about with a registration of the patent in Malaysia.

It is therefore beneficial to an applicant to register his invention in countries where the invention is intended to be utilised. Thus, it is with facilitation of registration procedures in mind that the PCT was signed in June 1970 in Washington DC. To date, almost all developed countries and many developing countries are signatories to the PCT - the number of PCT contracting states stands currently at 132. The PCT provides a procedural framework to ease multiple registrations to Treaty member states designated by the applicant, by only a single application which has legal effect in all Treaty member states.

The decision as to registrability of a patent still remains the exclusive right of the national Offices at the national phase. Furthermore, no substantive rights are obtained by filing a PCT application.

A Malaysian applicant will first have to make an application locally unless permission to file abroad has first been obtained from the Patent Registry. By virtue of section 23A of the Act, a local applicant has to wait for 2 months before filing abroad

Contents

1	Malaysia's Accession to the Patent Cooperation Treaty
3	Licence to Thrill Water Players
4	Disputes Can Be Made Less Painful
5	Obedience to Orders from Superiors - Is There a Limit?
7	Consumer Protection in Judicial Review
9	The Battle Against Peer - to - Peer File Sharing - Part 2
12	The E-Commerce Bill 2006: Bringing Legal Certainty to Electronic Documents
15	Liberalising and Beefing-Up Malaysia's Listing Rules



unless an express exemption is obtained. Within 12 months of the initial local application, a PCT application may be lodged claiming the priority date of the local application.

The most obvious benefit to patent applicants selecting application by way of PCT, as opposed to numerous separate registrations in various countries, is the fact that within 15 months of the priority date of the application (the first registration), an international search report and written opinion is generated to the applicant with regards to the patentability of their application. At this stage, the applicant has the option to amend his claim.

It is this information about the potential patentability of the invention under PCT which is most valuable to the applicant. Thus the applicant can make informed decisions on the best ways to proceed, weighing the chances of patentability of the invention on the one hand and the potential financial cost of multiple national applications on the other.

Applicants still have to bear the costs (translation, office fees and local agent costs) of each national application they elect. Hence they may elect to forgo registration in countries which they are less likely to utilise the patent. For example, based on WIPO statistics, in one case Procter & Gamble abandoned 20% of PCT filings at national phase after receiving the preliminary opinion and examination report on their invention.

Within 2 months of the search report and opinion, the application and the search report is published. Subsequently there is an option for a preliminary examination report. Although the national offices of PCT states are not bound by the preliminary report and examination of the ISA, the reports are of high persuasive value in practice.

Following from this, the PCT process allows the applicant the opportunity to delay deciding the countries to register his invention under the PCT, whilst preserving the same priority date as in the application in their home country. Without the PCT system, the applicant merely has 12 months from the priority date to decide in which countries he needs to file. It is often impossible to earmark the countries of interest within such a short period. The applicant will also be forced to cough up staggering application fees at such an early stage if it chooses to file in many countries worldwide. The commercial potential of the invention may not have been realised yet. Under the PCT regime, the applicant may delay filing in the national country for up to 30 months and thus, the costs of individual national registrations are postponed to a later date, thus making it possible for applicants to make a better financial decision.

According to the World Intellectual Property Organisation (WIPO) statistics, in the year 2005, 235,000 applicants (or inventors) used the PCT system. Among the largest users of PCT in 2005 are:

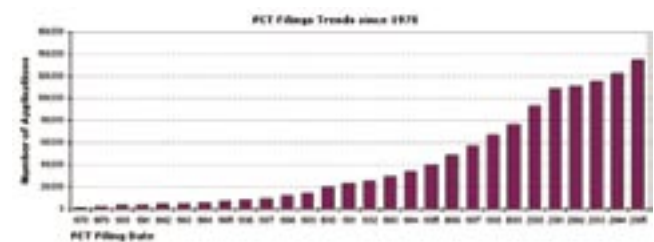
1. Phillips Electronics
2. Matsushita Electric Industrial
3. Siemens
4. Nokia

For inventors and potential applicants, the PCT offers an option for registering their invention in more than 100 countries, subject to cost and patentability. Further advantage is that international application aids the penetration of export markets by local industries and patent owners.

This development also marks the strengthening of international cooperation between the Intellectual Property Corporation of Malaysia (MyIPO) and local agents with their foreign counterparts and WIPO in the field of patents. MyIPO can reasonably expect to see an increase in the volume of PCT patent registrations in Malaysia in approximately 2 1/2 years, which is the duration after the initial search report and international preliminary examination report. This progress is lauded as it brings Malaysia up to date with international laws governing patent law and gives Malaysia a presence in the minds of inventors and patent owners across the globe.

PCT International Applications Top 15 Countries/Regions of Origin	2001	2002	2003	2004	2005
European Patent Office Member States	45,633	47,443	43,207	43,990	47,114
United States of America	43,025	41,204	41,024	43,965	49,452
Japan	11,004	14,663	17,414	20,762	24,800
Germany	14,011	12,305	12,568	15,714	18,981
France	4,707	5,009	5,171	5,153	5,710
United Kingdom	5,482	5,376	5,205	5,031	5,100
Netherlands	3,410	3,977	4,480	4,261	4,497
Republic of Korea	2,224	2,920	2,949	3,556	4,427
Switzerland	2,249	2,725	2,801	2,899	3,228
Sweden	2,421	2,980	2,615	2,846	2,839
China	1,731	1,638	1,296	1,704	2,501
Italy	1,023	1,305	1,163	1,192	2,287
Canada	2,114	2,260	2,270	2,105	2,317
Australia	1,664	1,790	1,680	1,828	1,962
Denmark	1,596	1,762	1,589	1,679	1,884
All Others	4,002	5,031	5,262	5,793	5,934
Total	159,227	137,392	115,196	122,633	134,506

Source: WIPO Statistics Database



By **Julia Low**
 (Julia.low@taypartners.com.my)

Julia practises in the Intellectual Property and Technology Practice Group, specialising in the areas of trade mark and patent prosecution and protection. For further information and advice on IP and Technology, you may contact:

Linda Wang
 (linda.wang@taypartners.com.my)

Su Siew Ling
 (siewling.su@taypartners.com.my)

Licence To Thrill Water Players

Parliament resumed sitting recently and high on the agenda was the overdue reading of the Water Services Industry Bill and the National Water Services Commission Bill. Both Bills were due to be passed in last year's parliamentary sitting but were deferred for public consultation. A constitutional amendment was passed to facilitate these bills. The Water Industries Bill seeks to regulate water supply and sewerage services at the Federal level by transferring jurisdiction from the State, with a view to "facilitate the development of competition to promote economy and efficiency".

This is to be done by establishing a licensing framework which retains a degree of flexibility. The licences are divided into two types - "Individual" and "Class". Either licence will allow a private entity to own a public water supply (or sewerage) system or any part thereof and to "undertake, provide or make available" any water supply (or sewerage) services by means of operating the same. An explanatory note in the bill states that the difference between the two types of licences is that the Individual Licence

is subject to greater regulation and obligations. However, this is not readily apparent from the proposed Act itself and much will depend on the terms stated in the actual licence granted. Standard terms will be provided for by regulations that are to be made under the proposed Act, but there is provision for the Minister to specify any special conditions while the power to exempt is also provided for.

The Water Industries Bill seeks to regulate water supply and sewerage services at the Federal level by transferring jurisdiction from the State, with a view to "facilitate the development of competition to promote economy and efficiency".

The government seeks to tap into the bond market to raise funds, whilst the water sector looks set to take off as negotiations have begun between government and private entities. Crucial to the existing players are the transitional provisions in the proposed Act whereby they are required to register any current agreements with the government within a specific time period failing which such agreements will lapse. The present fundamental restructuring and possible pit falls for current players present a one time opportunity for new players to strike.

Note: This article was recently published in issue 6.4 of the Asian Legal Business



By **Asmet Nasruddin**
(asmet@taypartners.com.my)

Asmet is a Partner in the Litigation and Dispute Resolution Practice Group.

Asmet's area of practice is corporate and commercial disputes advisory, litigation and arbitration.

Disputes Can Be Made Less Painful



Investors into Malaysia already have to deal with a bewildering amount of logistical and financial challenges, and while disputes are to be avoided as far as possible, sometimes you just need to draw the line, take a strong position with unfair or unscrupulous business partners, and you need to find a lawyer.

“Disputes are difficult enough for clients without having to deal with lawyers and legal procedures. We make it as painless as possible for clients.” says Asmet Nasruddin, the Disputes Partner in Tay & Partners.

“Lawyers sometimes forget that litigation can be quite traumatic for clients - in terms of time, effort, opportunity costs and finances. It's important to strike a balance between the legal requirements of the dispute and giving good service to the client so that he or

Litigation & Dispute Resolution
Department

Asmet Nasruddin
Email: asmet@taypartners.com.my

Leonard Yeoh
Email: leonard.yeoh@taypartners.com.my

Neoh Lay Choo
Email: laychoo.neoh@taypartners.com.my

she can get on with his or her normal business.”

“A good rule of thumb that has worked for us is to treat clients the way we would like to be treated if the positions were reversed.”
“On the other hand, it's our job to be as tough as possible with our client's opponents!”

Asmet should know. He has seen all manner of cases in his 10 years at the Bar in Malaysia and regularly advises and appears in Courts on behalf of international clients in commercial disputes. He deals particularly in directors and shareholders disputes. Asmet is qualified in England, Singapore and Malaysia.

... while disputes are to be avoided as far as possible, sometimes you just need to draw the line, take a strong position with unfair or unscrupulous business partners, and you need to find a lawyer.

Leonard Yeoh is the other Kuala Lumpur Disputes Partner. Leonard focuses on employment and industrial relations advices apart from corporate, construction and banking disputes. Leonard regularly advises and acts on behalf of MNCs in the management and settlement of their litigation and HR issues. Leonard qualified in England, Singapore and Malaysia and has 10 years of legal experience practising in Malaysia and Singapore.

Neoh Lay Choo is the Disputes Partner in Johor Bahru who draws upon her 19 years of experience on all manner of commercial and civil disputes and particularly benefits from being able to service clients in close proximity to Singapore.

The 3 Partners are assisted by a Senior Associate and 6 Associates all of whom have qualifications from common law jurisdictions as Malaysia's legal system is inherited from the UK. They are assisted by a large team of specialist support staff and paralegals.

Obedience to Orders from Superiors - Is There a Limit?

The recent interesting article "Blowing the Whistle" in "The Star" - Bizweek on 24 June 2006 reported that there is a growing trend among several companies such as Malaysia Airlines, Chemical Co of Malaysia Bhd, Telekom Malaysia Bhd, KPJ Healthcare Bhd and Malayan Banking Bhd to encourage employees to report wrongdoings within the organisation as part of their policy towards good corporate governance. The companies are relying on their whistle blower policy to provide a safe and acceptable way for employees to raise their concerns regarding fraud, illegal acts or omissions, breach of duty, dishonesty, abuse of authority or misconduct affecting the companies without fear of adverse repercussions.

However, when an employee of a company is confronted with a situation where his superior had given him orders to execute which he has no doubt that those orders are wrongful, fraudulent, unlawful or prejudicial to his company's interests, what should he do? If the employee decides to obey such orders, can he then defend himself on the basis that he fears dismissal on the ground of insubordination? What should an employee do if he had doubts on the lawfulness of his superior's orders? Fortunately, the answers to these questions can be found in the case of **Ngeow Voon Yean v Sungei Wang Plaza Sdn Bhd & Anor [2004] 1 CLJ 8**.



The charge against the claimant, in *Ngeow Voon Yean v Sungei Wang Plaza Sdn Bhd & Anor* which culminated in his dismissal was that he had falsely endorsed two deeds of assignment whilst he was the general manager of the respondent company. The claimant contended that he was merely carrying out the orders of his superior, the executive director. The Industrial Court accepted this as a 'successful defence' to the charge by the respondent company. The High Court, however disagreed that this was a good defence. The High Court found, *inter-alia*, that:-

- (i) there was no evidence that the claimant was forced or coerced, or was under the pressure or the effective control and dominant influence of the executive director, to endorse the two deeds;
- (ii) the claimant had admitted that he did not endorse the deeds out of the fear of losing his job; and
- (iii) the claimant knew that he entered the endorsements pursuant to wrongful or illegal orders.

Being dissatisfied with the High Court's decision, the claimant appealed to the Court of Appeal but his appeal was dismissed.

The Court of Appeal through the learned judgment of His Lordship Richard Malanjum JCA expounded the following principles of law in relation to Order of Superior In An Employer-Employee Relationship:-

- a) Generally under employment law, an employee is not entitled to disobey the order of his superior. Such precept is obvious since to allow disobedience of an order of a superior will bring a chaotic situation to any organisation in terms of discipline, performance as well as industrial peace. That was made clear in the case of **Pan Global Textiles Bhd, Pulau Pinang v Ang Beng Teik [2002] 1 CLJ 181**.
- b) As a general rule, the proper course for an employee who doubts the lawfulness or reasonableness of an order of his superior would be to obey the order first and challenge it later.
- c) However, if the employee is in no doubt that the order given is manifestly wrong and he is very conscious



of such fact, the general rule should not apply. In such a situation, the Court of Appeal does not think the issue of fear of dismissal should arise in the mind of the employee for if indeed such an event happens, his rights as an employee is assured. The Court of Appeal went on to hold that to extend the rule to mean that an employee is expected to follow any order of a superior even when knowing well of the illegal nature of such order could lead to a chaotic situation in any organisation. And further, there would be nothing to prevent an unscrupulous superior from making use of his subordinate to do unlawful actions well aware that the subordinate may have a good excuse.



In conclusion, the Court of Appeal held that they are in agreement with the conclusion of the learned High Court Judge that obedience expected from an employee to orders of his superior is not without limit.

In my view, the above principles of law in relation to Order of Superior In An Employer-Employee Relationship are supportive of the companies' policy towards good corporate governance and augurs well for our country's move towards accountability and transparency in the corporate world. This would in turn

attract more investments into our country and prosper our economy. However, in order for such policy to be truly effective, it is material that the whistle blower policy formulated by the companies spelt out clearly to the employees:-

- (i) what acts constitute fraud, illegal acts or omissions, breach of duty, dishonesty, abuse of authority or misconduct? The employees have to be guided so that they are left with no doubt whether a certain act by their superior or colleagues are wrongdoings within the organisation;
- (ii) what are the channels for reporting? In some companies, the employees are encouraged to highlight deficiencies or dishonest acts directly to the managing director. In other companies, the employees are to report to a special unit or fraud reporting hotline set up within the organisation. But employees should also have the option to report to the governmental regulatory bodies such as Anti-Corruption Agency, Securities Commission and Bursa Malaysia especially for government-linked corporations and public listed companies.
- (iii) what are the assurance of protecting and confidentiality of both the information and the identity of the whistle blower? And if I may add, what will be the rewards for the whistle blower as well since undoubtedly the whistle blower will face the struggle between acting in the public interest (in the case of public listed companies or government-linked corporations) and the sense of loyalty to management and colleagues. In any event, an employee need not fear as it is heartening to note that the Court of Appeal has held that his rights are assured by the law. Recently, after realising the importance of a whistle blower's role, the Malaysian government is also mulling the implementation of a witness protection programme for those who report to the Anti Corruption Agency.



By *Neoh Lay Choo*
(laychoo.neoh@taypartners.com.my)

Lay Choo heads the Litigation Department in the Johor Bahru Office.

For further information and advice on the article above or on any areas of civil litigation, you may contact the author.

Consumer Protection in Judicial Review



The Act

The *Consumer Protection Act 1999 (Act 599)* which came into force on 15 November 1999 was promulgated primarily to provide for the protection of consumers, the establishment of the National Consumer Advisory Council and the Tribunal for Consumer Claims and for matters connected therewith.

“Parliament knew that if matters were left to the ordinary courts, the protection it had set about giving speedy relief to consumers would be rendered illusory, so it established the Tribunal (Consumer Claims)” said Justice Gopal Sri Ram (Judge of the Court of Appeal) in the case of **Hazlinda Binte Hamzah v Kumon Method of Learning Centre**.

The Case

In this rarest of opportunity where the case went up on appeal to the Court of Appeal the Appellant as a consumer had sent her three children for tuition to the Respondent to improve their Mathematics and English. The services rendered by the Respondent were found to be wanting and the Appellant sought a refund of the fee she had paid the tuition centre.

On seeing that no response was forthcoming, the Appellant took the matter to the Tribunal for Consumer Claims (‘the Tribunal’) and

filed her claim there. The Tribunal decided in her favor and ordered the Respondent to make a partial refund since the Appellant had in fact received some benefit.

The Respondent applied to the High Court for judicial review to quash the Tribunal’s award and succeeded. The High Court quashed the award of the Tribunal because written grounds of judgment were not forthcoming from the Tribunal even though the High Court had written to the Tribunal for the same. The Appellant then brought the matter on appeal to the Court of Appeal.

The Court of Appeal unanimously allowed the appeal; the orders of the High Court were set aside and the substantive motion for judicial review was dismissed. The award of the Tribunal was upheld. It is while delivering the decision in this appeal, that Justice Gopal Sri Ram stated that the Act has several important provisions some of which are more beneficial than those found in the *Sale of Goods Act 1956*.

The Consumer Protection Act applies to both goods and services. The purpose of these provisions is to protect consumers from the provision of defective goods and services and to give claimants speedy relief.

“ Before the Act came into effect cases of this nature would have had to be filed in the Magistrates Court and disposal of the case would have taken ages” says Justice Gopal Sri Ram. *“ The jurisdiction of the Tribunal is limited to hearing claims not exceeding RM25000 (section 98) and proceedings before it are commenced by lodging a claim with it in the prescribed form (section 97) within 3 years of the claim accruing (section 99(2)). Parties are entitled to attend and be heard (section 108(1) but are not entitled to legal representation (section 108(2)). The Act in section 109 requires the hearings of the Tribunal to be open to public and by section 110 empowers the Tribunal to take evidence and to generally direct and do all such things as may be necessary or expedient for the expeditious determination of the claim”.*

Justice Gopal Sri Ram has added emphasis to reflect the central theme of the Act, namely, the speedy disposal of consumer claims. The theme is further enhanced by it being repeated in section 112(1) of the Act which requires the Tribunal to make its award





“without delay and, where practicable, within sixty days from the first day the hearing before the Tribunal commences”.

Section 114 of the Act states that the Tribunal shall in all proceedings give its reasons for its award in the proceedings. The Court of Appeal unanimously stated that “having regard to the general scheme of the Act it is sufficient if the Tribunal gives oral reasons”.

In this particular case, the oral reasons given by the President of the Tribunal were made available to the High Court by way of the Appellant’s affidavit in opposing the judicial review, which the High Court rejected due to a letter from the Tribunal stating that there were no grounds of judgment in the case at the Tribunal. However the Tribunal had given its written reasons at a later date by which time the High Court had decided on the matter.

Who Gets Protection

A person who buys goods or procures services for personal, domestic or household purposes is considered a consumer within the meaning of the Act. However, if a person acquires goods or services for business purposes he shall not be considered a consumer.

The Act defines goods as things which are primarily purchased, used or consumed for personal, domestic or household purposes including animals, fish, vehicles and vessels, utilities and trees, plants and crops.

A consumer can bring a claim with the Tribunal against a trader, supplier or manufacturer, as the case may be, for any loss suffered on any matter concerning his interests as a consumer under the

Act arising from a false or misleading conduct, false representation as to the type, manufacturing process, suitability for purpose, quality and quantity; safety of goods and services.

The Tribunal has its limitations; it cannot hear claims arising from personal injury or death, for recovery of land, or any estate or interest in land, in which the title to any land or any estate or interest in land, or any franchise is in question. The Tribunal has no jurisdiction to deal in disputes concerning entitlement of any person under a will or settlement or any intestacy; goodwill; any chose in action; or any trade secret or other intellectual property.

Above all these the Tribunal cannot hear disputes on claims that fall within the jurisdiction of any other tribunal that has been established under any other written law.

How to File a Claim

Claims can be filed in any of the 16 Tribunal offices that have been set up in the country (All State Capitals and the Federal Territories of Wilayah Persekutuan, Labuan and Putrajaya).

The filing fee is only RM5.00 and an official receipt will be issued. Upon filing the office will return two copies of the claim back to the claimant for service. The claimant is required to serve a copy of the claim on the respondent either personally or posting the claim in a pre-paid registered letter addressed to the respondent’s address or last known address.

The case would then be fixed for hearing and thereafter both the parties, claimant and respondent, will be notified, not less than 14 days before the date of hearing.

The Tribunal for consumer claims was established with the objective of giving an alternative channel, other than the courts, for a consumer to obtain appropriate damages and compensation from a supplier or manufacturer in a simple, inexpensive and speedy manner.



By **Suppiah Muthusamy**
(suppiah@taypartners.com.my)

Suppiah is a member of the IP and Technology Practice Group. Suppiah specialises in both criminal and civil enforcement of Intellectual Property rights.

For further information and advice on IP and Technology, you may contact:

- Linda Wang**
(linda.wang@taypartners.com.my)
- Su Siew Ling**
(siewling.su@taypartners.com.my)

The Battle Against Peer-to-Peer File Sharing - Part 2



To recapitulate, in the April / May 2006 issue of Legal Taps, the first part of this article had dealt with what peer-to-peer file sharing is generally, the liability of individual file sharers and the liability of technology manufacturers of peer-to-peer file sharing networks. With regards to the latter, the position in the US was examined in the cases of Napster, Aimster and Grokster and was followed by an analysis of the plausible causes of action against technology manufacturers of peer-to-peer file sharing networks in Malaysia. This article shall be a continuation of the analysis.

Analysis in the Malaysian Context

As mentioned, there are 2 plausible causes of action against technology manufacturers, firstly, via the 2nd limb of section 36(1) of the *Copyright Act 1987* ("the Act") in that the technology manufacturer had "caused" the infringement, and secondly an indirect infringement of section 36(1) based on general tortious principles. The latter shall be dealt with first, followed by the former.

Indirect Infringement

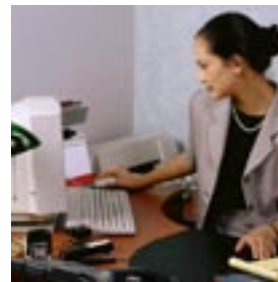
• Joint Tortfeasor

In certain circumstances, where the court finds that a person shares a common design with another and in pursuance of that common design, one or the other commits an infringement or causes an infringement, the person may be liable for copyright infringement by reason of having been a joint tortfeasor.

An example where joint tortfeasorship was claimed based on the commission of copyright infringement (the 1st limb of section 36(1) of our Act) was seen in **CBS Songs Ltd v Amstrad Consumer Electronics plc [1988] AC 1013** at 1054, where Amstrad sold hi-fi systems with facilities for high speed recording from pre-recorded cassettes on to blank tapes. Joint tortfeasorship of Amstrad was claimed based on infringement by the users. However, joint tortfeasorship was not made out in this case as the court could not find any common design between the defendants and purchasers of the tape recorders. As provided by Lord Templeman, the defendants had no control over or interest in the use of a tape recorder once it had been sold and therefore, they could not be liable as joint infringers with a purchaser or other person where that purchaser or other person copied material in which copyright subsisted. His Lordship further explained :

"All recording machines and many other machines are capable of being used for unlawful purposes but manufacturers and retailers are not joint infringers if purchasers choose to break the law."

It is pertinent to note here that control over the use of a contrivance by the other is an important factor in finding common design.



An example of a case where joint tortfeasorship was based on an authorised (the corresponding provision uses "caused" in our Act) infringement is in **Kazaa (Universal Music Australia Pty Ltd v Sharman License Holdings Ltd [2005] FCA 1242)**, which will be discussed with greater depth

below. The Respondents, who amongst others, comprised of Sharman Networks Ltd who controlled Kazaa, Altnet Inc who expended the Kazaa search by adopting Altnet's TopSearch technology, and the various personnel who played a key role in Kazaa, had entered into a common design with each other to carry out, procure or direct the said "authorisation".

Therefore, it would seem that copyright owners may prove common design between the peer-to-peer users and technology manufacturers by showing that there was ultimately control over the peer-to-peer users' use of the technology. In peer-to-peer file sharing systems, the technology manufacturer's degree of control over the users would depend on the type of peer-to-peer network. If a Napster type of hybrid network were set up, the Courts may be inclined to decide that the technology manufacturer had control, and common design would be found. However, if only a pure peer-to-peer system were set up, arguably, control is decentralized and the Court may be less inclined to find control, hence common design. Arguably, all technology manufacturers can demonstrate such control by using technologies to restrict the illegal sharing of files. Hence if the technology manufacturers were notified of infringements, they are under an obligation to restrict such unlawful uses of their networks, failing which, they would arguably share common design with the users.



The extent of the technology manufacturer's involvement in unlawful file sharing such as advertisements or other circumstances may lead to an inference of common design.

• **Contributory Infringement and Inducement**

In the US cases of Napster, Aimster and Grokster, contributory infringement was found based on actual knowledge of the infringing activity. In the Aimster case, the Court equated willful blindness with knowledge. As there is no independent cause of action for contributory infringement in Malaysia it would be difficult to import this type of indirect infringement to Malaysia. In Malaysia, whilst contributory negligence is recognised in the *Civil Law Act of 1956*, James Foong J had provided that contributory negligence is not an action, but a defence (**Hamizan Bin Abd Hamid v Wong Kok Keong & Anor [1994] 3 MLJ 630**).

• **Vicarious liability**

As vicarious liability is thus far confined to employer-employee or principal-agent relationships both under Malaysian and British laws, to stretch the ambit of vicarious liability beyond such relationships will be difficult. Therefore, unless one is able to infer such a relationship between users of the peer-to-peer file sharing network (the direct infringers) and the technology manufacturers, liability based on vicarious liability will not be established.

Causing Infringement - The 2nd Limb of Section 36(2) of the Act

Copyright owners may also possibly pursue a copyright infringement action against technology manufacturers by arguing that the technology manufacturer had "caused" the infringement. This was explored in the Australian Federal Court decision in Kazaa (**Universal Music Australia Pty Ltd v Sharman License Holdings Ltd [2005] FCA 1242**). Kazaa was the world's most downloaded peer-to-peer file sharing software with almost 390 million users. Kazaa had used the FastTrack software, similar to that used by Grokster above. Although Justice Wilcox accepted that the Kazaa system has no central server, he declared that Sharman Networks (which controlled Kazaa) had infringed the copyright in the sound recordings of the copyright owners by:

“ (i) authorizing the doing in Australia by Kazaa users of the following acts in relation to the said sound recordings :

(a) making a copy of the sound recording;

(b) communicating the recording to the public; in each case, without the licence of the relevant applicant; and

(ii) entering into a common design, with each of the other infringing respondents, to carry out, procure or direct the said authorisation”

The word “authorized” was subject to great debate and its interpretation, until now, is not clear. In **Falcon v Famous Players Film Co [1926] 2 KB 474**, it was held that liability could attach if a person “sanctioned, approved or countenanced” an infringing act (the wider approach) or “granted or purported to grant the right” (the narrow approach) to do such an act. The House of Lords later approved the narrow approach in Falcon in the case of **CBS Songs Ltd v Amstrad Consumer Electronics plc (supra)** that authorisation means to grant or purported to grant, which may be express or implied, of the right to do the act complained of. Here the Plaintiffs claimed that the Defendants by manufacturing, advertising and offering for sale hi-fi systems with facilities for, *inter-alia*, recording at high speed from pre-recorded cassettes on to blank tapes, had authorised and incited members of the public to infringe their copyrights. Lord Templeman, dismissing the appeal of the Plaintiffs, adopted the case of **CBS Inc. v Ames Records & Tapes Ltd. [1982] Ch. 91** where a record library which lent out records and also offered blank tapes for sale at a discount did not authorise infringement of copyright in the records.

Equipped with a new section 101(1A) of the Australian Copyright Act in 2000, which elucidates matters to be taken into account in determining whether a person has authorized the doing of an act in Australia, the Court in Kazaa adopted the approach in **University of New South Wales v Moorhouse (1975) 133 CLR 1**:

“I further accept, as did Bennett J in *Metro*, the continuing applicability of the Moorhouse test. A claim of authorization can be made good only where it is shown that the person has sanctioned, approved or countenanced the infringement. It is not essential there be direct evidence of the person's attitude; as Gibbs J said in *Moorhouse*, inactivity or indifference, exhibited by acts of commission or omission, may reach such a degree as to support an inference of authorization or permission .”

There were positive acts by Sharman which encouraged copyright infringement, such as promotion of a file-sharing facility, exhortations to users to use this facility and share their files, and

promotion of the “Join the Revolution” movement which scorns the attitude of record and movie companies in relation to their copyright works. These took place when Sharman knew the files shared by Kazaa users were copyright works. Sharman’s notice in small prints that it does not ‘condone activities and actions that breach the rights of copyright owners’ and the EULA (End User Licence Agreement) had no effect on the behaviour of the focus group of participants. Despite this, Sharman took no steps to include a filtering mechanism in its software. Therefore, Sharman had infringed the copyright owners’ copyright by authorizing Kazaa users to make copies of those sound recordings and communicating those recordings to the public. Sharman was found liable individually and as joint tortfeasors with the other respondents pursuant to a common design.

The corresponding section in Malaysia under section 36(1) of the Act uses the word “causes” as opposed to “authorised”. The complication which arises is that the word “causes” is not defined in the Act. It originated from the British pre-1911 copyright statutes which provision on causing infringement was narrowly interpreted to mean acts caused to be done by an agent or servant (**Russell v Briant (1849) 8 CB 836; Lyons v Knowles (1863) 122 ER 209; Karno v Pathe Freres (1900) 100 LT 260**). Since then, the British Copyright, Designs and Patents Act has amended its provisions from “cause” to “authorise”. The pertinent question is therefore whether “cause” under our Act is to be construed as broadly as the construction adopted for “authorise” in the Kazaa case. As Professor Khaw Lake Tee (Copyright Law in Malaysia, Second Edition) rightly opines that since the rules of vicarious liability would already apply as a matter of general principle of law, the word “cause”, to be meaningful, must be construed in a wider manner, to the extent of being synonymous with the word “authorise”. Whether cause can be equated to “authorise” would therefore be open to judicial interpretation. Thus the fate of copyright owners as against technology manufacturers is in this respect, uncertain.

In other jurisdictions, meanwhile, in an action by the Recording Industry Association of Korea in 2002, the Korean Courts ruled that the operators of Soribada, a Korean peer-to-peer file sharing network, were liable for an indirect infringement. This is the first judgment in Korea concerning peer-to-peer file sharing networks.

The Taiwan Courts have also found on 9 September 2005, Taiwan’s most popular peer-to-peer file sharing network, Kuro to be in violation of copyright law, following its Australian and US counterparts. Kuro encouraged its members to illegally trade copyrighted content through advertising.

BitTorrent

In 2005, yet another variant of peer-to-peer technology came about. Bram Cohen, its creator, seems interested only in non infringing uses. BitTorrent’s peer-to-peer software currently uses more than a third of the Internet’s bandwidth. It essentially works

by downloading tiny parts from a large number of people and uploading them at the same time to other peers. Users would send parts they have finished downloading to other users and these parts are uploaded by these other users who had requested them. There can be little doubt that the final full copy downloaded by a user is a reproduction in a material form.

On 7th November, 2005, a Hong Kong man was sentenced to 3 months in prison in what officials say is the world’s first successful prosecution of copyright violation using the popular file-sharing software BitTorrent. He had uploaded without authorization three Hollywood films onto a website so that others could obtain them.

Conclusion

The latest spate of actions taken against individual users of unauthorized peer-to-peer file sharing networks by the music industry has created growing awareness. As of 27th January 2006, Jupiter research shows that 50% of those who have stopped file sharing cite legal action as a factor in deterrence.

Though infringement of copyright by individual users of a peer-to-peer file sharing network is relatively clear and straightforward, finding liability as against technology manufacturers is more complicated and difficult. Liability for copyright infringement is plausible under section 36(1) of the Act for “causing” infringement, but copyright owners may have to traverse the pitted battlefields of convincing the Malaysian Courts that the terms “cause” and “authorise” used by our English or Australian counterparts are synonymous. There is also the question of adopting the narrower (English) or wider (Australian) construction to the definition of “authorise” should “cause” be construed to be in line with the modern definition adopted in other jurisdictions.

Another cause of action lies in joint tortfeasorship, liability being based on joint infringement with the users of the peer-to-peer file sharing network. The obstacle with establishing joint tortfeasorship lies in the requirement of proving common design between the parties. Ultimately, whether there is common design will depend on the factual circumstances and the courts need not be restrictive in inferring common design if the facts point towards control assumed or other forms of active encouragement to users to infringe exercised by the technology provider or web operator.



By **Choy Sook Yee**
(sookyee.choy@taypartners.com.my).

Sook Yee practises in the Intellectual Property and Technology Practice Group and advises on a broad range of IP issues.

For further information and advice on IP & Technology, you may contact:

Linda Wang
(linda.wang@taypartners.com.my)
Su Siew Ling
(siewling.su@taypartners.com.my)

The E-Commerce Bill 2006: Bringing Legal Certainty to Electronic Documents



Introduction

The prevailing uncertainty as to the legal effect or validity of electronic messages is amongst others, one of the obstacles hindering the full development of electronic commerce ('e-commerce') in Malaysia. To address this long outstanding issue, the Malaysian Government has finally introduced the *Electronic Commerce Bill 2006* ('the Bill'), which, as of the date of this article, has undergone second reading in Parliament.

Objective

The United Nations Commission on International Trade Law (UNCITRAL) Model Law on Electronic Commerce aims at facilitating the use of electronic means to spur global e-commerce and having a set of consistent rules to promote consistency amongst such countries. The Model Law seeks to facilitate the use of e-commerce by creating a media-neutral environment through equal treatment of users of paper-based documentation and users of computer-based documentation. This will help remedy the defects brought about by inadequate legislation on modern communication techniques, which creates obstacles to international trade. Countries that have adopted the model law include Australia, Singapore, New Zealand and the United Kingdom.

The Bill to a large extent adopts the recommendations of the

Model Law. The objective of the Bill is expressed as providing legal recognition of electronic messages used in commercial transactions, the use of electronic messages to fulfill legal requirements and to facilitate commercial transactions through the use of electronic means.

This article will highlight several of the provisions of the Bill which are of general interest.

Main Features of the Bill

- **Applicability of the Bill**

Provisions of the Bill shall apply to any commercial transaction that is conducted through electronic means. Power of attorney, wills, trusts and negotiable instruments are expressly excluded. Commercial transaction is defined to mean a single or multiple communications of a commercial nature, whether or not contractual, and includes any matters relating to the supply or exchange of goods or services, agency, investments, financing, banking and insurance.

- **The Functional Equivalent Approach**

The Model Law and thus the Bill is based on a functional equivalent approach i.e. the analysis of the functions of paper-based requirements to determine how these functions could be fulfilled through e-commerce techniques. To achieve this, Part III of the Bill provides for certain requirements in the electronic version of writings, signatures, seals, original documents, retention of documents and etc. in order to ensure that the functions served by paper-based documents such as accessibility, intelligibility, authenticity of data through signatures, capability to be reproduced and etc. would be retained.

- **Use of Electronic Messages Not Mandatory**

Another interesting feature of the Bill is the preservation of the principle of party autonomy. Under section 3 of the Bill parties have discretion whether to use, provide or accept any electronic message in any commercial transaction. A person's consent to use, provide or accept any electronic message in any commercial transaction may be inferred from the person's conduct.

- **Formation of Contracts**

One of the main provisions under the Bill is section 7 which provides for the formation and validity of contracts through electronic means. Under the Bill, the form of communication of

proposals, acceptance of proposals, and revocation of proposals and acceptances or any related communication may be by way of an electronic message. This provision coupled with sections 20-23 of the Bill, which provides for the time and place of dispatch and receipt of an electronic message, will increase the legal certainty on the conclusion of contracts by electronic means. For example, section 21 of the Bill provides that an electronic message is deemed received if:

- (1) where the addressee has designated an information processing system for receiving electronic messages, when the electronic message enters the designated system; or
- (2) when no information processing system has been designated, when the electronic message comes to the knowledge of the addressee.

This seems to indicate that the general rule for acceptance upon communication applies and not the postal acceptance rule. This also indicates that electronic messages are to be treated as instantaneous communication as in the case of telex communications.

Nevertheless, the questions that begs to be answered is, does this Bill alter the legal landscape of contracting in a substantive way? It is submitted that the conclusion of contracts through electronic means merely represents a modern dimension of accepted methods of contract formation. This view is reflected in section 4 of the Bill which provides that the application of the Bill shall be supplemental and without prejudice to any other laws regulating commercial transactions. This would include the *Contracts Act 1950*.



In addition, the Guide to the Enactment of the UNCITRAL Model Law on Electronic Commerce (in relation to an equivalent provision) states that the provision is not intended to interfere with the law on formation of contracts but rather to promote international trade by providing increased legal certainty as to the conclusion of contracts by electronic means. Moreover, under section 3 of the Bill, freedom of contract is preserved as the use of electronic messages in contracting is entirely up to the contracting parties and they are at liberty to specify their own methods of dispatch and receipt. ***In short, the provisions of the Bill merely recognises the validity of contracts concluded through electronic means but the issues arising therefrom such as where and when the contract was formed or in which***

jurisdiction was it concluded still remains to be decided using common law principles.

- **Digital Signatures**

Section 9 of the Bill introduces a new provision on digital signatures. Subsection (1) is derived from the UNCITRAL Model Law on Electronic Commerce and provides that any requirement of law that requires a signature is fulfilled by an electronic signature which:

- a) is attached to or is logically associated with the electronic message;
- b) adequately identifies the person and adequately indicates the person's approval of the information to which the signature relates; and
- c) is as reliable as is appropriate given the purpose for which, and the circumstances in which, the signature is required.

This subsection adopts a flexible and comprehensive approach by establishing the general conditions under which electronic messages would be regarded as authenticated with sufficient credibility and would be enforceable. This is achieved by focusing on two basic functions of a signature, namely to identify the author of a document and to confirm that the author approved of the content of the document.

Subsection (2) builds upon the flexible criterion in subsection (1) by establishing a standard where electronic signatures that meet the objective criteria of reliability (which is recognized by a State authority, private accredited entity or the parties themselves) can be made to benefit from the early determination as to their legal effectiveness. Under this subsection, which is derived from the UNCITRAL Model Law on Electronic Signatures, an electronic signature is reliable as is appropriate if:

- a) the means of creating the electronic signature is linked to and under the control of that person only;
- b) any alteration made to the electronic signature after the time of signing is detectable; and
- c) any alteration made to the document after the time of signing is detectable.

The advantage of such recognition is that it brings certainty to the users of such electronic signature techniques before they actually use the electronic signature technique. All in all, the purpose of the provision is to ensure that, where any legal consequence would have flowed from the use of a handwritten signature, the same consequence should flow from the use of a reliable electronic signature.

Given the pace of technological innovation, the Bill adopts a technology-neutral approach for the legal recognition of electronic signatures irrespective of the technology used (e.g. digital signatures relying on asymmetric cryptography;

biometric devices; symmetric cryptography, the use of PINs; the use of “tokens” as a way of authenticating electronic messages through a smart card or other devices held by the signatory; digitized versions of handwritten signatures; signature dynamics; and other methods, such as clicking on an “OK-box”). This approach allows for the possibility that more secure technology may be created in the future and thus providing the advantage of adaptability.

Nevertheless, it has been argued that a technology-neutral approach would create an environment that lacks legal certainty. This is because the merits of particular security technologies are not dealt with. The onus then falls squarely on the users, designers and service providers to select authentication technology on a risk-managed basis by agreeing on what is fit for the purpose.

Under section 9(3) of the Bill, the *Digital Signature Act 1997* (DSA) will continue to apply to any digital signature used as an electronic signature in any commercial transaction. Under the DSA, the technology to be used is specifically the asymmetric cryptosystem and thus it differs from the technology-neutral approach taken in sections 9 (1) and 9(2) of the Bill. However, subsection (3) does not necessarily preclude the use of other forms of security technologies in commercial transactions. Under section 89 of the DSA, the Minister may, by order published in the Gazette, exempt any person or classes of persons from all or any of the provisions of the DSA. The provisions under section 9(1) and (2) of the Bill will then apply to give legal recognition to digital signatures effected through methods other than asymmetric cryptography.

• **Communication of Electronic Messages**

Sections 17 -19 of the Bill provides for certain presumptions that the addressee of an electronic message can rely upon where there is a question as to whether an electronic message was really sent by the person who was indicated as the originator. Section 17 of the Bill deals with the attribution of electronic messages and provides that an electronic message is that of the originator or is presumed to be that of the originator when the electronic message was sent by:

- (1) the originator himself;
- (2) a person who has authority to act on behalf of the originator in respect of that electronic message (e.g. an agent) ; or
- (3) an information processing system programmed by, or on behalf of, the originator to operate automatically.

The addressee is only entitled to act on the presumption above in two situations i.e. if:

- (1) the addressee had properly applied the authentication method previously agreed to between the originator and the addressee; or
- (2) if the electronic message resulted from the actions of a person who, by virtue of his relationship with the originator or his agent, had access to the originator’s authentication method.

Section 17(4) of the Bill also provides for situations where the originator is released from the binding effects of an electronic message. This section is intended to preclude the originator from disavowing the message once it was sent, unless the addressee knew or should have known that the message was not that of the originator.

In addition, under section 18 of the Bill, there is a presumption that the contents of the electronic message were what the originator intended to send. However, the presumption does not arise if the addressee knew or should have known that there were errors in the content of the message arising from errors in transmission. Under section 19 of the Bill, there is also a presumption that each electronic message is a separate electronic message. It is intended to deal with the issue of erroneous duplication of electronic messages.

Conclusion

The Bill clearly intends to refine the existing legal framework pertaining to the regulation of e-commerce as a whole. It is hoped that the Bill would fill the current legal vacuum and reduce the uncertainties and difficulties encountered in practice in order to give effect to Malaysia’s express commitment to becoming a leading player in the field of information technology.



By *Su Siew Ling* and *Stephanie Phua*

Siew Ling is a Partner in the Intellectual Property and Technology Practice Group with focus on IP protection, litigation and enforcement whilst Stephanie is a Pupil in Chambers.

For further information and advice on IP and Technology laws, please contact:

Linda Wang
(linda.wang@taypartners.com.my)
Su Siew Ling
(siewling.su@taypartners.com.my)

Liberalising and Beefing-Up Malaysia's Listing Rules



In a spate of recent announcements, Bursa Malaysia Securities Berhad ("Bursa Securities"), Malaysia's Stock Exchange, and the Securities Commission announced several amendments to the Main & Second Board Listing Requirement ("LR") and to the MESDAQ Market Listing Requirements ("MMLR"). While some amendments focused on tightening listing rules, especially those relating to the financial health of listed companies, other amendments significantly liberalized previously restrictive rules.

The LR amendments of 5 May 2006 imposed stricter requirements on the financial health of PLCs. The categories of financially distressed PLCs and those with inadequate levels of operations were expanded by the lowering of thresholds and financial ratios. This will result in a wider net cast to capture such recalcitrant PLCs (NB: as at 12 June 2006, 34 companies have announced that they are PLCs affected by the revised LR). Significantly, the affected PLCs must now submit a restructuring plan within 8 months of their announcements and must also obtain the Securities Commission's approval of their plans. The amendments are aimed at expediting the restructuring efforts before the affected PLC's financial condition (and shareholders' investments) worsen. Information flow from the PLCs is also emphasized with enhanced measures to ensure that investors are kept informed of the affected PLC's restructuring plans on a timely basis.

While the LR amendments are focused, specific and are akin to the fine tuning of listing rules, the MMLR amendments of 8 May 2006 are broad-based and represent a significant milestone for the MESDAQ market. This is the first major revamp of the MMLR since its inception in 1997. Ever since its formation, the MESDAQ market has always been targeted at young technology-based and high-growth companies. To cater to such companies, the MMLR had less stringent requirements than those applicable to Main and Second Board PLCs. The MMLR revamp is implicitly an acknowledgement by Bursa Securities that investors expect the same high standards of MESDAQ companies as they do of Main and Second Board PLCs. As such, it is telling that the revamped MMLR emphasizes on transparency, corporate governance, quality of PLCs and investor protection matters.

On 29 May 2006, Bursa Securities announced revisions to its bonus issues rules. Bursa Securities now disallow Malaysian PLCs from undertaking a bonus issue where their accumulated losses exceed the reserves to be capitalized for the bonus issue.

More good news soon followed. Before the ink was even dry and while still basking from the positive reviews of investors and foreign analysts alike to the recent amendments, the Securities Commission announced on 22 June 2006 new measures to further liberalise the listing of foreign corporations on Bursa Securities. In addition, the LR were also liberalized for secondary listings of Malaysian PLCs on foreign stock exchanges.

Large foreign-owned corporations having operations even outside Malaysia can now seek primary or secondary listings on the Main Board of Bursa Securities. The impetus for this particular liberalization is twofold: the realization that several blue-chip unlisted foreign MNCs (e.g. Unilever and Intel) are already operating in Malaysia, and that large local IPOs will be few and far between in the near future. The addition of these MNCs should accelerate the integration of Malaysian capital market internationally and expand the pool of high quality stocks on Bursa Securities. It also provides diversity of investment opportunities for investors. It is also envisaged that cross-border listings will also promote linkages with other capital markets and that more cross-border M&A activities will follow.

The recent amendments are part of the continuous efforts of the authorities to implement the Capital Market Masterplan. The Masterplan is a 10-year plan launched in 2001 to create an internationally competitive Malaysian capital market that is supported by strong regulatory framework. These amendments have been viewed positively by the market as further demonstrations of Malaysia's seriousness to enhance the quality of Malaysian PLCs. It is hoped that the international benchmarking of the LR and MMLR will promote investor confidence and spur greater investments into Bursa Securities.



By *Ronald Tan*
(ronald.tan@taypartners.com.my).

Ronald heads the Debt Capital Markets Practice Group in the Corporate and Commercial Department.

For further information and advice on the article above or on any areas of corporate and commercial advisory work, you may contact:

Tay Beng Chai
(bengchai.tay@taypartners.com.my)
Ronald Tan
(ronald.tan@taypartners.com.my)

ISSN 1675-9729



LegalTAPS is a collective effort of the firm to bring relevant legal updates and information to you.



TAY & PARTNERS

Advocates & Solicitors • Registered Trademark & Patent Agents • Registered Industrial Design Agents

legaltaps

AXCELASIA GROUP



Editorial Committee

Neoh Lay Choo
Melanie Ann Selvalingam
Shaikh Mohamed Noordin
Su Siew Ling
Tay Beng Chai
Leonard Yeoh

This publication provides a summary only of the subject matter covered and is not intended to be nor should it be relied upon as a substitute for legal or other professional advice.

Tay & Partners

Kuala Lumpur Office

6th Floor Plaza See Hoy Chan
Jalan Raja Chulan
50200 Kuala Lumpur, Malaysia
Tel: 603 2050 1888
Fax: 603 2072 6354
Email: mail@taypartners.com.my

Johor Bahru Office

Suite 15.02, 15th Floor
Menara MAA,
15, Jalan Dato' Abdullah Tahir,
80300 Johor Bahru, Malaysia
Tel: 607 331 6136
Fax: 607 332 2898
Email: mail_jb@taypartners.com.my

T & P News

In an extensive worldwide survey conducted by *Asialaw* recently to identify leading local firms in 6 Asian jurisdictions, Tay & Partners was recognised and achieved a top 3 placement in the areas of Banking and Finance, Corporate and Commercial, Dispute Resolution and Intellectual Property.

TAY BENG CHAI, our Managing Partner and Head of the Corporate & Commercial Practice Group attended the IPBA's Annual General Meeting & Conference held in Sydney, Australia from 29 April to 4 May 2006.

LINDA WANG, our Partner in the IP & Technology Practice Group attended the INTA Annual Meeting in Toronto that was held from 6 to 10 May 2006. She also participated at the WIPO National Seminar, organised by WIPO in co-operation with the Ministry of Domestic Trade and Consumer Affairs, on the Role of the Intellectual Property Courts in Enforcement of Intellectual Property Rights held in Langkawi from 18 to 19 July 2006. Linda represented the Bar Council at the seminar and was a panelist for the topic of discussion, "Justice through Specialisation – IP Courts in Malaysia".

Linda was recently identified by the 2006 *Asialaw Leading Lawyers* survey as one of the most highly acclaimed legal experts in Intellectual Property in Asia-Pacific, and identified and listed in the 2006 *Guide to the World's Leading Trade Mark Law Practitioners*.

LEONARD YEOH, our Partner in the Litigation and Dispute Resolution Practice Group attended the IPBA's Annual General Meeting & Conference held in Sydney, Australia from 29 April to 4 May 2006.

Leonard was again voted and nominated as a Leading Lawyer for Dispute Resolution this year by *Asia Law*. This is the 3rd consecutive year that he has been nominated as a Leading Lawyer in Dispute Resolution. Apart from being recognised as a leading litigator, Leonard has also been consistently voted as one of the leading lawyers in Labour & Employment Law.

SU SIEW LING, our Partner in the IP and Technology Practice Group attended the INTA Annual Meeting in Toronto that was held from 6 to 10 May 2006. She also attended the "ASEAN-USPTO Workshop on Intellectual Property Rights Enforcement for Prosecutors" organised by the Asean Secretariat and the United States Patent and Trademark Office held on 23 and 24 May 2006 in Kuala Lumpur. Siew Ling presented a paper in a seminar organised by the Malaysian Chapter of AIPPI on Madrid Protocol from the Malaysian perspectives on 18 July 2006. She also presented a paper on health and safety issues with respect to counterfeit goods in the "WIPO-National Seminar on the Role of Intellectual Property Courts in the Enforcement of Intellectual Property Rights" on 19 July 2006.

Siew Ling was recently voted in the 2006 *Asialaw Leading Lawyers* survey as one of the most highly acclaimed legal experts in Intellectual Property in Asia-Pacific.

RONALD TAN, our Partner who heads the Firm's Debt Capital Markets Practice Group, and **DAVID LEE**, a Senior Associate in the Corporate & Commercial Practice Group, presented a paper on Legal Considerations in Structuring M & A: A Mock Case and conducted a workshop on Buyer's Perspective / Seller's Perspective at a seminar on Mergers & Acquisitions – Structuring A Good Acquisition Plan, organised by MySeminars Sdn Bhd which was held on 25 July 2006 at Impiana KLCC Hotel & Spa Kuala Lumpur.

Published by AxcelAsia Group Sdn Bhd, 6th Floor, Plaza See Hoy Chan, Jalan Raja Chulan, 50200 Kuala Lumpur.
Tel: 603 - 2050 1888; Fax: 603 - 2031 8618;
Email: mail@taypartners.com.my

Printed by Nets Printwork Sdn Bhd, 58 Jalan PBS 14/4, Taman Perindustrian, Bukit Serdang, 43300 Seri Kembangan, Selangor.
Tel: 603 - 8945 2208; Fax: 603 - 8941 7262;
Email: netspro@tm.net.my