

Topic: SIDA Urgent Meeting on IPDR public consultation

Meeting Date: 10 Nov 2018

Meeting Time: 2pm to 6pm

Attendance: Jason,David,TatCheng,Eddie,Tan,,,,,,,,,

ce with apology: George, Nicky

Note: This is an approved copy. This copy was circulated to all related SIDA members from 17 Nov 2018 to 21 Nov 2018.

Item	Speaker	Content {Meeting Tweeter Ver 3.0 (U001R03) }
001	System	Meeting Started
002	Jason	Let's start the meeting.
003	Jason	I will start off with the ground rules. 1.Do not get angry. 2.Coordinator can issue Yellow card. Two Yellow cards equal one penalty. 3.Do not say words like ""cannot work"", ""stupid/lousy idea"" and etc. Instead say ""Strength is"", ""Good thing is"", ""Weakness is"", ""Problem is"" and etc." 4.Do not insult or verbal attack on anyone or any race or any religion in the meeting. 5.Everyone must AGREE TO DIS-AGREE, but there must be a reason to dis-agree.
004	Jason	First, a little background. On 30 October, Tan posted a news from a Chinese newspaper about a public consultation for a proposed "Fast Track" patent litigation system. This proposal is highly relevant to our SIDA inventors, so I am calling this meeting to get everyone in to contribute to this public consultation. By the way, I like to thank Tan for his timely news article posting in WhatsApp to alert everyone.
005	Jason	I've send everyone a copy of the consultation paper. It has two PDF files, Annex A and B. I've read these two paper and make note on some of the issues that I think is relevant to SIDA. I'll go through these one by one to get everyone opinion. If there are additional area in the paper that you think is relevant, please bring them out.
006	Jason	Annex A, section 7. This section is information to all, I don't see any issues in this section. It said "...the time and costs needed to resolve a civil dispute are proportionate to the value of the claim." Any issues ?
007	All	No issues.
008	Jason	Next, Annex A, section 8. IPDR committee propose a two tracks system. One is the "normal track", second is a "fast track". We are concerned only with the "Fast Track" . The "Fast Track" proposal is quicker and more cost effective dispute Resolution that has a cap on length of trial, recoverable party and party cost, damage recoverable and profit. There is a note that said IPDR do not make form recommendation on interlocutory and final relief. These include injunction, freezing order, search and seizure order and etc.
009	Eddie	Why did the IPDR don't recommend interlocutory relief ? We should think about this.
010	TatCheng	I think it make sense that interlocutory relief for injunction and freezing order should not be issue during Court trial. Example, an inventor sue a big company for patent infringement. If the court issue an interlocutory relief to stop the company from selling the infringed product in the market, the company will incur revenue losses until the court case end. If the inventor win, all is well. But if the inventor loses, the company will try to claim compensation for the loss of this revenue during the trial. This is really bad for the inventor.
011	Eddie	The judge may not be in the position to make a good interlocutory relief during the trial because the judge does not have the full picture yet.

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012	Jason	Next, I want to go to Annex A, section 16 on expert witness. I quote "e) Default position of having a single court-appointed expert witness if at all necessary, with the option to have party-appointed expert witnesses upon parties agreement. "
013	Jason	I think that having the court appointed expert witness make sense for the inventors. The main problem for small inventor is that when they try to sue a big player, the big player would not want to let the court appoint the expert witness. They want party appointed expert witnesses because they want to deplete the financial resources of the small inventor. So the likely scenario is that the judge will need to listen from both side and make a ruling.
014	Tan	When this situation occur, the small inventor will be at the disadvantage position. Because the big player will have lots of lawyers to help them come up with many reasons to convince the judge to use party appointed expert witnesses.
015	Eddie	I think that the judge should give a higher weightage for plaintiff (inventor) on which track to be decided. This should be mentioned in the IPDR recommendation.
015A	Eddie	(Added from Eddie's email on 21 Nov 2018) Since we have agreed on the fast track and the whole committee panels are lawyers, as inventor we need to be aware that these panel has their legal profession interest to uphold their fees etc thus we shall approach the whole matter to be ONE WAY- FAST track then to allow these professional to protect the legal system with higher fee for their work at the expense of inventors.
016	Jason	I think we can highlight this to IPDR committee to let them work out a way to protect the disadvantage inventor in such situation.
017	Tan	On the selection of "Fast Track" and "Normal Track" . I think that if a plaintiff inventor decided to go for the "Fast Track" due to financial constraints, then if he win and make money from the defendant, he should not be allowed to sue another company on the same patent using the "Normal Track" . He will only be allowed to proceed with the same "Fast Track" for the same patent.
018	Tan	The rationale is like this, the "Fast Track" litigation is meant to help small inventors. It is a noble idea and should not be abused. If the small inventors make \$500,000 from the first "Fast Track" litigation, he is no more considered as the small inventors with limited financial resources. So he cannot use the same patent and sue another company for \$5,000,000.
019	Jason	Noted.
020	Tan	The next question on the expert witnesses is that there are no incentives and disincentives for the expert witnesses to perform their duties in an unbiased manner.
021	Jason	Noted. If the expert witnesses are appointed by the court and does not act in a professional and unbiased manner, there is no way for the inventor to protect his interest.
022	Eddie	The pool of expert witnesses that the court appointed should be make liable to make sure that they are qualified and to ensure that they perform their duties professionally in an unbiased manner.
023	Jason	If the judge decide that expert witnesses should be party appointed, the small inventor will not be able to pay as well as the big player. So the expert witnesses appointed by big player with be highly motivated to help their client, while the expert witnesses appointed by inventor will be lowly motivated.

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024	Tan	One solution is to allow the inventor to negotiate a contract with the expert witnesses that have various options. For example, if the inventor win the "Fast Track" litigation, the expert witnesses will be paid the full payment. If the Inventor loses the litigation, the expert witnesses will only be paid 50% of the full payment.
025	Jason	Will we have a situation where no expert witness is willing to come forward ?
026	Tan	No, because if the Inventor has a good litigation case and the expert witness is qualified, one look at the litigation case and the expert witness will know with confidence that the inventor will likely win.
027	Eddie	There is no mention on the criteria of the expert witness. They should have a basic knowledge and experience in the field.
028	Jason	I would suggest that the qualification of expert witnesses is to use the same standard used in the patent examination process of "a person skilled in the art".
029	TatCheng	Expert witness should be working in a relevant field for a number of years. If someone worked as an engineer for 10 years, then switch to another unrelated profession, he should not be qualified as expert witness.
030	Jason	Then if someone worked as engineer in the relevant field for many years, get promoted to management position. Is he still qualified ?
031	Tan	I think it should be an open question to IPDR on the court criteria to select someone as an expert witness ?
032	TatCheng	My experience is that if it is a open question, they will do nothing. We must give them the problem and offer some solution, then they will do something.
033	Jason	I have to agree with TatCheng on this point.
034	TatCheng	I think that expert witness identity should be kept confidential until the first hearing day. This should be clearly stated in the new "Fast track" recommendation. This is to prevent any party from influencing the expert witnesses. In most cases, it is usually the big player who will try to approach and influence expert witness.
34A	Eddie	(Added from Eddie's email on 21 Nov 2018) As an addition knowledge, if there are such threat then official police report ought to be done - this is a side issue BTW
035	Jason	Noted.
036	Jason	Next, I want to go to Annex A, Section 19 on hearing days. I quote "...the "fast track" will have a clear limit of 2 hearing days for trial. The trial judge will nevertheless have the discretion to extend this in exceptional circumstances... However, this cap may be waived by agreement of the parties...through mutual agreement."
037	Jason	I think this cap is good for small Inventors. I don't see any issues in this section. Does anyone have any ?
038	All	No issues.
039	Jason	Ok next is Annex A, Section 21. I quote "...Preliminarily, it is proposed that the cap be placed at \$500,000..."

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040	Jason	I have a comment. The cap can be placed at \$500,000. But this cap should be reviewed at every three years by the IPDR committee using public consultation with various stakeholders, including the individual inventors.
041	Jason	Annex A, Section 25. I quote "...the "fast track", stage costs will be introduced. There will be a cap on the maximum amount of P&P costs and disbursements (except for court fees)...an overall cap of \$50,000 on total costs...costs will be front-loaded, such that the proportion of costs recoverable at each stage (relative to the likely costs incurred) decreases as the matter progresses to later stages"
042	Jason	Again, I like to propose that the \$50,000 cap be reviewed every three years using public consultation with various stakeholders.
043	Jason	Annex A, section 28. I quote "...that a party has behaved in a manner which amounts to an abuse of process, the court may depart from the proposed caps and scale..."
044	Jason	Any comment ?
045	All	No comment.
046	Jason	Annex A, section 30. I quote "At the point of commencing the action, the plaintiff will indicate whether he wishes the case to be placed on the "fast track". In the absence of this, the case will be placed on the default track. If the defendant does not object, the case will proceed on the plaintiff elected track."
047	Tan	I think that if the plaintiff (small inventor) did not indicate, the default track should be the "Fast Track" . This is because the small inventor is not trained in the law and usually do not know the system well. It is likely that the litigation goes to the "Normal Track" without the full understanding of the small inventor. This is an unfair procedure against the less privilege inventors.
048	Jason	Next, Annex A section 32. I quote "...Reference may be made to the considerations for transfer of cases to the UK IP Enterprise Court ("IPEC"), which is similar to the proposed "fast track" ."
049	Jason	I like to highlight this section as a information to all.
050	Jason	Annex A section 33 and 34. I quote "...the procedure for seeking leave to appeal in IP cases will be aligned with the Civil Justice Reforms recommendations..." and "...it is proposed that the principle that costs should be kept low by limiting the layers of appeal as of right be applied, while retaining discretion for the court to decide if a further appeal is to be allowed in each particular case..."
050A	Eddie	(Added from Eddie's email on 21 Nov 2018) We ought to throw back this whole thing to them as the whole exercise is to reduce and minuse legal cost so throw these isse to them to do the right things as lower the legal system to encourage more international cases to be heard here in Spore is already in the govt mind Bear in mind, the whole committee up there are legal profession without external profession like our member thomas, David or Mr Tan etc or SIDA to be as their panel of expert panelist then all legal panel in the first place to bring up please.
051	Jason	It made sense that appeal in the "Fast Track" be limited so as to reduce cost. But it is not clear to many inventors how the appeal process work. So I would like IPDR committee to clarify on the procedure and cost of appeal in the "Fast Track" . Any issues in this section ?
052	All	No issue.

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053	Jason	Annex A section 35. I quote "...Natural persons will be allowed to appear as litigants-in-person, and companies should be represented by advocates unless the court gives leave...". Any issues ?
054	All	No issue.
055	Jason	Annex A section 37. I quote "...Alternative dispute resolution ("ADR") (section 2.6 of the IP Report). Consistent with the Civil Justice Reforms recommendations, the court will, as far as possible, encourage ADR by consent...". This section is information to all.
056	Jason	We completed Annex A, so we will go to Annex B from now on.
057	Jason	Annex B executive summary item 3 page 2. I quote "As part of the Government IP Hub Master Plan, MinLaw in 2015 appointed this Committee to review the IP dispute resolution framework in Singapore. The two objectives of the review are...particularly for individuals and small and medium sized enterprises ("SMEs")".
058	Jason	Together with item 3, I like to refer to Annex B executive summary item 14 page 5. I quote "...fast track" procedures will require detailed consultations with all interested stakeholders...It also recognised that it does not have the benefit of empirical studies on the demands and needs of individual and SME IP rights owners in Singapore."
059	Jason	Further reference to Annex B section 1.2.3. I quote "We directed our focus primarily at a synthesis of the first two terms of reference: how to enhance access to Singapore IP dispute resolution system with especial attention to individuals and SMEs."
060	Jason	The above the quote from Annex B seem contradicting. The objective is meant to help individuals and small and medium-sized enterprises ("SMEs"). But it seem that members of the IPDR committee does not have anyone who is a good representative of individual and SMEs.
061	Jason	The IPDR committee wants consultation of "fast track" procedures with all interested stakeholders but seem not willing to spend resources to engage individuals and SMEs. I do not think that it takes a lots of resources to seek IPOS help to get a list of all patent owners in Singapore, send an invitation to them and arrange for a simple meeting.
062	Jason	Annex B section 1.2.4. I quote " Our secondary focus was... Developing Singapore into a global IP dispute resolution hub...". This is information to all.
063	Jason	Annex B section 1.2.9. I quote "Individuals and SMEs may have as their dominant concern cost-proportionality and efficiency...On the other hand, cost may play a less central role in the calculus of the international IP actor...We have, in this Report, sought to achieve a balance between these objectives."
064	Jason	A balance between these objectives cannot be achieved without participation from individual inventors and SMEs.
065	Jason	Annex B section 1.3.2. I quote "...In patent litigation, there is an additional mode of establishing facts by experimental proof."
066	All	(Discussion on experimental proof).
067	Jason	I summarised the discussion that experiments by both parties may need the use of some measuring equipment. It should be made that these measuring equipment be certified and allow to be audited by any party.

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068	Jason	Annex B section 1.3.3. I quote "...IP disputes often involve myriad technical details that are susceptible to repeated and extensive requests for particulars and discovery...can also be used tactically, to oppress and deplete the resources of the other party..."
069	Jason	This section highlight the difficulties and common bullying tactic by big companies that individual inventors faced.
070	Jason	Annex B section 2.2.5. I quote "...the US permits contingency fee arrangements, that is an option a putative plaintiff may rely on to fund its litigation..."
071	Tan	This is a good options for inventors. I think IPDR Committee should not rule out this option if it want to promote innovation.
072	Jason	Noted.
073	Jason	Annex B section 2.4.12. I quote "...The Managing Judge will be given broad case management powers which will, for example, allow him to give directions on whether expert witnesses or experiments are required."
074	TatCheng	I think that both parties should be given the rights to conduct at least one experiment so that the judge can fully appreciate the intention. But Ad-hoc experiment request during trial by any party should not be entertained.
075	Jason	Noted.
076	Jason	Annex B section 2.4.27. I quote "...If the broad recommendations of this Report are accepted it will be necessary, at the implementation stage, to consider formulation of specialist procedural rules to guide the Managing Judge in the conduct and control of "fast track" cases..."
077	Jason	What is the meaning of specialist procedural rules to guide the Managing Judge ? Need to request the IPDR Committee to clarify in layman term.
078	Jason	Is there any other issues that anyone like to bring out ? If not, I will proceed to prepare the SIDA report for this public consultation. I will get it ready and then I will call our last IPDR consultation meeting on 24 Nov 2018, Sat 2pm at Tan's office.
079	All	No issue.
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