



Piyawat Kayasit
Attorney-at-Law
piyawat.k@tilleke.com

Thailand Introduces Changes to the Appeal Proceedings for IP-Related Cases

Prior to the establishment of the Central Intellectual Property and International Trade Court (“IP&IT Court”) in 1997, which was the first specialized IP court in Southeast Asia, an IP-related lawsuit was normally heard in an ordinary court of first instance, which at the time had jurisdiction over such a dispute. The judgment of the first-instance court could then be appealed to the relevant Court of Appeal that had jurisdiction over the lower court, and then a further appeal to the Supreme Court could be pursued based on the conditions set forth in the Civil Procedure Code or Criminal Procedure Code.

With the inauguration of the IP&IT Court on December 1, 1997, came a major change to the process for appeals. The Act for the Establishment of the Procedure for the Intellectual Property and International Trade Court B.E. 2539 (1996) (“IP&IT Court Act”) prescribed that all intellectual property and international trade cases must be filed with the IP&IT Court. In addition, an appeal against any judgment of the IP&IT Court was required to be submitted directly to the Supreme Court. This streamlined procedure sought to redress the procedural delays in delivering timely judgments, specifically for intellectual property and international trade cases.

Changes to Appeal Process

In 2015, Thailand again made significant changes to its procedure regarding appeal proceedings. On September 1, 2015, the Civil Procedure Code was amended to change from the previous rights-based process to a new permission-based process. A few months later, on December 4, 2015, the Thai parliament passed two new laws affecting the appeal proceedings for intellectual property and international trade cases:

1. The Act for the Establishment of the Procedure for the Intellectual Property and International Trade Court (No. 2) B.E. 2558 (2015), which amended the IP&IT Court Act. This new law outlined several significant revisions to previous practice, including the overhauling and streamlining of the appeal procedure in IP cases.
2. The Act for Establishment of the Court of Appeal for Specialized Cases B.E. 2558 (2015) (“Specialized Appeal Court Act”).

The first major change resulting from the implementation of these new laws is that as from October 1, 2016, any judgments or orders of the IP&IT Court must be appealed directly to the Court of Appeal for Specialized Cases (“Specialized Appeal Court”). The second major change is that under the amended IP&IT Court Act, the appeal procedure for civil cases must be made based on provisions under the

Civil Procedure Code, which has also been amended, and the appeal procedure for criminal cases must be made based on provisions under the Criminal Procedure Code.

This means that judgments and orders of the IP&IT Court—whether they are in civil or criminal cases—can be appealed further, provided that they fulfill the conditions prescribed under the Civil Procedure Code or under the Criminal Procedure Code, as the case may be. All eligible appeals must be submitted directly to the Specialized Appeal Court.

The Specialized Appeal Court

The Specialized Appeal Court was established and empowered by the Specialized Appeal Court Act to adjudicate cases appealed from the following lower specialized courts:

1. The Tax Court
2. The Labor Court
3. The Bankruptcy Court
4. The Juvenile and Family Court
5. The IP&IT Court

The Specialized Appeal Court has five divisions corresponding to the specialized courts over which it has jurisdiction. The Intellectual Property and International Trade Case Division (“IP&IT Division”) has the power to handle all appeals filed against judgments of the IP&IT Court, including judgments handed down in all IP cases, including, for example, IP infringements, IP licensing disputes and appeal decisions of the Board of Trademarks and Board of Patents.

The Specialized Appeal Court is comprised of judges with specific knowledge and expertise in the respective subject area. Each case is adjudicated by a quorum of judges. However, any case dealing with an important issue that impacts many different areas of the law may be decided by a divisional meeting or an inter-divisional meeting of judges.

Such a meeting would include the Vice President of the Specialized Appeal Court, who is in charge of the relevant division where the matter had been heard, and all the judges in the relevant division who are on duty provided that (1) the number of judges attending the meeting cannot be less than two-thirds of all judges in the division; and (2) the resolution of the meeting will be reached by a majority vote. Currently, the IP&IT Division has three quorums of judges. The number of judges in the IP&IT Division is not publicly available, but given that each quorum consists of at least three judges, the division likely consists of at least nine judges.

As of April 7, 2017, the Specialized Appeal Court has rendered six judgments in IP-related lawsuits. All of these judgments were in criminal cases. Only one of them has been sent to the IP&IT Court for reading to the parties in the case. The other five are currently in the process of being sent to the IP&IT Court for reading.

Further Appeal to the Supreme Court

It is possible to further appeal a judgment or order of the Specialized Appeal Court, although the process varies for criminal and civil cases. In criminal cases, parties who disagree with judgments or orders of the Specialized Appeal Court may further appeal to the Supreme Court, provided that the appeal is made only on legal issues. For factual issues in criminal cases, the right to appeal depends on the severity of the punishment as set out in the lower court’s judgment.

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Appeals Procedure (from page 7)

In civil cases, judgments or orders of the Specialized Appeal Court will be deemed final. However, any party who disagrees with a judgment or order may ask the Supreme Court for permission to appeal the decision further. The Supreme Court may grant permission if it finds that there is an issue(s) in the appeal that sets out a significant matter worthy of clarification.

Section 249 of the amended Civil Procedure Code sets out “significant matters” as follows:

1. Matters related to the public interest or public order;
2. When a Court of Appeal determines a significant question of law in a manner of discrepancy or contrary to a Supreme Court precedent;
3. When a Court of Appeal determines a significant question of law in its judgment or order without citing any Supreme Court precedent;
4. When the judgment or order of a Court of Appeal is contrary to the final judgment or order of other courts;
5. For the purpose of developing legal interpretation; and
6. Other significant questions according to the Regulations of the President of the Supreme Court.

On November 24, 2015, the President of the Supreme Court issued further regulations stating that other significant questions under Section 249(6) include:

1. Judgment or order of a Court of Appeal that has a dissenting opinion(s) in substance; and
2. Judgment or order of a Court of Appeal that rules on a significant question of law contrary to an international agreement that binds Thailand.

To request permission to appeal, the party must file a request for permission, together with the appeal petition, as well as pay the relevant court fee to the first-instance court,

within one month from the reading of the Specialized Appeal Court’s judgment or order. This deadline is extendable.

After checking that the formalities have been satisfied, the first-instance court will forward a copy of the documents to the respondent in the case, who will then have the right to file their opposition against the request. At the same time, without waiting for the opposition petition, the first-instance court will forward the request and the appeal to the Supreme Court, which will have to consider the request in a timely manner.

The Supreme Court’s decision as to whether or not to permit the appeal will be sent to the first-instance court for reading to the parties in the case. If the request is granted, the other party will have the right to file their response to the appeal with the first-instance court within 15 days. This deadline is also extendable. After receiving the response to appeal, the first-instance court will forward it to the Supreme Court for consideration.

Outlook

According to *The Court of Appeal for Specialized Case*, a volume published by the Specialized Appeal Court, the reason for the establishment of the Specialized Appeal Court is to harmonize the appeal system for specialized courts with the systems of the ordinary courts of first instance. Based on this, it would not be reasonable to expect that the establishment of the Specialized Appeal Court will shorten the length of time needed to conduct a lawsuit. It is true that we can expect a timely judgment from this court, at least in the first two to three years of its operation, as the number of appeals that it currently handles is still minimal.

But it is important to recognize that the appeal system for criminal cases has been changed from a two-tier to a three-tier procedure, while civil lawsuits retain the possibility of a further appeal to the Supreme Court. This raises the probability that it may now actually take longer for an IP-related lawsuit to reach a final decision. Of course, this will affect IP owners, as they may need to invest more money and time in seeing their legal matters through to a final conclusion. 