The First 10 Years of Patent Cases in CIPITC: (1) Results of Preliminary Analyses[1]

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Abstract

Patent litigation data from CIPITC were analyzed with respect to the extent of pre-trial ADR, the number of patent litigations, the technical fields involved in patent litigations, the types of patent litigation, the time taken to complete a trial, appeal to the Supreme Court, and notable CIPITC decisions. The overall number of patent cases is still growing at approximately 30 per cent per year. There are more criminal cases than civil cases. Approximately 10 per cent of the cases took advantage of the ADR provided by CIPITC. Patent cases involve almost all technical fields. There are very few patent licensing cases. It takes approximately 24 months to complete a trial. (Worst case took 4 years.) Parties involved normally appeal to the Supreme Court. CIPITC decisions touch upon a whole range of legal principles and how to apply them to specific circumstances. CIPITC's and Supreme Court's decisions are both managerially and pedagogically very valuable and should all be publicized as soon as they are read by the respective courts.

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[1] This paper is the original edition (V1.00) that appeared in the Intellectual Property and International Trade Law Forum (Special Issue: Tenth Year Anniversary of the Central IP&IT Court - 2008) The author, who is also the copyright owner, wrote this paper in his spare time. Any opinion expressed here is the author's own opinion and may not necessarily be shared by the Central IP&IT Court or Chulalongkorn University. The author has attempted to the best of his ability to write and proofread this article but cannot offer any warranty as to the accuracy, completeness, or timeliness of the information provided, or as to the suitability of application to the reader's need. The word "preliminary" in the title means that further data need to be included in the analysis. The author (lerson@lerson.org) will be indebted to any reader who reports any error, omission, or otherwise any possible improvement to this article. Abbreviations: ADR = Alternative Dispute Resolution, DIP = Department of Intellectual Property, IPC = International Patent Classification, CIPITC = Central IP&IT Court = Central Intellectual Property and International Trade Court, WIPO = World Intellectual Property Organization.

[2] Lerson Tanasugarn received a joint AB *magna cum laude* - AM and also a Ph.D. in biology from Harvard University. The author served as an Associate Judge at CIPITC for a complete term (5 years) starting from the establishment of the Court in December, 1997. He was also for 8 years Director of Intellectual Property Policy Research at Chulalongkorn University Intellectual Property Institute.

Introduction

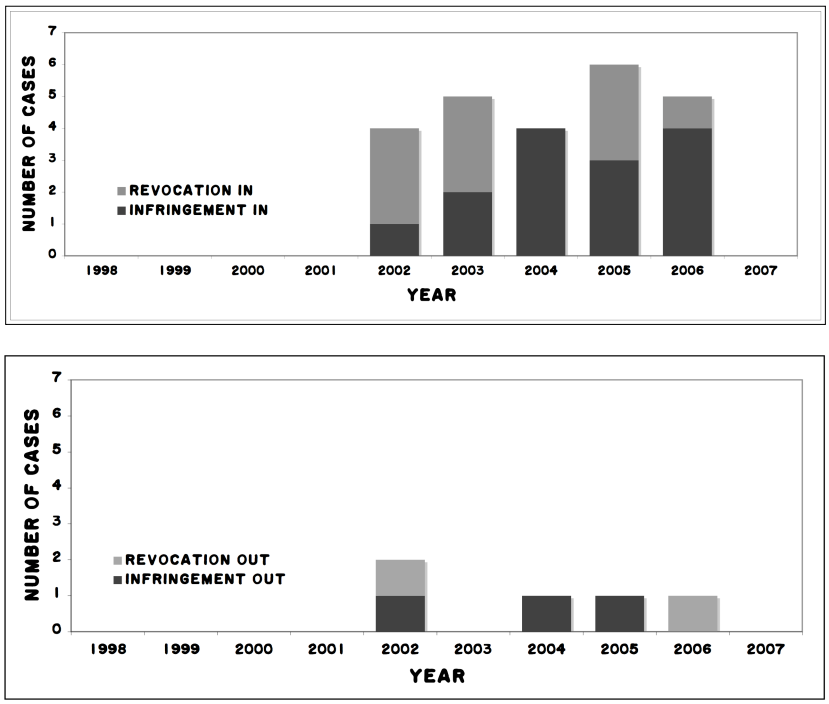
It has been known since the birth of the Central Intellectual Property and International Trade Court (CIPITC) that most intellectual property trials in Thailand have to do with the legal regimes of copyright and trademark. While this statement is still valid, patent litigation has increased significantly in number during the past five years (2003-2007) compared with the first five years of CIPITC operation (1998-2002). Now that there are over 200 CIPITC patent decisions as well as a few supreme court judgments, a close look at the data might reveal some features which could be useful for national intellectual property policy formulation and review in the context of knowledge society within the sufficiency economy framework that is and will be the blueprint for national development in the foreseeable future.

Methodology

The idea of patent litigation analysis was well-received by the editorial board of this Journal, who had invited the author to submit a manuscript in the first place. Nevertheless, a month was grossly inadequate to gather the required data and perform the analysis to meet the publication deadline. Most of the macro-level analyses in this paper, unfortunately, had to be based on secondary data that had been collected by CIPITC over the past decade. At the micro level, each of the CIPTIC civil decisions that were available to the author was thoroughly read, summarized, and cross-checked with CIPITC Registry as well as the Supreme Court's decisions. Then these cases were classified according to the legal principles involved and the consequential impact to the public.

Since only a small percentage of the total patent cases were reviewed in detail, this paper only claims to contain preliminary results. The methodology, however, should be useful for further analysis when more complete data are available. Similar analyses should also be applicable to other types of intellectual property cases, including copyright, trademark, and trade secret.

Results

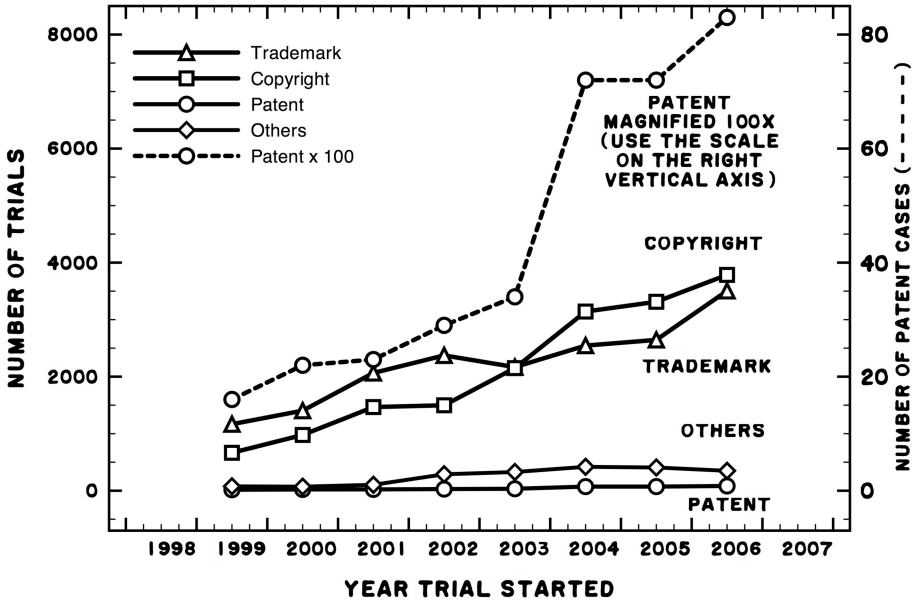


Graph 1: Number of ADR cases at CIPITC (1998-2007)

The numbers are grouped by type of cases. The number for 2007 is for the first 3 quarters. In = Incoming cases, Out = Outgoing (Resolved) cases. Source: ADR Office, CIPITC.

1. Alternative Dispute Resolution (ADR)

Although there have been up to around 60 to 80 patent cases per year during the past few years, Graph 1 shows that only about 5 to 6 of them (around 10 per cent) entered the Alternative Dispute Resolution (ADB) process.



Graph 2: Trend of Intellectual Property Litigation at CIPITC

Since there are very few patent cases compared to copyright, trademark, and other cases, the patent curve has been magnified 100 times and plotted as a dashed curve. To read this magnified curve, the reader should use the vertical axis on the right of the graph.
Source: Secondary data compiled by CIPITC.

2. Number of patent litigation

Graph 2 shows that the time trend of the overall patent litigation in CIPITC has almost always been on the rise. (See dash line for 100x magnification.) Each year there are about 80 patent cases starting in CIPITC with a growth rate of roughly 30 per cent per year since 2003. This figure includes civil, criminal and other patent cases like temporary injunction, transfer of patent ownership, patent licensing, etc.

By the way, it is also interesting to note that the growth in number of copyright cases is a bit faster than the growth in trademark cases.

	Class	Technology Subclass
A	Human Necessity	AGRICULTURE; FORESTRY; ANIMAL HUSBANDRY; HUNTING; TRAPPING; FISHING BAKING; EDIBLE DOUGHS BUTCHERING; MEAT TREATMENT; PROCESSING POULTRY OR FISH FOODS OR FOODSTUFFS; THEIR TREATMENT, NOT COVERED BY OTHER CLASSES TOBACCO; CIGARS; CIGARETTES; SMOKERS' REQUISITES WEARING APPAREL HEADWEAR FOOTWEAR HABERDASHERY; JEWELLERY HAND OR TRAVELLING ARTICLES BRUSHWARE
B	Performing Operations Transporting	PHYSICAL OR CHEMICAL PROCESSES OR APPARATUS IN GENERAL CRUSHING, PULVERISING, OR DISINTEGRATING; PREPARATORY TREATMENT OF GRAIN FOR MILLING SEPARATION OF SOLID MATERIALS USING LIQUIDS OR USING PNEUMATIC TABLES OR JIGS; MAGNETIC OR ELECTROSTATIC SEPARATION OF SOLID MATERIALS FROM SOLID MATERIALS OR FLUIDS; SEPARATION BY HIGH-VOLTAGE ELECTRIC FIELDS CENTRIFUGAL APPARATUS OR MACHINES FOR CARRYING-OUT PHYSICAL OR CHEMICAL PROCESSES SPRAYING OR ATOMISING IN GENERAL; APPLYING LIQUIDS OR OTHER FLUENT MATERIALS TO SURFACES, IN GENERAL GENERATING OR TRANSMITTING MECHANICAL VIBRATIONS IN GENERAL SEPARATING SOLIDS FROM SOLIDS; SORTING CLEANING DISPOSAL OF SOLID WASTE; RECLAMATION OF CONTAMINED SOIL MECHANICAL METAL-WORKING WITHOUT ESSENTIALLY REMOVING MATERIAL; PUNCHING METAL CASTING; POWDER METALLURGY MACHINE TOOLS; METAL-WORKING NOT OTHERWISE PROVIDED FOR GRINDING; POLISHING HAND TOOLS; PORTABLE POWER-DRIVEN TOOLS; MANIPULATORS HAND CUTTING TOOLS; CUTTING; SEVERING WORKING OR PRESERVING WOOD OR SIMILAR MATERIAL; NAILING OR STAPLING MACHINES IN GENERAL WORKING CEMENT, CLAY, OR STONE WORKING OF PLASTICS; WORKING OF SUBSTANCES IN A PLASTIC STATE, IN GENERAL PRESSES MAKING PAPER ARTICLES; WORKING PAPER LAYERED PRODUCTS PRINTING; LINING MACHINES; TYPEWRITERS; STAMPS BOOKBINDING; ALBUMS; FILES; SPECIAL PRINTED MATTER WRITING OR DRAWING IMPLEMENTS; BUREAU ACCESSORIES DECORATIVE ARTS VEHICLES IN GENERAL RAILWAYS LAND VEHICLES FOR TRAVELLING OTHERWISE THAN ON RAILS SHIPS OR OTHER WATERBORNE VESSELS; RELATED EQUIPMENT AIRCRAFT; AVIATION; COSMONAUTICS CONVEYING; PACKING; STORING; HANDLING THIN OR FILAMENTARY

	Class	Technology Subclass
		MATERIAL HOISTING; LIFTING; HAULING CLEANING], OPENING OR CLOSING BOTTLES, JARS OR SIMILAR CONTAINERS; LIQUID HANDLING SADDLERY; UPHOLSTERY MICRO-STRUCTURAL TECHNOLOGY NANO-TECHNOLOGY
C	Chemistry Metallurgy	SKINS; HIDES; PELTS; LEATHER METALLURGY OF IRON METALLURGY COATING METALLIC MATERIAL; COATING MATERIAL WITH METALLIC MATERIAL ELECTROLYTIC OR ELECTROPHORETIC PROCESSES; APPARATUS THEREFOR CRYSTAL GROWTH COMBINATORIAL CHEMISTRY
D	Textile & Paper	NATURAL OR ARTIFICIAL THREADS OR FIBRES; SPINNING YARNS; MECHANICAL FINISHING OF YARNS OR ROPES; WARPING OR BEAMING WEAVING BRAIDING; LACE-MAKING; KNITTING; TRIMMINGS; NON-WOVEN FABRICS SEWING; EMBROIDERING; TUFTING TREATMENT OF TEXTILES OR THE LIKE; LAUNDERING; FLEXIBLE MATERIALS NOT OTHERWISE PROVIDED FOR ROPES; CABLES OTHER THAN ELECTRIC PAPER-MAKING; PRODUCTION OF CELLULOSE
E	Fixed Constructions	CONSTRUCTION OF ROADS, RAILWAYS, OR BRIDGES HYDRAULIC ENGINEERING; FOUNDATIONS; SOIL SHIFTING WATER SUPPLY; SEWERAGE BUILDING LOCKS; KEYS; WINDOW OR DOOR FITTINGS; SAFES DOORS, WINDOWS, SHUTTERS, OR ROLLER BLINDS IN GENERAL; LADDERS EARTH DRILLING; MINING
F	Mechanical Engineering; Lighting; Heating; Weapons; Blasting Engines or Pumps	MACHINES OR ENGINES IN GENERAL COMBUSTION ENGINES MACHINES OR ENGINES FOR LIQUIDS POSITIVE DISPLACEMENT MACHINES FOR LIQUIDS; PUMPS FOR LIQUIDS OR ELASTIC FLUIDS FLUID-PRESSURE ACTUATORS; HYDRAULICS OR PNEUMATICS IN GENERAL ENGINEERING ELEMENTS AND UNITS; GENERAL MEASURES FOR PRODUCING AND MAINTAINING EFFECTIVE FUNCTIONING OF MACHINES OR INSTALLATIONS; THERMAL INSULATION IN GENERAL STORING OF DISTRIBUTING GASES OR LIQUIDS LIGHTING STEAM GENERATION COMBUSTION APPARATUS; COMBUSTION PROCESSES HEATING; RANGES; VENTILATING REFRIGERATION OR COOLING; COMBINED HEATING AND REFRIGERATION SYSTEMS; HEAT PUMP SYSTEMS;

	Class	Technology Subclass
		MANUFACTURE OR STORAGE OF ICE; LIQUEFACTION SOLIDIFICATION OF GASES DRYING FURNACES; KILNS; OVENS; RETORTS HEAT EXCHANGE IN GENERAL WEAPONS AMMUNITION; BLASTING
G	Physics	MEASURING OPTICS PHOTOGRAPHY; CINEMATOGRAPHY; ELECTROGRAPHY; HOLOGRAPHY HOROLOGY CONTROLLING; REGULATING COMPUTING; CALCULATING; COUNTING CHECKING-DEVICES SIGNALLING EDUCATION; CRYPTOGRAPHY; DISPLAY; ADVERTISING; SEALS MUSICAL INSTRUMENTS; ACOUSTICS INFORMATION STORAGE INSTRUMENT DETAILS NUCLEAR PHYSICS; NUCLEAR ENGINEERING
H	Electricity	BASIC ELECTRIC ELEMENTS GENERATION; CONVERSION OR DISTRIBUTION OF ELECTRIC POWER BASIC ELECTRONIC CIRCUITRY ELECTRIC COMMUNICATION TECHNIQUE ELECTRIC TECHNIQUES NOT OTHERWISE PROVIDED FOR

Table1: Framework of the International Patent Classification (IPC)

This table continues from the preceding pages. This version of IPC is called IPC8.
Source: IPC Web Site, http://www.wipo.int/classifications/ipc/en/

3. Subject matter of patent litigations

In order to see what branches of technology are involved in patent litigation in CIPITC, let us employ the framework of the International Patent Classification (IPC) shown in Table 1. In the IPC system, “technical fields” are broadly divided into 8 groups as shown in the Table. They are (A) Human necessity, (B) Performing operation and transporting, (C) Chemistry and metallurgy, (D) Textile and paper, (E) Fixed construction, (F) Mechanical Engineering; Lighting; Heating; Weapons; Blasting Engines or Pumps, (G) Physics, (H) Electricity.

A total of 40 full-text CIPITC decisions were reviewed. These correspond to approximately 20 per cent of all patent cases. (The rest of the decisions were not available for review at the time of this writing.) Results are shown in Table 2.

IPC Technical Field	CIPITC Decision Number	Subject Matter	Remark
A. Human necessities	C0256/2542 C0354/2542 IP0017/2542 IP0030/2543 IP0060/2545 IP0093/2545 IP0126/2545 IP0131/2545 IP0013/2546 IP0054/2546 IP0101/2547 IP0145/2547 IP0050/2548 IP0079/2548 IP0119/2548	Bottles and bottle mold Mosquito net Steering wheel cover Plough Watch plate Medication for HIV Pen refill Kwow Krua medicinal plant Telescopic straw Heart & hypertensive medication Knockdown table Water treatment filter Boots Chemotherapeutic agent Bendable plastic straw	
B. Performing operation; Transporting	IP0097/2545 IP0048/2546 IP0107/2546 IP0117/2548 IP0138/2549	Undersea Touring Method Clutch and brake lock Water filter EVA foam book binding Fixing simulated leather plastic	
C. Chemistry; Metallurgy	IP106/2549	Bio-diesel from used vegetable oil	
D. Textiles; Paper	IP0016/2547 IP0103/2549	Fabric inspecting machine Moisture absorbing clothes	
E. Fixed Constructions	C0507/2542 IP0038/2544 IP0080/2547 IP0107/2549	Ceiling Design Pile cushion Iron fence Rapidly deployable crane	
F. Mechanical engineering	IP0055/2543 IP0082/2545 IP0004/2546 IP0091/2546 IP0133/2546 IP0019/2547 IP0025/2547	Air conditioning refrigerant Silenced side frame for rolling Door Brake or clutch auto lock Fluidized bed cereal dryer Washing machine process Water and mud pump Cyclone rice husk burner	
G. Physics			No cases found.
H. Electricity	IP0049/2542 IP0114/2545	Wound core for transformer Radio and TV antenna	

IPC Technical Field	CIPITC Decision Number	Subject Matter	Remark
	IP0084/2546 IP0002/2548 IP0156/2548	Sound control for video recording Electrical switch Remote control for air conditioner	

Table 2: IPC Technical Field of Sample CIPITC Patent Cases

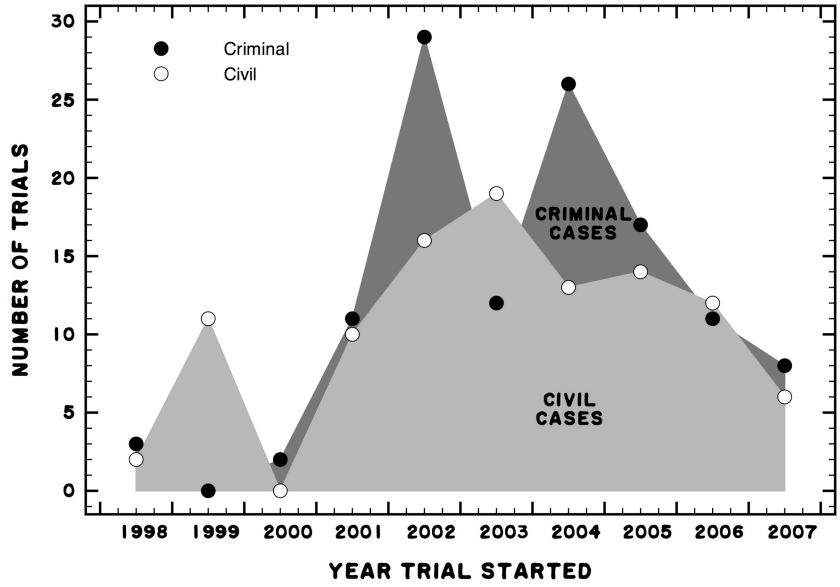
This table continues from the preceding page. IPC Technical Field is taken from the topmost core classification of IPC8 shown in Table 1. Classification was performed manually. C = Criminal case; IP = Civil case. Source: Full-text CIPITC Decisions.

When the full-text CIPITC civil (as well as a couple of criminal) decisions were classified according to the IPC technical field, the results are shown in Table 2.

The most popular technical field is Human Necessity (A) followed by Mechanical Engineering(F). The least popular technical field is Physics(G) where no court case has been found, followed by Chemistry(C) where only one case was found.

As more CIPITC decisions are available for review in the future, Table 2 should be expanded and the case distribution profile according to IPC technical fields could change accordingly.

Such distribution profile with respect to IPC technical field could be compared with the distribution profile of Thai patent application and of Thai patent registration. The data should not be difficult to obtain since DIP need to report such data to WIPO annually. To further extend this line of analysis, the distribution profile to be compared with could involve more than one variable, like technical field and nationality of inventor.



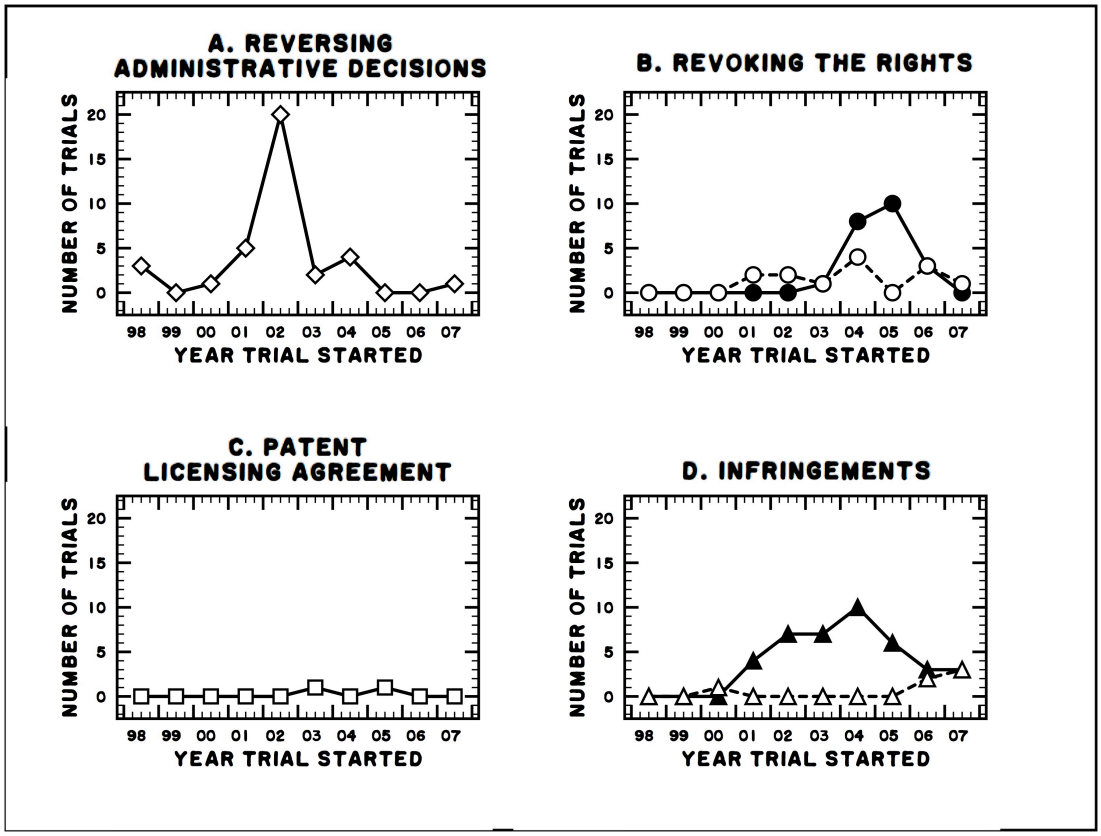
Graph 3: Types of Patent Litigation in CIPITC

Civil cases are represented by open circles and shaded at 30% gray. Criminal cases are represented by closed circles and are shaded at 60% gray.
Source: Secondary data compiled by CIPITC.

4. Legal classifications of patent litigations

When patent cases are classified into civil and criminal types, the results are shown in Graph 3. After the first two years of operation, the number of criminal cases per year rose quickly to almost 30 cases in 2002 but fell to half the value during the following year. In 2004 it rebounded again. The decline in 2006 and 2007 may have been artifacts resulting from using only data from 3 quarters of each year in the original CIPITC compilation.

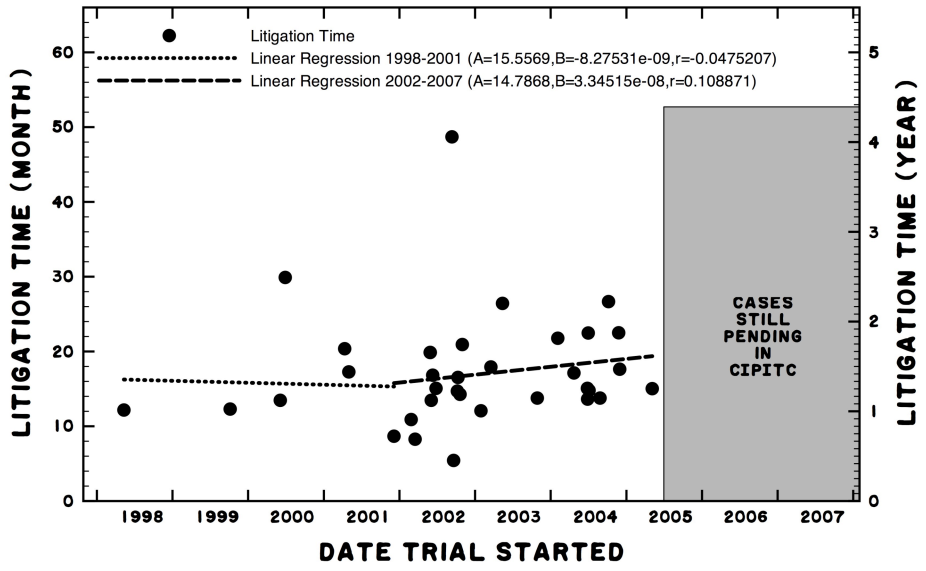
Without reviewing all CIPITC patent decisions, one cannot verify the numbers. The author hopes to have a better picture of the classification profile once the complete collection of IPITC decisions are available for review.



Graph 4: Types of Civil Patent Litigation in CIPITC

Four types of civil patent and utility model litigation were plotted against the year trial started. A = Reversing administrative decisions related to patent and utility model prosecution or maintenance, B = Revoking patents and utility models, C = Disputes related to patent and utility model licensing agreements, and D = Infringements of patents and utility models. Source: Compiled (secondary) data from CIPITC database.

Graph 4 shows four types of civil patent litigation plotted against the year trial started, using the same vertical and time scale for easy comparison. Reversing administrative decision cases peaked in 2002. Infringement and revocation suits peaked around 2005. Again, the author hopes to have a better picture of the classification once the complete collection of IPITC decisions are available for review.

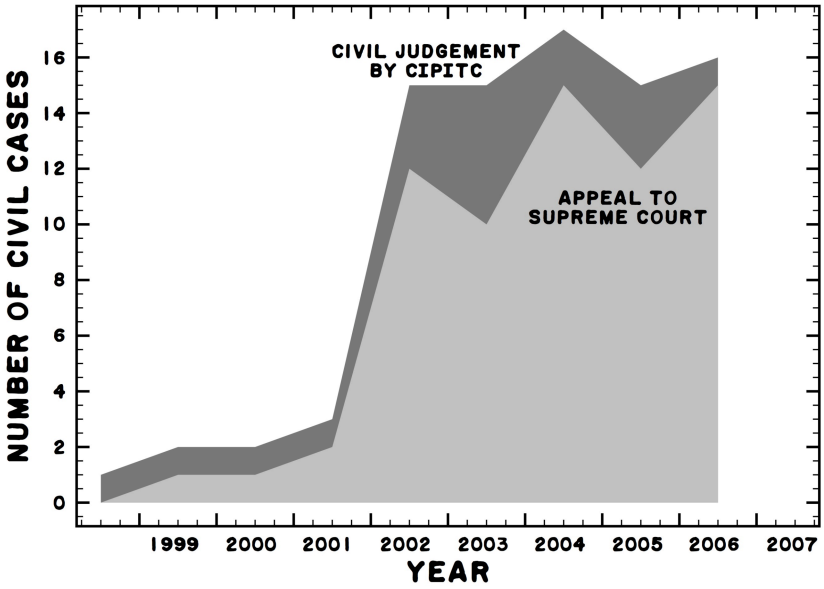


Graph 5: Time Taken to Complete A Trial at CIPITC

The time taken to complete a civil trial whose decision was made available to the author is plotted against the date that the respective trial started. Dotted line represents linear regression during 1988-2001. Dashed line represents linear regression starting in 2002, where the system of continuous trial was supposed to replace the old scheduling system. Note that no data is available after mid-2005 from pending IPITC cases.
Source: Raw date data from CIPITC database.

5. Time taken to complete a trial

Graph 5 shows the time taken for CIPITC to reach a decision for a trial as a function of the date the trial started. Linear regression was performed for two date ranges: before 2002 and after 2002, when the system of continuous trial was supposed to replace the old system of intermittent scheduling. As seen in the graph, the slopes of the regression lines are not much different. In fact the slope of the regression line increases slightly after 2002. This means that a trial that is starting in CIPITC in 2007 is likely to take about 2 years on the average before the Court's decision can be reached.



Graph 6: Number of appeals to the Supreme Court

The number of civil patent decisions by CIPITC as well as the number of civil patent cases that were appealed to the Supreme Court during the respective year are plotted as a function of time. Source: Primary data compiled from various databases within CIPITC and partially verified with the case number of the Supreme Court.

6. Appeal to the Supreme Court

Given the importance of patents in industries, it is a normal practice for a plaintiff or a defendant or both parties to appeal the CIPITC decision to the Supreme Court. Graph 6 shows the numbers of CIPITC decision and appeals. Before 2001 both of these numbers were very small. After 2001, however, the number of CIPITC decisions jumped to about 14 cases per year while the number of appeals also jumped to approximately 12 per year.

7. Decisions of the Supreme Court

Out of approximately 70 cases that have been appealed to the Supreme Court, only 5 decisions have been made available to the author. The sample size is too small to draw any conclusion.

Type	CIPITC Outgoing Case No.	Summary of Issue Involved
Reversing Administrative Decisions on Utility Patents or Utility Patent Applications	IP0045/2543	Compressor refrigerant has an inventive step.
	IP0038/2544	Pile cushion (P9433) lacks novelty due to wide usage in the Kingdom.
	IP0054/2546	Going to court was the correct thing to do when the Patent Act of 1992 allowed pharmaceutical product patent but the patent examiner refused to add product claims to a pending patent application. Instead, the plaintiff abandoned the application and filed a new application, the novelty of which being destroyed by the abandoned application.
	IP0084/2546	Changing microphone connections from parallel to serial does not endow the invention with an inventive step.
	IP0133/2546	Whirlpool's patent on horizontal washing of clothes (P10280) was deemed abandoned due to failure of the patent agent to pay maintenance fees.
	IP0019/2547	A mud and water pump patent (P8868), abandoned due to failure to pay maintenance fees, was resurrected when the circumstances surrounding the failure were heard by the Court.
	IP0144/2547	A responsible patent agent should manually remind his client that a maintenance fee is due on his flaked food patent (P8125). Putting the blame on a computer cannot justify failure to pay maintenance fees.
Reversing Administrative Decisions on Design Patents or Design Patent Applications	IP0126/2545	The spiral color pen refill lacks novelty since it is not substantially different from that registered in Indonesia by a competitor.
	IP0002/2548	Matsushita's design application for an electrical switch was not substantially different from a prior patent publication to render it new.
	IP0169/2548	The invented picture frame backing with stand was not different from prior arts enough to overcome lack of novelty objection.
Revoking Utility Patents	IP0049/2542	Transformer core (P6181) lacks an inventive step.
	IP0097/2545	Undersea tour method (P9725) lacks novelty due to widespread use in the Kingdom.
	IP0093/2545	Narrow the scope of the claims for DDI, an HIV drug (P7600).
	IP0131/2545	Phytoestrogenic Kwow Krue formulation (P8912) lacks novelty. Claims unfairly widen the scope of patent.
	IP0048/2546	New feature resulting from incremental improvements make the clutch & brake lock patentable (P10218).

Type	CIPITC Outgoing Case No.	Summary of Issue Involved
	IP0103/2549	Moisture absorbing mat (P8871) lacks novelty due to mere heating of the raw material.
Revoking Utility Models	IP0004/2546	Defendant's clutch & brake lock (UM579) is not substantially different from that described in plaintiff's utility patent (P10218). The Utility Model was therefore revoked by CIPITC.
	IP0107/2546	Water filter (UM458) lacks novelty due to widespread use in the Kingdom, even with improvements that are claimed to reduce defects and cut costs.
	IP0118/2546	An obvious invention (one without an inventive step) can still qualify for a utility model if it has novelty and industrial applicability. The meaning of a two-part claim was explained.
	IP0016/2547	Evidence helps destroy the novelty of a fabric inspecting machine.
	IP0101/2547	The plaintiff must have economic interests in the case in order to sue. UM349 for a knock-down table was not revoked.
	IP0117/2548	The utility model for a EVA-Foam book binding method invented by a Belgian (UM794) was revoked due to the existence of identical Asian traditional knowledge (for paper bookbinding).
	IP0119/2548I	There was not enough evidence to revoke the utility model on flexible straw for lack of novelty.
Revoking Design Patents	IP0017/2542	Steering wheel cover design (D4956) lacks novelty.
	IP0114/2545	Radio & TV antenna designs (D11104 & D11105) lack novelty.
	IP0013/2546	The design patent for telescopic/bending drinking straw (D13411) was revoked for lack of novelty in an *ex parte* trial.
	IP0012/2547	Rubber boots design (D15730) lacks novelty.
	IP0050/2548	Designs cannot cover functional aspects, which should be protected in a utility patent or a utility model instead.
	IP0120/2548	Designs for utensils (D15953, D15954, D15955, D15956, D15957, D15958, D15959 and D15960) were revoked for lack of novelty in this well-researched law suit.
	IP0129/2548	Design patents application for radio/TV antenna (D11854 and D11855) was novel enough to overcome lack of novelty. [Nevertheless, design patents are misused to protect function.]
	IP0156/2548	D15549 for an air conditioner remote control was revoked for lack of novelty based on advertisements in a daily newspaper prior to the design application

Type	CIPITC Outgoing Case No.	Summary of Issue Involved
		filing date.
	IP0046/2549	Designs on fork and spoon lack special features.
	IP0081/2549	Design patents for imitation flower mold (D17562, D17563 and D17564) were revoked. Utility aspect of an invention must be protected by a utility patent or a utility model, not by design.
Utility Patent Contract	IP0145/2547	Transferee refused to pay the transferor because transferor had not transferred the technology to transferee.
Utility Patent Infringements	IP0061/2546	The novel clutch & brake lock invention in UM440 is more secure and convenient than the plaintiff's invention in P10218.
	IP0069/2546	The claimed invention in UM382 is not clearly different from the prior art in P10218. UM382 was therefore revoked.
	IP0091/2546	A utility model for fluidized bed rice drying machine (UM410) was revoked since it is essentially identical to a prior art (P7081).
	IP0025/2547	Plaintiff was an inventor but did not have the right to file a patent application or sue for infringement because he was an employee of a state university. Defendant's patent application was under review by the Patent Office as a result of an opposition filed by the Plaintiff. After the Patent Office issues a ruling then a stakeholder may bring the case to CIPITC.
	IP0079/2548	The Indian process for preparing a chemotherapeutic agent was not different from a patented process (P12332) by a French company. Differences in solvent, crystallization, precipitation, temperature, pressure, and relative humidity were viewed by the Court as general chemical practices.
	IP0089/2548	Defendant's steel rod hot/cold-molded splicing process did not infringe the plaintiff's patent (P4575) which covered the cold-forging process.
	IP0106/2549 IP0107/2549	The alleged infringing rapidly deployable crane is not substantially similar to the patented invention (P8731) to trigger infringement.
Utility Model Infringements	IP0150/2547	Holder of UM440 for clutch and brake lock sued to revoke P10218. The Court found that UM440 actually infringed P10218 according to the Doctrine of Equivalence.
	IP0138/2549	Attempt to enforce non-existing right outside of the claims. Blood feud between brothers. UM1630 survived. UM1380 revoked.

Type	CIPITC Outgoing Case No.	Summary of Issue Involved
Design Patent Infringements	IP0030/2543	Thai patent rights must be granted before the rightholder may sue others for infringement. What the plaintiff claimed to be his design patent registration was actually a trademark registration.
	IP0082/2545	A design patent (P10562) for muffled door frames does not protect an element that cannot be visually perceived by potential consumers.
	IP0132/2546	Tetrapak (TH) did not show enough evidence to revoke a design patent on telescopic drinking straw (D6100).
	IP0080/2547	Design patents for a ready-made steel fence (D-9922, D9914, D9915, D9923) were revoked for lack of novelty. Not only was the design copied from Indonesian designs but the pictures in advertising brochures were also copied by the defendant.

Table 3: Notable Patent Decisions in CIPITC (1999-2006)

Selected notable patent litigation are classified in a similar manner to the classification used in Graph 4. Note that 3 types of cases were not found: (1) reversing administrative decisions on utility models, (2) utility model licensing and (3) design licensing. Source: CIPITC decisions.

9. Notable Cases

Many lessons could be learned by studying CIPITC decisions and, of course, the corresponding Supreme Court's judgments.

Out of many CIPITC patent decisions made available to the author, 40 have been selected as representing notable patent decisions. These decisions were then grouped according to the legal actions sought. Table 3 shows the result of this exercise. The rightmost column of the table help highlight important issues or legal principles in each case, for example:

- Thai patent rights must be granted before the rightholder may sue others for infringements.
- A design patent does not protect an element that cannot be visually perceived by potential consumers. Designs cannot cover functional aspects, which should be protected by a utility patent or a utility model.

Policy Discussion

Although written as preliminary findings, the author hopes this paper has illustrated the dual potential for court decision analysis as a learning tool as well as a management tool. For example, the potential as a learning tool can be found in Table 3. As a management too, the distribution analysis could be performed with respect to the type of case and the name of judges. Such results would show which judges are preferentially assigned a particular type of cases. It would serve as a rough indication for the work load of judges as well.

The difficulty in obtaining enough data for analysis, even with the help and blessing from virtually all levels of CIPITC personnel may sound hard to believe but this fact reflects the level of security that was built into the system to the point that nobody knows where or how to find the needed information. On the brighter side, this present exercise can serve as a good evidence in support of a CIPTIC-initiated review of its own information system. Court decisions should be publicized and available to all.

Another improvement that could be made at CIPITC is its trial scheduling. As shown in Graph 5, even after starting the continuous trial scheme in 2002, it has taken longer and longer every year to reach a court decision. A brainstorming session should be arranged to see whether there really is a problem and whether a practical solution can be found.

In the process of sorting out the flow of information within CIPITC, one might also find an explanation to a paradox regarding why most of the appeals to the Supreme Court seem to have disappeared during the past few years, even though the Supreme Court only considers the legal principles involved in the case.

Once everything is in order and all the tables in this article have been updated, I would urge professors in law schools across the country to draw examples from CIPITC and Supreme Court decisions to make their textbooks and lectures more practical. Besides, the next generation of patent lawyers should learn from the mistakes of the

previous generation. If the problem turns out to be the fault of the system, however, discussions by law professors could serve as a starting point for legal amendments, which would later be taken up by the government, the parliament, or political parties.

Regarding legal amendments, this paper has shown repeated misuses of the patent law, which might have resulted from misunderstanding of the law on the part of businessmen as well as legal practitioners. For example, a lay person who reads the Thai patent law for the first or even for the second or third time is not likely to pick up the notion that a design patent does not protect the design of an internal part of a machine. How can we make our law easier to read?

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บทคัดย่อ

ข้อมูลจากคดีสิทธิบัตร ที่ขึ้นสู่ศาลทรัพย์สินทางปัญญาและการค้าระหว่างประเทศกลาง (เลขคดี วันยื่นฟ้อง โจทก์ จำเลย วันพิพากษา มาตรากฎหมาย คำพิพากษา องค์คณะ) ได้รับการวิเคราะห์เบื้องต้นย้อนหลังไป 10 ปีตั้งแต่เปิดศาล โดยพิจารณาการเข้าระบบไกล่เกลี่ย จำนวนคดีสิทธิบัตรในแต่ละปีและแนวโน้ม Technical Field ของ IPC ที่เกี่ยวข้องกับคดี ประเภทของคดี เวลาที่ใช้ในการฟ้องกว่าจะมีคำพิพากษา การอุทธรณ์ไปศาลฎีกา และคดีที่น่าสนใจ ผลเบื้องต้นคือ จำนวนของคดีสิทธิบัตรยังเพิ่มขึ้นเรื่อยๆ ประมาณร้อยละ 30 ต่อปี โดยมีจำนวนคดีอาญามากกว่าคดีแพ่ง ประมาณร้อยละ 10 ของคดีสิทธิบัตรได้เข้าระบบไกล่เกลี่ยของศาล คดีสิทธิบัตรครอบคลุมแทบทุก Technical Field ในขณะที่ยังไม่พบคดีที่เกี่ยวกับสัญญาอนุญาตใช้สิทธิตามสิทธิบัตร หลังจากฟ้องแล้วโดยเฉลี่ย คู่ความต้องรอประมาณ 24 เดือนกว่าจะได้คำพิพากษา ในขณะที่คดีที่นานที่สุดใช้เวลาในศาลถึง 4 ปี เมื่อฟังคำพิพากษาแล้ว ส่วนมากโจทก์หรือจำเลยหรือทั้งสองฝ่ายจะอุทธรณ์ไปศาลฎีกา คดีที่ขึ้นศาลทรัพย์สินทางปัญญาและการค้าระหว่างประเทศกลาง เป็นตัวอย่างของหลักกฎหมาย และการนำหลักกฎหมายมาปรับใช้ในแต่ละสถานการณ์ คำพิพากษาของศาลทรัพย์สินทางปัญญาและการค้าระหว่างประเทศกลาง รวมทั้งคำพิพากษาของศาลฎีกาที่เกี่ยวข้อง มีประโยชน์ทั้งในระดับนโยบาย และในการศึกษากฎหมายสิทธิบัตร จึงควรได้รับการเผยแพร่ให้ประชาชนทั่วไปได้รับทราบหลังจากที่ศาลได้อ่านคำพิพากษาแล้ว