

The Application of Technology in Court Procedure
of the CIPITC during the COVID - 19 Pandemic*
การนำเทคโนโลยีมาใช้ในการพิจารณาคดีของศาลทรัพย์สิน
ทางปัญญาและการค้าระหว่างประเทศกลาง
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Abstract

The COVID - 19 pandemic has greatly disrupted international trade and investment as well as economy as a whole. Undeniably, the number of international trade cases has significantly risen. Meanwhile, the imposition of lockdown and travel restrictions in an effort to stem the virus outbreak in Thailand have greatly obstructed court attendance and resulted in the adjournments of most court proceedings. This article provides measures and the application of the electronic court the Central Intellectual Property and International Trade Court (the CIPITC) has adopted and reinforced to enable continuous trial and procedures during the pandemic. Problems occurring from the use of technology in court proceedings and the discussion of the continuous use of electronic procedures in the post-pandemic future are also addressed.

Keywords : COVID - 19 pandemic, electronic court, the central Intellectual property and international trade court, case adjournment, electronic court procedure

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บทคัดย่อ

การแพร่ระบาดของเชื้อไวรัสโควิด ๑๙ ส่งผลให้เกิดการชะลอตัวและการหยุดชะงักของการค้าและการลงทุนระหว่างประเทศรวมถึงเศรษฐกิจทุกภาคส่วน จำนวนคดีเกี่ยวกับการค้าระหว่างประเทศเพิ่มขึ้นเป็นจำนวนมาก ในขณะที่เดียวกันมาตรการต่าง ๆ ของรัฐที่บังคับใช้ในการลดการเดินทางเพื่อยับยั้งการแพร่ระบาดของเชื้อไวรัสก็เป็นอุปสรรคอย่างยิ่งต่อการพิจารณาคดีของศาล ก่อให้เกิดการเลื่อนคดี ทำให้มีคดีค้างพิจารณาในศาลจำนวนมากอันส่งผลกระทบต่อผลประโยชน์ของคู่ความรวมถึงความเชื่อมั่นของผู้ประกอบธุรกิจและนักลงทุน บทความนี้รวบรวมมาตรการต่าง ๆ รวมถึงวิธีพิจารณาคดีทางอิเล็กทรอนิกส์ที่ศาลทรัพย์สินทางปัญญาและการค้าระหว่างประเทศกลางนำมาปรับใช้เพื่อให้การพิจารณาคดีสามารถดำเนินไปได้อย่างรวดเร็วและเป็นธรรม โดยคำนึงถึงความปลอดภัยของผู้ที่เกี่ยวข้องทุกฝ่ายเป็นสำคัญ นอกจากนี้ยังนำเสนอปัญหาและบทวิเคราะห์ถึงความเหมาะสมในการนำมาตรการต่าง ๆ ไปใช้ต่อไปในอนาคตด้วย

คำสำคัญ : การแพร่ระบาด, เชื้อไวรัสโควิด ๑๙, ศาลทรัพย์สินทางปัญญาและการค้าระหว่างประเทศกลาง, การเลื่อนคดี, การพิจารณาคดีอิเล็กทรอนิกส์

Introduction

Since March 2020, the COVID - 19 pandemic has impacted the entire world, not only an enormous global health crisis, but also massive social and economic ones. In the international trade and investment aspects, the pandemic causes the disruption to supply chains from raw materials to finished product. Slowdowns in manufacturing due to the unavailability of labor or material inputs are an inevitable result as the virus spreads. The need of social distancing measures and lockdowns has also rendered great impacts to

the operational effectiveness of goods distribution chains. Export and import activities have been disrupted by precautionary measures to prevent the spread of virus, such as border controls, mandatory ship quarantines, and by delays in the return of vessels.⁽¹⁾ While the current proactive and extensive measures are not effective enough to contain the spread of virus and to protect people's lives, the COVID - 19 outbreak is predicted to continue to affect cross-border trade for the foreseeable future. As a consequence, there have been a considerably rise in the number of international trade and investment lawsuits filed. Based on the emerging trends in the pending COVID - 19 actions, it is expected that additional lawsuits will continue to be filed during and after the pandemic. While there has been an increase in number of international trade and investment cases, the imposition of lockdown and effort to help stem the COVID - 19 virus outbreak in Thailand have greatly obstructed parties to travel to court, resulting in the adjournments of most court proceedings which not only significantly impair interests of the parties, but also affect confidence in international trade and economy as a whole.

The Application of Technology to Court Procedures to Reinforce Case Management during the Pandemic

Having the core mission to administer justice with the internationally accepted standard and awareness that justice delayed is justice denied,

⁽¹⁾ See Darrel H. Pearson, John M. Weekes, Valerie Hughes, Sabrina A. Bandali, George W. H. Reid, Jessica B. Horwitz and Ethan Gordon, 'Trade Implications of Covid - 19 from a Canadian Perspective' (Trade Implications of COVID - 19 from a Canadian Perspective | Bennett Jones) accessed on September 1st, 2021.

the Central Intellectual Property and International Trade Court (the CIPITC), as the key organization responsible to adjudicate civil cases in relation to international trade, has an attempt to decrease the adjournments of all cases, improve court appearance rate while reducing the risk of infection. Consequently, new measures of hearings conducted virtually through video conferencing and other forms of remote technology have been adopted to enable continuous trial and procedures during the pandemic. Firstly, the electronic filing of court pleadings and documents according to the Advice of the President of the Supreme Court on Submitting, Sending, and Receiving Pleadings and Documents via the Electronic Filing System (E-Filing System) which came into effect on May 4th, 2017 has been strongly encouraged and brought into practice. Under such advice, litigants are able to send and receive pleadings, notices, court orders, and documents by the E-Filing System. The electronic documentation is also instituted and parties are able to track and monitor cases status and information through the e-filing system and the Court Integral Online Service (CIOS) without having to travel to the court. It is reported that the number of pleadings and documents submitted electronically to the CIPITC has significantly risen up during the pandemic.⁽²⁾ Additionally, required court fees and expenses can also be paid online via credit card, bank transfer or other methods specified in the Announcement of the Office of the Judiciary.⁽³⁾

⁽²⁾ The CIPITC case-filing data shows that the number of cases filed electronically to the CIPITC between January 1st, 2021 and September 30th, 2021 has increased more than twice of that in 2020.

⁽³⁾ Announcement of the Office of the Judiciary on Submitting, Sending, and Receiving Pleadings and Documents via the Electronic Filing System, announced December 30th, 2020.

Secondly, the CIPITC has encouraged the use of current rules of electronic hearing of witnesses as well as announced the new protocol regarding the remote hearings and proceedings in the COVID - 19 pandemic, extending, among others, the scope of existing use of video conferencing rule. Rule 32 of The Rules for Intellectual Property and International Trade Cases B.E. 2540 (1997) stipulates that 'In case where one party or both parties make a request and the Court deems appropriate in the interest of justice, the Court may permit the hearing of a witness being outside the Court be conducted by means of video conference. The hearing conducted under paragraph one shall be deemed proceedings conducted in a courtroom.' Under this Rule, the CIPITC has long applied the use of video conference to the examination of witnesses outside the court, mostly overseas, via video conference which remarkably facilitates speedy, productive and efficient trial while reducing cost of travelling of witnesses. Before the pandemic, the witness examination using video conferencing approach is generally adopted only in cases where witnesses reside abroad, but during the spread of COVID - 19, where the travelling between, or even within provinces, is restricted, the video conference hearing becomes more common. However, this rule permitted the use of video conference only to the testimony of witness in civil cases, while other court procedures are excluded. Moreover, only witnesses are allowed to present on the video conference, whereas litigators and other relevant parties are required to be in the courtroom. Therefore, it does not materially solve all the problems during the pandemic. Accordingly, in the early of year 2021, the CIPITC has announced the Notification on Criteria, Methods and Conditions Relating to the Electronic Court Procedures in the Pandemic of Coronavirus Disease (COVID - 19), effective on May 14th, 2021, in accordance with the Office of the Judiciary's Notification on Criteria, Methods and Conditions Relating

to the Electronic Court Procedures in the Pandemic of Coronavirus Disease (COVID - 19), aiming to allow the proceedings to continue under the current situation. According to this Notification, all proceedings of civil case, including an inquiry hearing for a petition, the settlement of issues, the case conference, can be conducted via Cisco Webex, Google Meets, and Zoom, which are the applications considered to have information system security that can prevent confidential data leakage, with judges and associate judges presiding in court and relevant parties in appropriate places as prescribed by the Notification. Apart from the testimony of witness in civil cases, other court hearings such as the hearing in Petty cases, the hearing in cases under Section 196 of the Civil Procedure Code of Thailand or the hearing of motions can be proceeded by other applications that can continuously communicate via video and audio platform as agreed by the parties such as Line Meeting.⁽⁴⁾ Under this approach, the visual and audio signals of parties or witnesses participating in the proceeding from an out of court venue are transmitted and displayed openly in the courtroom.⁽⁵⁾ The parties and lawyers will have to present their identification cards and the court officer will take their photos presenting their ID card as the evidence to ensure their true identities.⁽⁶⁾ Documents or photographs submitted in the proceeding or hearing of witness via the Electronic System are in the electronic format sent into the Electronic

⁽⁴⁾ The Appendix of the Office of the Judiciary's Notification on Criteria, Methods and Conditions Relating to the Electronic Court Procedures, announced July 20th, 2021.

⁽⁵⁾ Clause 21 of the Office of the Judiciary's Notification on Criteria, Methods and Conditions Relating to the Electronic Court Procedures, announced July 20th, 2021.

⁽⁶⁾ Clause 17 of the Office of the Judiciary's Notification on Criteria, Methods and Conditions Relating to the Electronic Court Procedures, announced July 20th, 2021.

Filing System by the party and are regarded as original documents.⁽⁷⁾ Similarly, a memorandum of proceedings and documents prepared by the Court in the course of Court Sitting via the Electronic System are in an electronic format, and signed the electronic signature (e-Signature) by the relevant persons.⁽⁸⁾ In cases that the parties cannot apply the e-Signature, it shall be deemed that such parties cannot sign under section 50 of the Civil Procedure Code of Thailand where the judges will specify the reasons of the signature missing as a replacement for the signing of such parties.⁽⁹⁾ This significantly broadens the scope of application of video conference to cover all court proceeding in all civil cases and only judges and associate judges are required to present in the courtroom. However, in April, 2021, Thailand has faced the third wave of the COVID - 19 outbreaks across the country. There have been more than 10,000 infections a day since April 14th, with deaths climbing to triple digits a day in July, making this the most severe outbreak Thailand ever faced. The pandemic, inevitably, affects the CIPITC's personnel. Some departments of the CIPITC were closed due to infections of staffs. Attempting to overcome this struggle and avoid adjournments of cases as well as to build confidence for judges, associate judges, litigators and all relevant parties in case adjudication during this severe pandemic of COVID - 19, the CIPITC has announced guidance⁽¹⁰⁾, by virtue of the Civil Procedure Code article 35,

⁽⁷⁾ Clause 24 of the Office of the Judiciary's Notification on Criteria, Methods and Conditions Relating to the Electronic Court Procedures, announced July 20th, 2021.

⁽⁸⁾ Clause 19 of the Office of the Judiciary's Notification on Criteria, Methods and Conditions Relating to the Electronic Court Procedures, announced July 20th, 2021.

⁽⁹⁾ Clause 9 of the Guidelines on the electronic trial from outside the court room, announced August 2nd, 2021.

⁽¹⁰⁾ Announcement of the Central Intellectual Property and International Trade Court on Conducting Electronic Court Procedures Outside the Courtroom, announced on August 20th, 2021.

allowing the hearing and proceeding to take place in any other places than the court. Consequently, judges and associate judges are allowed to adjudicate cases in the appropriate venues as well. Such development truly liberalizes the use of remote communication for court proceedings to reinforces the growing move towards Electronic Court and to enhance efficiency as well as facilitate access to justice.

While the courts' technological infrastructure is rapidly developing to support expanded application of video conferencing and other remote technology for the use of the electronic court, it is undeniably that not everyone has an ability to access and use the required technology. Bearing in mind the restriction in accessing to technology someone might have, measures of remote court above mentioned, thus, are strongly encouraged, but not abiding clause of practice. In cases where one or all parties are unable to applied the electronic court approach, the CIPITC has provided the separate courtrooms, which is used in the children and adolescents trial, for parties who physically present at the court, in order to avoid the gathering at the courtroom, and only parties and relevant persons will be allowed to attend the court with the implementation of social distancing measures according to the policy of the government authorities.

Looking to the Future: Some Major Concerns Regarding the Electronic Court Procedure

As for the future, after the pandemic situation has relieved, it is interesting and challenging to consider whether the use of electronic procedures shall continue to be one of the available options for litigants and to what extent it should be used. It is obvious that the electronic court has

numerous and significant benefits, especially due to its convenience, cost and time saving as both parties and lawyers are not required to come to the court. Yet, as it is very new to Thai's courts, some concerning issues are still left unaddressed. The President of Thailand's Supreme Court emphasizes that the electronic court must not diminish fundamental rights according to the law of both parties since it shall affect the fairness of court proceedings which is of great important to the judicial system. Adopting the electronic court procedure as the new normal method will be considered as effective only on the condition that the genuine justice can be served for both parties. There are certain limitations of electronic court which may obstruct the fair trial. The judges are allowed to see the witnesses through the computer screen only, which is much harder to have eye contact and observe the witness's behavior.⁽¹¹⁾ As a result, in some circumstances, the examination of the reliability of the witness is more difficult to do. Some witnesses may be able to use such loophole to testify by having others tell what they should say or read the line from paper or computer screen. Also, normally the court proceedings require the presence of the parties in the open court. With the electronic court, to remain the concept of the open court still need further considerations.⁽¹²⁾ Moreover, it is undeniable that the effectiveness of the electronic court, to some extent, depend on the abilities of the relevant parties to access to electronic devices such as notebook computer, printer, scanner, smart phone or tablet as well as secure, speedy and stable internet signal. Importantly, the electronic court procedure should be used only with the willingness and consent of the parties. Thus, in order to encourage the use

⁽¹¹⁾ R. Sadler Bailey, Advantages and Disadvantages of Virtual Court Hearings.

⁽¹²⁾ Joe McIntyre, Anna Olijnyk and Kieran Pendery, "Civil courts and COVID - 19: Challenges and opportunities in Australia", page 197.

of electronic court, the explicit and definite legislations, rules and principles are in serious need to ensure the transparency of the proceeding and give confidence to the parties. Such legislations and rules should also have appropriate timeframe for the parties to be prepared and getting ready for the electronic court. Furthermore, they must not create model or method that increases unnecessarily burden and cost for the parties.

Conclusion

To conclude, as all legal profession around the world are well aware that justice delay is justice denied, the eruption of the world wide COVID - 19 pandemic tremendously demolishes such crucial principle. Nevertheless, the safety of parties, lawyers, judges and relevant court personnel is as much important. Therefore, to create suitable balance between these two essential elements, the Court of Justice of Thailand and the CIPITC as the specialized court for international trade cases have developed the electronic court procedure, especially in civil cases. It is believed to be an effective method to prevent further delay of cases which to some extent undeniably benefits and gives confidence to parties involving in international trade. It also enables the court proceedings to be carried on in safe manner due to the distance created between judges and each party. As the electronic court procedure has mainly been invented to cope with the COVID - 19 pandemic, in order to continue using such procedure in normal circumstance, certain concerns needed to be taken into account. The upcoming rules or regulations should provide clear and fair measures to address such concerns in order to ensure that the genuine justice is served to every party involved. It is believed that although the electronic court procedure has certain

limitations in some extent and cases, such limitations are regarded as the problems that can be overcome and it does not have adverse impact on the fairness of the court procedure. With tremendous and recognizable advantages of the electronic court procedure, it is anticipated that the electronic court procedure shall be developed as the new normal court procedure using to provide justice to the parties in the near future. When the effective legislations and rules are imposed, the technology needed to support the electronic procedure are widely accessible and all the relevant personnel in justice system are ready to learn and adapt to this new procedure, the electronic court procedure shall be considered as the true new normal and become one of the effective alternatives to render justice to all relevant parties which is the primary goal of the CIPITC.

