

## Patent enforcement in Laos

### 1. What are the most effective ways for a patent owner to enforce its rights in Laos?

Generally, a patent infringement or disputes may be settled in Laos under 6 ways as provided under Article 127 of Lao IP Law as follows:

- (i) Reconciliation;
- (ii) Mediation;
- (iii) Administrative remedies;
- (iv) Remedy through Economic Dispute Resolution Committee;
- (v) Judicial actions to People's Courts;
- (vi) International dispute settlement

**Reconciliation:** In Laos, the parties may reconcile with regard to IPR violations. The agreement resulting from the reconciliation shall adhere to contracting principles as provided for in the Law on Contract and Tort.

**Mediation:** In Laos, the parties may choose the mediation form to resolve their dispute at any time in accordance with laws and regulations.

**Administrative Remedies:** In Laos, the parties may purpose to the intellectual property administration authority for dispute resolution relating to intellectual property in accordance with laws.

A dispute that can be remedied in administrative mean shall be any dispute relating to registration of industrial properties, new plant varieties and provision of information related to copyright and related rights.

**Remedy through Economic Dispute Resolution Committee:** In Laos, the parties may request the economic Dispute Resolution Committee at any time to resolve their intellectual property dispute in accordance with the Law on Economic Dispute Resolution and other relevant laws and regulations.

**Judicial Actions to People's Court:** In Laos, the parties may file an action to the People's Court to decide on intellectual property dispute in accordance with laws and regulations.

**International Dispute Settlement:** In Laos, the intellectual property dispute settlement of international nature shall be proceeded in accordance with international conventions and agreements to which the Lao PDR is a party.

In practice, most patent infringement cases in Laos can be settled firstly by sending a cease and desist letter or proposing a patent licence to the infringer.

Alternatively, a patent owner can enforce its patent rights through criminal and civil proceedings. However, up to now, no patent infringement cases heard by Laotian courts have been reported.

### 2. What are the stages in the litigation process leading up to a full trial?

In general, the following stages occur before a full trial:

- The patent owner conducts a private investigation to collect evidence of infringement.
- The patent owner sends a cease and desist letter to the alleged infringer informing the party of patent validity, ownership and requesting that the infringer ceases infringing the patent. If no reply is received, a follow-up letter may be sent to the infringer after expiry of the prescribed period.
- Both parties enter into direct negotiation or mediation to settle the infringement case.
- If no settlement is reached within the deadlines, the patent owner initiates a civil action against the infringer by filing a petition with a competent Laotian Peoples' court and serving it to the infringer. Kindly note that the People's Court shall have jurisdiction over all violations of intellectual property rights in accordance with the procedures as provided for in the Law on Civil Procedures and the Law on Criminal Procedures as the case may be.
- The court, upon finding the petition grounded, will summon the infringer. In return, the infringer must file an answer to the petition with the court and serve a copy of the answer to the patent owner.
- The court sets a hearing date in order to determine whether both parties are committed to litigation. During the hearing the court will set out the issues to be tried.
- Both parties prepare and submit written testimonies, supporting documents and evidence for submission to the court.

- A decision is usually made within one month from the hearing date.

### **3. How easy is it for defendants to delay proceedings in Laos and how can plaintiffs prevent them from doing so?**

The defendant may attempt to delay proceedings by requesting extensions of individual deadlines or unreasonable postponements of hearing, or by raising procedural issues concerning the handling of the case that require decisions by the court. The plaintiff can oppose any such request, and the court will then consider whether the request is reasonable.

### **4. How might a party challenge the validity of a patent through the courts in anticipation of a potential suit for infringement being issued against it?**

A party anticipating an infringement suit would typically attempt to challenge the validity of the patent at issue before DIP by filing a patent invalidity case and become a plaintiff. While this would not prevent an infringement suit, the Laotian court would usually consider the invalidity case first before making a decision in the infringement suit.

In case an infringement suit has already been initiated, the defendant can claim in its defence that the patent is being considered for invalidation/cancellation. The defendant can file a counterclaim for patent invalidity with the court alongside the answer to the infringement complaint, and serve a copy of the counterclaim on the plaintiff. The plaintiff must file an answer to the counterclaim with the court and serve a copy of the answer on the defendant. Alternatively, the defendant may file an invalidity action against the plaintiff's patent to bring about a new suit. The judge appointed in the infringement case is usually also appointed in the invalidity case and, after consulting with the parties, may decide to merge the cases.

### **5. Does Laos apply a doctrine of equivalents and, if so, how?**

At present, there is no statutory provision concerning the application of the doctrine of equivalents in Laos. In addition, no precedent case on patent infringement has been heard. As such, the doctrine of equivalents may not be adopted to handle patent infringement in Laos.

### **6. Is it possible to obtain preliminary injunctions? If so, under what circumstances?**

Preliminary injunctions are available under Article 144 of Laotian IP Law. A patent owner may apply to the court for an injunction if there is clear evidence that a person has committed or is about to commit an infringing act. In detail, an individual, legal entity or organization may file a complaint requesting the People's Court to order prompt and effective provisional measures to:

- (i) prevent an infringement of any intellectual property right from occurring;
- (ii) prevent the entry into the channels of commerce of goods, including imported goods immediately after customs clearance;
- (iii) preserve relevant evidence in regard to the alleged infringement.

To request a court in Laos to award a preliminary injunction, an application for a preliminary injunction (*i.e. a provisional measure*) shall be required to:

- (i) provide any reasonably available evidence in order to satisfy the Court with a sufficient degree of certainty that the applicant is the right holder and that the applicant's right is being infringed or that such infringement is imminent;
- (ii) provide a security or equivalent assurance sufficient to protect the defendant and to prevent abuse;
- (iii) supply other information necessary for the identification of the goods concerned by the authority that will execute the provisional measures.

### **7. Will Laotian courts consider decisions in cases involving similar issues from other jurisdictions?**

Foreign court decisions in similar cases are generally unenforceable in Laos, but may be recognised as proof of a claim adjudicated abroad.

### **8. Can the successful party in Laos obtain costs from the losing party?**

Yes; however, the value of the costs is at the judge's discretion. A defendant may request the Laotian People's Court to order a party at whose request measures were taken and who has abused enforcement procedures to provide to a party wrongfully enjoined or restrained with compensation including expenses in connection with the legal action, which may include attorney's fees for the injury suffered because of such abuse.

### 9. What are the typical remedies granted to a successful plaintiff?

In the court proceedings in Laos, the plaintiff may request the People's Court to:

- (i) Order the infringer to desist from an infringement;
- (ii) Order the suspension of Customs procedures;
- (iii) Order the seizure of goods to prevent the entry into the channels of commerce of imported goods that involve the infringement of an intellectual property right, immediately after customs clearance of such goods;
- (iv) Order a declaratory judgment of infringement;
- (v) Order the infringer to pay damages adequate to compensate;
- (vi) Order the infringer to pay the right holder expenses, which may include appropriate attorney's fees;
- (vii) Order that goods that have been found to be infringing, be destroyed or otherwise disposed of in such a manner that such goods will not enter channels of commerce;
- (viii) Order that materials and implements the predominant use of which has been in the creation of the infringing goods be disposed of outside the channels of commerce in such a manner as to minimize the risks of further infringements.

In considering requests under items 7 and 8 above, the People's Court shall take into account for proportionality between the seriousness of the infringement and the remedies ordered as well as the interests of third parties.

### 10. How are damages awards calculated? Are punitive damages available?

The court generally awards only the actual damages suffered as a result of the infringing activities. Per Article 141 of Laotian IP Law, the People's Court shall set damage awards in an amount sufficient to compensate the party making the claim for its losses and to deprive the infringer or other violator of any profit from its unlawful act. The People's Court may order recovery of profits and/or payment of damages even where the infringer did not knowingly, or with reasonable grounds to know, engage in infringing activity.

Punitive damages are not available in Laos.

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