

## Intellectual Property & Technology Review

Dear Clients & Friends

### Senior Counsel Appointment

#### Dr Stanley Lai, SC

We are pleased to announce that our Head of Intellectual Property & Technology, Dr Stanley Lai, has been appointed as Senior Counsel on 9 January 2010 at the opening of the legal year. The appointment of Senior Counsel is given to those with outstanding ability as advocates, extensive knowledge of law and high professional standing.

Stanley is a specialist in all forms of Intellectual Property litigation and enforcement. He also maintains a commercial litigation practice, and regularly advises and represents clients on information technology disputes. Stanley advises a large number of local and foreign clients on branding strategy, and general IP portfolio management and domain name protection. Stanley's practice has also extended to advising bio-medical and pharmaceutical companies on issues of regulatory/ethical compliance, clinical trials, product recall and product liability. Stanley graduated from the University of Leicester with an LLB (Hons) degree in 1992. He was called to the Bar at Lincoln's Inn in 1993. He obtained an LLM from the University of Cambridge in 1994 and was called to the Singapore Bar in 1995. Stanley then commenced his Ph.D research at the University of Cambridge in the field of technology law and computer software copyright and completed his doctorate within three years. He is the first Singapore-born lawyer to have been conferred a Ph.D in Law from the University of Cambridge.

### General

#### Singapore announces new tax breaks for research and development / registration and acquisition of intellectual property

The Singapore Minister for Finance delivered the Budget Statement for the Financial Year 2010 ("**Budget 2010**") on 22 February 2010. Budget 2010 introduces a new Productivity and Innovation Credit scheme that provides enhanced tax deductions for businesses incurring expenditure in activities that boost productivity and innovation.

In 2008, Singapore introduced enhanced tax deductions that allow businesses to deduct up to 150% of expenditure on research and development activities ("**R&D**"). Budget 2008 also introduced the Research and Development Tax Allowance scheme (which provided for additional deductions for incremental expenditure on R&D over a base level) and the Research and Development Incentive for Start-up Enterprises scheme (which provided for cash grants for start-up companies which had incurred a specified level of expenditure on R&D and had a tax adjusted loss).

In the proposed budget for 2010, Singapore has introduced enhanced tax deductions for expenditure on a broader range of activities. Budget 2010 increases both the amount of the tax deductions and the activities that qualify for the deductions. Under the Productivity and Innovation Credit scheme, six categories of activities are now eligible for tax deductions. These categories are:

- R&D
- Intellectual property registration
- Intellectual property acquisition
- Design activities
- Automation of processes
- Training of employees

Businesses will be able to claim enhanced tax deductions (or allowances) for 250% of the amount of qualifying expenditure incurred in each category, up to a maximum of S\$300,000 of qualifying expenditure in each category for each assessment year. Normal tax deductions or allowances are available for any balance expenditure in excess of S\$300,000 in each category for each year of assessment (i.e. up to 150% tax deduction for any balance expenditure in excess of S\$300,000).

In addition, businesses with at least three local employees may convert the tax deductions (or allowances) under the Productivity and Innovation Credit scheme into a cash grant equal to 7% of the amount of tax deductions (or allowances) allowed, i.e. up to a maximum cash grant of S\$21,000 per year of assessment.

The Productivity and Innovation Credit scheme will be available from Year of Assessment 2011 to Year of Assessment 2015. Further details will be released by the Inland Revenue Authority of Singapore in June 2010.

## Patents

### **Singapore Court of Appeal considers novelty and inventive step requirement in patent dispute**

*Mühlbauer AG v Manufacturing Integration Technology* [2010] SGCA 6

The Singapore Court of Appeal has decided that Manufacturing Integration Technology Ltd, a local company listed on the Mainboard of the Singapore Exchange Securities Trading Limited, has infringed a patent owned by Mühlbauer AG, the world's market leader in production solutions for die sorting, manufacturing of radio frequency identification (RFID) labels/tickets and for the production and personalisation of cards, passports and other ID documents.

The appeal arose out of an earlier lawsuit that took place in the High Court for patent infringement commenced by Mühlbauer AG against Manufacturing Integration Technology Ltd for infringement of Mühlbauer AG's patent. Mühlbauer AG's patent was for a device known as a die sorter and flip chip machine which had a specific method for inspecting, picking up and placing electronic components (dies) onto substrates or tape and reel packaging. The inventive concept of Mühlbauer AG's patent was embodied in its invention's ability to conduct a concurrent inspection of a die through a pivoting part using just two pickup heads.

Even though Manufacturing Integration Technology Ltd had admitted to infringing Mühlbauer AG's patent during the High Court trial, Mühlbauer AG's patent was found to be invalid by the High Court in the same trial and was subsequently revoked. In addition, the High Court decided that Mühlbauer AG had made groundless threats of patent infringement proceedings against Manufacturing Integration Technology Ltd and was thus liable for damages.

In its decision released on the 23 February 2010, the Court of Appeal allowed Mühlbauer AG's appeal and overturned the earlier decision of the High Court.

The Court of Appeal found Mühlbauer AG's patent to be valid over various other inventions belonging to a number of companies (including Advanced Systems Automation Limited, Matsushita Electric Industrial Co Limited, National Semiconductor Corporation, and KK Shinkawa) and thus accorded protection to what it described as Mühlbauer AG's "*valuable contribution to the state of the art*". The Court of Appeal further granted a certificate of contested validity in respect of Mühlbauer AG's patent in Singapore and found that Mühlbauer AG did not make any groundless threats of patent infringement proceedings against Manufacturing Integration Technology Ltd.

The matter does not end here as the High Court has now scheduled a further hearing in respect of the assessment of the amount of damages or profits that are payable by Manufacturing Integration Technology Ltd to Mühlbauer AG as a result of the infringement by Manufacturing Integration Technology Ltd. Manufacturing Integration Technology Ltd is also liable to Mühlbauer AG for the costs of the High Court trial and the proceedings before the Court of Appeal.

Allen & Gledhill represented Mühlbauer AG in its successful Appeal.

## Copyright

### **Singapore High Court rules against service provider of Internet-based facility which allowed public to record free-to-air broadcasts and films**

*RecordTV Pte Ltd v MediaCorp TV Singapore Pte Ltd & Ors* [2009] SGHC 287

In *RecordTV Pte Ltd v MediaCorp TV Singapore Pte Ltd & Ors*, the Singapore High Court found that the service provider of an Internet-based facility which allowed members of the public to request for free-to-air broadcasts and films to be recorded for viewing had infringed the Copyright Act. The High Court did not find the service provider to be liable for direct infringement of the copyright subsisting in the broadcasts and films. Instead, the court held that the service provider had infringed copyright laws by communicating the free-to-air broadcasts and films to the public and authorising the making of copies by the end-users. Please [click here](#) to read on.

### **Copyright Act amended with effect from 31 December 2009: Changes to Copyright Tribunal's jurisdiction and operational aspects**

The Copyright Act has been amended with effect from 31 December 2009 with the key objective of updating and maintaining its relevance in the face of advancing technologies which have given rise to new ways of accessing and using copyright works. Principally, the amendments concerned the jurisdictional and operational aspects of the Copyright Tribunal (the "**Tribunal**").

Consequential amendments were also made to the Copyright Tribunal (Procedure) Regulations pursuant to the Copyright Tribunal (Procedure) (Amendment) Regulations 2009, which also came into force on 31 December 2009.

#### **Key amendments**

The key amendments to the Copyright Act are set out below:

- The Tribunal will be able to hear licence disputes relating to all types of copyright works, including disputes relating to the reproduction and storage of digital sound recordings in hard disks for commercial use.
- The jurisdiction of the Tribunal will be expanded to cover licensors who are in the business of collectively administering copyright licences for different copyright owners. This development ensures that the Tribunal acts as a check against licensors imposing unreasonable licensing fees and terms. The Intellectual Property Office of Singapore (the "**IPOS**") intends to enact further regulations in relation to this provision. Following the approach in Australia and the United Kingdom, individual copyright owners will not fall under the Tribunal's jurisdiction.
- The Tribunal may substitute a licence scheme.
- Operationally, the Tribunal will expect an increase in the number of appointed Deputy Presidents and members.

#### **Background**

As a matter of background, the IPOS conducted a public consultation to seek feedback on the proposed changes to the jurisdiction and operational aspects of the Tribunal in February/March 2008. The Act was introduced as a Bill in Parliament in August 2009 and passed the following month.

## Further information

Should you have any queries as to how these developments may affect your business, please do not hesitate to get in touch with your usual contact at Allen & Gledhill LLP or any of the following:

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