IN-DEPTH

Intellectual Property

MALAYSIA

LEXOLOGY

Intellectual Property

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In-Depth: Intellectual Property (formerly The Intellectual Property Review) provides a global overview of the forms of intellectual property coverage available in each jurisdiction, along with an update of the most consequential recent developments. It offers deep insight into the key legal and commercial issues that arise when seeking to obtain and enforce IP rights – including patents, copyright, designs, trademarks and trade secrets.

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Malaysia

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Summary

Introduction

Forms of intellectual property protection

There are a variety of intellectual property (IP) protection mechanisms available in Malaysia, and the Intellectual Property Corporation of Malaysia (MyIPO) is the government agency under the Ministry of Domestic Trade and Cost of Living (KPDN) responsible for administering IP registration.

Patents

The Patents Act 1983 (PA 1983) and the Patents Regulations 1986 (PR 1986) govern patent protection in Malaysia. Under the PA 1983, an invention can be patented if it is new, involves an inventive step and is capable of industrial application.[1] An invention is defined as an idea of an inventor which permits in practice the solution to a specific problem in the field of technology and may be or may relate to a product or process.[2] The owner of a patent has the exclusive rights to exploit the patented invention, assign or transmit the patent and license the patent. The PA 1983 stipulates that the duration of protection is 20 years from the date of filing of an application. Guidance on the patent application process is available on MyIPO's official website.[3] Upon expiry of the patent, the protected invention enters the public domain.

Utility innovations

Utility innovations (UI), the Malaysian equivalent to a utility model, can be protected if it is both new and capable of industrial application.[4] UI are also governed by the PA 1983 and the PR 1986. Only a single claim is allowed in a UI application and generally the examination process is quicker than that of a patent application. A UI is valid for 10 years from the date of filing of an application and before the 10 years expire, the owner may apply for an extension for two consecutive terms of five years each. This makes the total duration of protection for a UI potentially 20 years from the filing date (10 + 5 + 5).[5]

Trademarks

Trademarks are governed by the Trademarks Act 2019 (TMA 2019) and the Trademarks Regulations 2019 (TMR 2019). A trademark must consist of a sign capable of being represented graphically which is capable of distinguishing the goods or services of one undertaking from those of another. Registration grants protection for a period of 10 years, with the option to renew indefinitely[6] subject to payment of the prescribed fee. Registration alone is not sufficient and there is a requirement under the TMA 2019 to use the mark, as it may become vulnerable to cancellation for non-use. With Malaysia's accession to the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks (Madrid Protocol), it is now more convenient and cost-effective for trademark applicants to register and manage their trademark portfolio worldwide by filing a single application and paying one set of fees to apply for protection in over 120 countries.

For unregistered trademarks, protection is available under the common law tort of passing off. A passing-off action provides a remedy to prevent traders from misrepresenting in the course of trade their goods or business as being, or being associated in some way with, the goods or business of another trader. Protection subsists if the claimant can show continuing use and subsisting goodwill.

Copyright

Copyright subsists the moment the work is reduced to material forms and is original. There is no requirement under the Copyright Act 1987 (CA 1987) for registration, but the copyright owner may affirm a statutory declaration (under section 42) as *prima facie* evidence or formally notify and deposit a copy of the work with MyIPO by way of a Copyright Voluntary Notification. The duration of protection for copyright is the life of the author plus 50 years. As Malaysia is a member of the Berne Convention on the Protection of Literary and Artistic Works (Berne Convention),[7] a work that originates in any one of the member countries will be afforded the same level of protection in all other member countries as that one country grants to works of its own nationals.

Industrial design

Industrial designs protect the shape, configuration, pattern or ornamentation applied to an article by any industrial process or means. Registration is required to be afforded protection, and the design must be new and not contrary to public order or morality. A design is considered "new" if it is not disclosed to the public anywhere in Malaysia or elsewhere or not the subject matter of another application for registration in Malaysia having an earlier priority date by a different applicant. An exception to disclosure is the 6-month grace period offered where designs appear in official or officially recognised exhibitions. Protection can last up to 25 years from the filing date of the application. The initial duration of protection is five years and can be renewed four times for five-year periods. As Malaysia is a signatory to the Paris Convention, an applicant may claim priority based on an earlier foreign application in another Paris Convention country if the application in Malaysia is filed within six months from the date of the foreign application.

Trade secrets

Trade secrets and confidential information can be protected by the common law tort of breach of confidential information and by contract. Information can be protected as confidential if the information is not in the public domain, the type of information has the quality of being confidential and the information was disclosed by the disclosing party to the receiving party in circumstances expressly or implicitly imposing a duty of confidence on the recipient of the information. There is no separate recognition of trade secrets, but trade secrets can be protected if they meet the conditions for confidentiality. Certain relationships can also give rise to legal obligations to protect and/or not misuse trade secrets and confidential information; for example, in the context of certain fiduciary relationships. There is no system of registration for confidential information. Protection lasts as long as the information does not lose its quality of confidence.

Geographical indication

The law governing geographical indications is contained in the Geographical Indications Act 2022 (GIA 2022) and the Geographical Indications Regulations 2022 (GIR 2022). "Geographical Indication" (GI) refers to a sign that may include one or more words identifying goods as originating from a specific country or region, or a particular area or locality within that country or region, where a quality, reputation or other characteristic of the goods is essentially linked to its geographical origin. GI are afforded protection for 10 years from the date of filing and may be renewed indefinitely every 10 years subject to payment of renewal fees.[8] The official GI logo is used to mark products that have been recognised as possessing specific qualities, reputation or characteristics linked to their geographical origin.

International treaties

Malaysia is a member of the World Intellectual Property Organization (WIPO) and a signatory to among others, the Paris Convention for the Protection of Industrial Property, the Berne Convention and the Madrid Protocol. Malaysia is also a signatory to the Agreement on Trade-Related Aspects of Intellectual Property (TRIPS) signed under the auspices of the World Trade Organisation (WTO). Malaysia's accession to the Patent Cooperation Treaty (PCT)[9] provides applicants with an avenue for filing of international patent applications in multiple member countries and simplifies entry into Malaysia for foreign PCT applicants. Malaysia's commitment to the global IP system and adherence to international IP treaties is further reflected in its accession to the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure (Budapest Treaty)[10] in 2022, which simplifies patent procedure for inventions involving microorganisms by allowing a single deposit at an International Depository Authority (IDA). In addition, Malaysia's accession to the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled (Marrakesh Treaty)[11] in the same year provides an exception to copyright protection that will allow persons who are blind, visually impaired or print disabled to have access to printed materials in accessible formats.

Year in review

Post-grant patent opposition

One of the most significant recent developments in Malaysia in 2025 is the coming into force of specific provisions of the patent opposition procedure under the Patents (Amendment) Bill 2022 ("Amendment Act"). Whilst the Amendment Act came into force in 2022, several of its provisions were deferred and on 6 October 2025, KPDN designated 31 December 2025 as the date for the entry into force of the remaining provisions through a notice in the Government Gazette.

Under the Amendment Act, interested persons can bring post-grant opposition proceedings by filing a notice of opposition, accompanied by a statement setting out the grounds of opposition and the evidence in support, with the Registrar of Patent within six months from the date of publication of the grant of the patent.

The grounds for post-grant opposition are limited to the following grounds under section 55A of the Amendment Act:

1. the subject of the patent is not an invention or is excluded from protection;
2. the subject of the patent is not novel, not inventive and/or not industrially applicable;
3. the description or the claims do not comply with the requirements of the Patent Regulations; and
4. drawings necessary for the understanding of the claimed invention have not been supplied.

In addition to the Amendment Act, the Patents (Amendment) Regulations 2025 (Amendment Regulations)[12] came into effect on 31 December 2025. The Amendment Regulations are intended to clarify certain administrative matters, introduce patent opposition procedures and related fees.

The post-grant opposition procedure includes (Regulations 43A to 43U, Amendment Regulations):

1. the filing of a counter statement and/or requests for amendment of the patent by the patent owner;
2. the filing of a statutory declaration with evidence in reply and/or response to request to amend by the interested person;
3. the filing of further evidence by either party, subject to leave of the Registrar;
4. the filing of written submissions;
5. the formation of an ad hoc opposition committee to give recommendations to the Registrar;
6. the Registrar making a decision at the end of the opposition proceedings.

Opposition proceedings can only be commenced if the interested person has not started invalidation proceedings or any other court proceedings in relation to the relevant patent. When opposition proceedings before the Registrar are pending, the interested person must not institute any court proceedings against the patent owner for invalidation unless both parties to the opposition proceedings agree for the invalidation proceedings to be instituted or if the interested person is a defendant in infringement proceedings.

Online filing for Copyright Voluntary Notification (CVN)

Effective from 2 December 2025,[13] MyIPO announced that all applications for the CVN may be accessed and filed online through MyIPO's official system. The last day of operation of the Copyright to You (CR2U) Counter at MyIPO was on 31 December 2025 and effective 2 January 2026, this service was discontinued to encourage full utilisation of the online filing platform.

Collective Management Organisation guidelines

In April 2025, KPDN launched the Guidelines of Copyright (Collective Management Organisation) 2025,[14] empowering MyIPO to monitor royalty collections and distributions. These guidelines were scheduled to come into force on 16 January 2026 but have now been stayed pending judicial review.

First GI case in Malaysia

In September 2025, and for the first time in Malaysian history, a company and its director were charged in the Johor Bahru Sessions Court under the GIA 2022 for applying a GI "KK Tanom Coffee" on 1,368 packets of coffee which indirectly refer to a registered GI, "Tenom Cofee", without the approval of the proprietor of the registered GI. This case marks the first prosecution under the GIA 2022 since it came into force on 18 March 2022.

Obtaining protection

Obtaining protection for various IP rights

Patents

An applicant should start by conducting a patent search to assess the state of the art, identify potential prior art and determine claim drafting strategy. Note, however, that these searches are indicative and not determinative of patentability. The next stage would be drafting the patent specification, which includes among others, the description of the patent, claims, abstract and drawings (where required). If protection is required in multiple countries, the applicant should identify countries of interest (for PCT filing or national phase filing). A PCT application will designate all major countries including Malaysia when it is filed. Only a national or resident of Malaysia can file a PCT application with MyIPO. If the first application is filed via PCT and the applicant and/or inventor(s) is a resident of Malaysia, written authorisation will need to obtained under Section 23A of the PA 1983 from the Malaysian Patent Registrar before the PCT application can be filed. For a direct route patent application, irrespective whether the novelty or inventive step or the commercial viability has been determined, the foreign applications will need to be filed by the 12-month period (or the relevant grace period of the respective country).

Not all inventions are patentable. Section 13 of the PA 1983 provides that the following shall not be patentable, save for products used in any such methods:

1. discoveries, scientific theories and mathematical methods;
2. plant or animal varieties or essentially biological processes for the production of plants or animals, other than man-made living micro-organisms, microbiological processes and the products of such micro-biological processes;
3. schemes, rules or methods for doing business, performing purely mental acts or playing games; and
4.

methods for the treatment of human or animal body by surgery or therapy, and diagnostic methods practised on the human or animal body.

Genetic material – notably isolated DNA sequences, whether natural or mutated

While the PA 1983 does not expressly refer to DNA, patentability is assessed under general principles of "invention", novelty, inventive step, industrial applicability and exclusions. The Patent Examination Guidelines 2023[15] provide that a mere discovery of a previously unrecognised substance is not patentable, inferring that patent protection is afforded to inventions and not mere discoveries.

Genetically altered material may be patentable in Malaysia under the PA 1983 if it is artificially created or modified, involves human intervention and the resulting application of technology in controlling or modifying the genes does not happen naturally. The applicant must clearly identify and disclose the function or practical application of the isolated or modified genetic sequence.

Methods of production in cells, plants and animals

Plant or animal varieties or essentially biological processes for the production of cells, plants or animals, other than man-made living micro-organisms, micro-biological processes and the products of such micro-biological processes are not patentable.[16]

Nevertheless, a *sui generis* system of protection, Malaysia's Protection of New Plant Varieties Act 2004 (PNPV 2004) is in line with the Convention on Biological Diversity and is modelled on the International Convention for the Protection of New Plant Varieties. Malaysia has created a *sui generis* system to protect plant varieties under the. A plant variety is registrable if it is new, distinct, uniform and stable.[17] If a plant variety is bred, or discovered and developed by a farmer, local community or indigenous people, the plant variety may be registered as a new plant variety.

Business methods

Business methods are excluded from patentability under section 13 of the PA 1983. Business methods may be patentable only if claimed as part of a technical solution (eg, a computer-implemented system solving a technical problem). Business methods cover subject matter or activities which are of a financial, commercial, administrative or organisational nature and fall within the scope of schemes, rules and methods for doing business.

Computer software

Copyright is recognised as the main form of protection for IP rights of the owner for computer programs and software. Computer software, including the source codes and object codes, are protected as a form of literary work under the CA 1987. Copyright of computer software only subsists if the software complies with the conditions laid down in

the CA 1987; namely, that the work is original and that the author is a qualified person or the work is made in Malaysia or first published in Malaysia.

A computer program by itself is not patentable.[18] However, if the claimed invention makes a technical contribution to the prior art, it should not be refused simply because it uses software. For example, it may be possible to obtain a patent for a computer program if the invention, when running on a device, is proven to be more than just an abstract idea as it makes a technical contribution beyond using a computer to gather and analyse data.

Methods for treating patients, both with drugs and medical procedures

Methods for the treatment of patients, whether they involve drugs and medical procedures are generally not patentable under the PA 1983.[19] However, products used in treatment may be patentable. Further, a claim in the form "Use of a composition X for the manufacture of a medicament for therapeutic application Z" is allowable for either a first or "subsequent" such application, if this application is new and inventive.

Trademarks

The key stages of an application for trademark registration include submission of a trademark application, where MyIPO first conducts a formality check for compliance with statutory requirements. An applicant has 12 months to respond to any non-compliance, failing which the application must be refused. After passing the formality check, the Registrar conducts a substantive examination during which a search is conducted on prior marks and the trademark is substantively examined for registrability. If the application does not fulfil registrability requirements, the Registrar must issue a written notice informing the applicant of the grounds of provisional refusal. The applicant can respond to the provisional refusal within the period specified in the written notice, failing which the application is deemed withdrawn. If the Registrar maintains its objections against registration of the mark and refuses to register the mark, the applicant can file an appeal to the High Court of Malaysia against the total provisional refusal within one month from the date the Registrar's written grounds of decision of the total provisional refusal are issued to the applicant. If the application passes the substantive examination, the trademark is accepted and published in the Federal Gazette.

Madrid Protocol

With Malaysia's accession to the Madrid Protocol in December 2019, applicants can register and manage trademarks worldwide by filing a single application and paying one set of fees. The Madrid system, administered by WIPO, is a convenient and cost-effective solution. Under Regulation 61 of the TMR 2019, any application for an international trademark registration shall be filed with the International Bureau through the intermediary of the Trademark Registrar accompanied by payment of the prescribed fee. The application shall only be made by a citizen of Malaysia, a body or corporation incorporated or constituted under the law of Malaysia, a person domiciled in Malaysia, or a person who has a real and effective industrial or commercial establishment in Malaysia.

Copyright

Registration is not required for copyright protection to subsist. However, there is a procedure for voluntary notification with MyIPO. Although notification is not a requirement to obtain copyright protection in Malaysia, a voluntary copyright notification can serve as *prima facie* evidence of copyright. Alternatively, an author may choose to have a Statutory Declaration prepared and signed for each piece or collection of work.

Industrial design

An applicant should start by conducting an industrial design search on the MyIPO register. Note, however, that these searches are indicative and not determinative of industrial design registrability. Thereafter, the applicant should prepare relevant information and documentation such as the following before filing the industrial design application with MyIPO:

1. representations of the article in all the different views showing the key features of the design;
2. a description of each view should be provided;
3. names and addresses of all the authors of the design;
4. statement indicating where the novelty in the industrial design resides; and
5. provide a signed copy of the ID Form 10 (appointment of agent form), to be signed by an authorised signatory.

On submission of an industrial design application, MyIPO first conducts a formality examination for compliance with statutory requirements. If there are any issues requiring clarification or objections, MyIPO will issue a letter (known as Office Action). An applicant has three months to respond to the Office Action, failing which the application is deemed abandoned. If the application passes the formality examination, the industrial design is accepted, MyIPO issues a certificate of registration and publishes the design in the Official Journal.

Implications on patents, trademarks and copyrights on the use of AI

Patents

Under the PA 1983, any person may make an application for a patent either alone or jointly with another.[20] Regulation 6 of the PR 1986 requires for name and address of the inventor to be submitted during the application. From these statutory provisions, an inventor must be a natural person. Even if AI is used as a tool, inventorship must be attributed to the human who devised the inventive concept or exercised creative control. There has not been any authority in Malaysia where an AI system has been recognised as an inventor.

Trademarks

Trademark registration for any AI-generated sign follows the same principles as traditional trademarks. For registrability, any AI-generated sign must still meet the criteria for distinctiveness and must not be confusingly similar to existing trademarks.

Copyright

Section 10 of the CA 1987 provides that copyright protection subsists only if the author of the work is a “qualified person” who is either a citizen or permanent resident of Malaysia, or a non-human entity such as a body corporate that is established in Malaysia and constituted or vested with legal personality under Malaysian law.[21] The duration of copyright protection incorporates the terms "life of the author", "death" and "personal representative". This indicates that the current legal framework only applies to the natural person[22] and does not extend to any AI system.

Industrial design

Section 3(1) of the IDA 1996 defines “author” as the person who creates the design. This indicates that the current legal framework only applies to the natural person and does not extend to any AI system.

Enforcement of rights

Possible venues for enforcement or revocation

Judicial route

There is a specialised IP court that may hear all IP-related disputes filed in that court. However, outside of Kuala Lumpur, any High Court in Malaysia has jurisdiction to try an IP dispute. A dissatisfied party can appeal to the Court of Appeal. Leave must be first obtained from the Federal Court for a further appeal to the Federal Court (the highest court). Final appeals are limited to questions of law.

Criminal enforcement

The Enforcement Division of KPDN handles criminal enforcement through raids, searches and seizures of infringing goods. Aggrieved trademark and copyright owners can lodge complaints to KPDN, and the officers are empowered under the TMA 2019 (Part XVI) and the CA 1987 (Part VII) to investigate and initiate enforcement action against acts of infringement. To do this, the brand owner must lodge an official complaint to KPDN to commence an investigation. The official complaint will need to include sufficient evidence such as full details of the brand owner’s IP rights, details of the infringing act(s), surveillance report and the relevant authorisations by the brand owner to the authorised representative.

If satisfied with the documents submitted and the information provided, KPDN will exercise its search and seizure powers by conducting an enforcement raid. KPDN would often require the brand owner or the authorised representative to be present during the enforcement raid as following the raid, the brand owner or the authorised representative would be required to furnish a statement and to submit a verification report to KPDN.

MyIPO

The Registrar has powers under the TMA 2019 to revoke a trademark registration under certain conditions (eg, within 12 months of registration for administrative errors).

Asian International Arbitration Centre (AIAC)

Disputes involving country-code top-level domains (ccTLDs) with the ".my" domain extension can be resolved by administrative domain name dispute resolution proceedings under the Malaysian Network Information Centre (MYNIC)'s[23] Domain Name Dispute Resolution Policy (MYDRP).[24] A MYDRP complaint can be filed with the AIAC in Kuala Lumpur, but remedies are limited to the transfer or deletion of the domain name registration.

Selection considerations and limitations

For certain IP (patent and industrial design infringements), criminal enforcement is not available. Some criminal charges for copyright offences can be tried in the lower courts, such as the Sessions Courts.

The judicial route via the High Court is ideal for complex infringement or validity disputes or cases where immediate injunctive relief or financial compensation is a priority.

Trade secrets and confidential information can be protected by the common law tort of breach of confidential information and by contract. An action for unauthorised use of confidential information is heard by civil courts and is usually initiated in the High Court with jurisdiction to hear civil claims where the amount in dispute exceeds 1 million Malaysian ringgit. Actions claiming injunctions, as is commonly the case for breaches of confidential information, are also usually brought in the High Court, although the lower Sessions Courts can also order injunctions.

If the amount in dispute does not exceed 100,000 or 1 million Malaysian ringgit, the matter can be heard in the Magistrates' Court and Sessions Court, respectively. There is no fast-track procedure. There is a small-claims procedure in the Magistrates' Court for claims below 5,000 Malaysian ringgit, in which parties cannot be legally represented unless the party is a corporation. However, the Magistrates' Court does not have the power to grant injunctive relief.

Litigation process

Requirements for jurisdiction and venue

The Courts of Judicature Act 1964[25] provides that the High Court shall have jurisdiction to try all civil proceedings where:

1. the cause of action arose;
2. the defendant or one of several defendants resides or has their place of business;
3. facts on which proceedings are based exist or alleged to have occurred; or
4. any land, the ownership of which is disputed is situated within the local jurisdiction of the court and where all parties consent in writing within the local jurisdiction of the other High Court.

The jurisdiction of the specialist IP Court in Kuala Lumpur is not confined to matters originating in Kuala Lumpur. In the case of *R Ramani a/l M Ramalingam v Deluxe Exclusive Lounge Sdn Bhd* the IP High Court in Kuala Lumpur declined to transfer an action for copyright infringement to the High Court in Johor Bahru despite arguments that the cause of action arose in Johor Bahru.

Obtaining relevant evidence of infringement and discovery

Under the Rules of Court 2012 (ROC 2012)[26] a party may file an application for discovery requiring any party to a cause or matter to give discovery by making and serving on any other party a list of documents which are or have been in his possession, custody or power and may at the same time or subsequently also order him to make and file an affidavit verifying such a list and to serve a copy thereof on the other party. Although discovery is available at any stage, this type of application is typically made after the close of pleadings but before the start of trial.

The court may also order pre-action discovery[27] to enable a prospective plaintiff in determining whether there is a viable cause of action against a potential defendant. Obtaining such pre-action disclosure can yield crucial information at the earliest possible time which can save costs, enable any subsequent claim to be pleaded more precisely, narrow the issues in dispute between the parties, and encourage early settlement.[28] The applicant is required to prove that the documents sought are necessary to identify the proper parties or to determine whether a cause of action exists, and that the documents sought are likely in the possession, custody or power of the other party.

A party may apply for leave of court to serve interrogatories[29] on the opposing party, which consists of a series of written questions. In assessing whether to grant leave, the court will consider if such interrogatories are necessary either for disposing the cause or matter fairly, for saving costs and whether any offer has been made by the party to be interrogated to give particulars or to make admissions or to produce documents relating to any matter in question.

In situations where there is a risk where evidence may be removed or destroyed, an application can be made for an *Anton Pillar* order. This order permits the applicant to enter the defendant's premises in the presence of supervising solicitors to inspect and take into custody any documents, articles or devices that are specified in the order. There is a requirement for the plaintiff to provide undertakings and ensure safeguards are in place.-[30]

Preliminary injunctions

A plaintiff may apply for an interim or interlocutory injunction to stop the infringing party from continuing with the infringing acts. In a case of urgency, the application can be made *ex-parte* and with a certificate of urgency. An *ex parte* application requires the applicant to provide full and frank disclosure of all material facts may influence the court's decision to grant or dismiss the injunction. In determining whether to grant an interim injunction, the court will consider the following principles enunciated in the case of *Keet Gerald Francis Noel John v Mohd Noor Bin Abdullah & Ors* (which adopts the test in *American Cyanamid Co v Ethicon Ltd* [1975] AC 396):

1. whether there are bona fide serious issues to be tried;
2. whether damages would not be an adequate remedy if the applicant succeeds at trial; and
3. whether the balance of convenience lies in granting the injunction sought.

If there is a risk of dissipation of assets, a plaintiff may apply for a *Mareva* injunction. In deciding whether to grant the *Mareva* injunction, the court will consider the following factors:[31]

1. whether the plaintiff has a good arguable case;
2. whether the defendant has assets within the jurisdiction;
3. whether there is a risk of dissipation of the assets; and
4. whether the balance of convenience lies in favour of granting the *Mareva* injunction.

Trial decision-maker

There is no jury system in Malaysia. A case originating at the High Court shall be presided by a single judge.[32] In the Court of Appeal, appeals are usually heard before a panel of three judges. In the Federal Court, an application for leave is usually heard before a panel of three Federal Court judges, whereas a substantive appeal is often heard by a panel of five judges.[33]

Structure of the trial

An action is commenced either by filing a writ and statement of claim, or for cases that concern only matters of law and are unlikely to have a substantial dispute of fact, by filing an originating summons.[34]

If the action is initiated by way of writ, the endorsed writ and statement of claim are to be served on the defendant. Thereafter, the defendant is required to enter appearance and file and serve their defence, and counterclaim, if any. The plaintiff may file and serve the reply to defence, and defence to counterclaim, if any. Parties are then required to attend pre-trial

case managements and comply with pretrial directions, which include the exchange and filing of documents and witness statements for trial.

For actions commenced by way of originating summons, pleadings are by way of affidavits exchanges and instead of a trial, parties may be required to file written submissions, and a hearing will be fixed before the court.

Infringements

Patents

A claim for infringement can be brought against the performance of any of the patent owner's exclusive rights without consent or authorisation. These acts include, where the patent relates to a product, making, importing, offering for sale, selling or using the patented product; or stocking the product for the purposes of offering for sale, selling or using the product and where the patent relates to a process, using the patented process; or performing any of the acts relating to exploitation of a patented product in respect of a product obtained directly by means of the patented process. Infringement proceedings must be initiated by the patent owner within five years of the act(s) of infringement.

The Malaysian courts construe the scope of a patent claim using a purposive approach as established by Catnic Components *Ltd & Anor v Hill & Smith Ltd* [1982] RPC 183 (HL), asking what a person skilled in the art would understand the patentee to mean by the words of the claim. This approach was affirmed by the Federal Court (apex court of Malaysia) in *Spind Malaysia Sdn Bhd v Justrade Marketing Sdn Bhd & Anor* [2018] 4 MLJ 34 at paragraph [123].

Trademark

Infringement actions under the TMA 2019 are only available for registered trademarks. A trademark infringement action can be initiated when a person, without the consent of the registered proprietor, uses a sign in the course of trade that is identical with the registered trademark in relation to identical goods or services or identical with, or similar to, the registered trade mark in relation to identical or similar goods or services, resulting in a likelihood of confusion.

When assessing infringement, courts consider various factors, including a comparison of both marks as a whole, the aural, visual and conceptual similarities between the marks, the price of the goods or services and the manner of their sale, consumers' imperfect recollection, evidence of market confusion and all relevant circumstances related to the trade.

Copyright

Copyright is infringed where there is reproduction of the whole or a substantial part of the work or when a person who, not being the owner of the copyright, and without licence from the owner, does or authorises an act that is controlled by the CA 1987.[35]

Industrial designs

An industrial design infringement action can be initiated against anyone who, without the licence or consent of the owner of the industrial design applies the registered industrial design or any fraudulent or obvious imitation of it to any article for which the industrial design is registered. This action can also be brought against anyone who imports any article to which the industrial design or any fraudulent or obvious imitation of it is applied into Malaysia for sale or for use in trade or business. Additionally, an industrial design infringement action can be initiated against anyone who sells, offers or keeps for sale, hire, or offers or keep for hire any infringing articles.

Defences

Patent

Possible defences include non-infringement due to the alleged infringing product or process falling outside the scope of the patent claims, as well as non-infringement based on statutory exceptions where the acts are performed solely for scientific research, reasonably relate to obtaining regulatory marketing approval for drugs, pertain to products produced by or with the consent of the patent owner or its licensee, where the patentee's rights have been exhausted (including for patents granted outside Malaysia for the same or essentially the same invention) or involve the use of the patented invention in or on foreign vessels, aircraft, spacecraft or land vehicles that are temporarily in Malaysia. Additionally, non-infringement may be claimed if the patent is invalid or has expired.

Trademark

Possible defences to a trademark infringement action include the argument that there was no infringement because the competing trademarks are not similar, or that the trademark asserted was invalid. Additionally, the defence that the act may not constitute trademark infringement under section 55 of the TMA 2019 for several reasons. For example, one might argue the use was in good faith of a person's own name or the name of their place of business. Another defence could be the good faith use to indicate the kind, quality, quantity, intended purposes, value, geographical origin, time of production or rendering or other characteristics of the goods or services. Moreover, prior use of an unregistered trademark that is identical with or similar to a registered trademark in relation to identical or similar goods or services may arguably be accepted as a valid defence, provided that this use has been continuous from a time before the date of registration of the registered trademark or the date of first use of the registered trademark, whichever is earlier. Furthermore, the use of a registered trademark for non-commercial purposes, or the use of a registered trademark to which the registered proprietor or licensee has at any time expressly or impliedly consented, could also serve as valid defences.

Copyright

Possible defences against copyright infringement include the argument that the work or a substantial part of it has not been reproduced, or that the alleged infringing work was independently created. Additionally, various exceptions to copyright under the CA

1987 may apply. These exceptions include acts of fair dealing for purposes such as research, private study, criticism, review, or reporting of news or current events, provided there is an acknowledgement of title and authorship (except for reporting by means of sound recording, film or broadcast). Other defences include acts of parody, pastiche or caricature; the inclusion of artistic works permanently situated in public view within a film or broadcast; incidental inclusion of a work in various artistic mediums; and inclusion of a work in broadcasts or performances for teaching purposes, compatible with fair practice, with proper source acknowledgement. Moreover, making a film or sound recording of a broadcast for private use, creating and distributing copies of works formatted for visually or hearing-impaired individuals by non-profit organisations, and the use of works in judicial proceedings or governmental inquiries are additional defences. Lastly, reproduction by the press or broadcasting of articles in newspapers or periodicals on current topics, when not expressly reserved and with clear source indication, also constitutes a valid defence.

Industrial designs

Possible defences for industrial design infringement typically include the argument of non-infringement, where it can be demonstrated that the alleged infringing article is neither a fraudulent nor an obvious imitation of the registered industrial design. Another defence may be based on invalidity, asserting that the registered industrial design is not new or lacks the capability of protection. Additionally, a defence may be raised on the grounds that the action is time-barred if it was instituted more than five years after the alleged acts of infringement.

Time to first-level decision

Depending on the complexity of the matter including type of issues, number of witnesses and documents as well as the number of interlocutory applications involves, the time to first-level (High Court) decision for a writ action is typically between 12 to 18 months. For an action commenced by way of originating summons, the time to first-level decision is typically between six to nine months.

Remedies

Final remedies may include injunctive relief and monetary remedies which may include an account of profits, assessment of damages, aggravated damages, exemplary damages, punitive and statutory damages (for copyright infringement), delivery up and/or destruction of the infringing goods.

Appellate review

A defeated party may appeal to the Court of Appeal on both questions of law or facts.[36] Any further appeal to the apex court, the Federal Court, is subject to leave being obtained and such appeal is confined to questions of law.[37]

Alternates to litigation

Alternatives to litigation include mediation, negotiation and arbitration (subject to a valid arbitration agreement between the disputing parties).

Special considerations

In the context of the general IP framework in Malaysia, several local considerations are noteworthy. To date, there have been no reported cases in which Malaysian courts have recognised AI as an inventor or author of any invention or work. The current legal framework indicates that only natural persons can be named as inventors or authors, raising questions about the legal status of AI-generated innovations.

The intersection of AI and technology with IP is increasingly significant, particularly with the establishment of the National AI Office (NAIO)[38] in Malaysia. The NAIO seeks to accelerate AI adoption, foster innovation and ensure ethical development of artificial intelligence. It aims to enhance the countries competitiveness, drive sustainable growth and position Malaysia as a regional AI leader.

The collaborative efforts between MyIPO and WIPO, formalised through a strategic Memorandum of Understanding in September 2025,[39] aim to significantly enhance Malaysia's innovation and patent ecosystem. This partnership prioritises increasing IP awareness, nurturing local talent, and facilitating the commercialisation of intellectual property. Key initiatives under this collaboration encompass capacity-building programs, workshops and the provision of essential resources to assist Malaysian innovators and entrepreneurs in successfully navigating the patent process. Ultimately, this partnership aspires to fortify Malaysia's position in the global IP landscape while fostering a vibrant culture of innovation that drives sustained economic growth and development.

Outlook and conclusions

The rapid growth of AI has raised concerns over intellectual property ownership, infringement risks and available legal defences. In response, Malaysia is preparing its first Artificial Intelligence (AI) Bill,[40] expected to be tabled by mid-2026, to regulate responsible AI use while balancing innovation with the protection of intellectual property rights.

As commerce increasingly moves online, intellectual property infringements have become more frequent, large-scale and cross-border. The proposed E-Commerce Bill[41] seeks to address these risks by improving consumer protection, enhancing platform and seller accountability and promoting a fair and transparent digital marketplace.

KPDN has officially launched the Integrated Enforcement Management System (IEMS) 2.0[42] as of 1 February 2026, establishing a single, centralised digital platform for all intellectual property (IP) enforcement-related engagements. IEMS 2.0 now serves as the mandatory portal through which brand owners, companies and legal representatives must register IP assets, lodge infringement complaints and submit applications for enforcement-related programmes. With its implementation, informal channels such as emails, letters or ad-hoc communication will no longer be accepted for initiating enforcement action.

Acknowledgements

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Alyshea is a partner in Skrine's IP practice. Her work focuses on IP litigation and advisory as well as civil and commercial litigation.She continues to represent local and foreign clients in a wide range of disputes across various industries that include food and beverage, automotive, information technology, fashion goods and household goods and regularly acts for and advises brands on brand protection, anti-counterfeiting, and enforcement strategies. She also acts for clients in disputes involving hire purchase and consumer protection. Alyshea is the current President of the Licensing Executives Society Malaysia and is a committee member in the Licensing Executives Society International's

Technology Transfer Committee, Li

fe Sciences Committee, Women in Licensing Alliance and Young Members Congress. She is also a member of the International Trademark Association's Trademark Office Practices Committee.

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