

STRENGTHENING INTELLECTUAL PROPERTY ENFORCEMENT FOR MSMEs: THE ROLE OF MYANMAR'S INTELLECTUAL PROPERTY COURTS

Ei Ei Thae¹

Abstract

Myanmar has enacted essential intellectual property (IP) legislation, comprising the Industrial Design Law, the Trademark Law, the Patent Law, and the Copyright Law. Notwithstanding these developments, the efficient execution and enforcement of these laws continue to pose challenges. Enforcement mechanisms in Myanmar comprise civil and criminal actions against intellectual property infringements, as well as border enforcement to mitigate counterfeit goods. Furthermore, court-facilitated mediation provides a time-efficient and economical method for settling intellectual property conflicts. This article seeks to assess the efficacy of Myanmar's intellectual property laws and enforcement procedures via IP Courts, with specific emphasis on their influence on Micro, Small, and Medium Enterprises (MSMEs). It examines the efficacy of these laws in fostering innovation and competitiveness among MSMEs and evaluates the impact of specialized IP courts on enhancing IP enforcement. The study uses qualitative research approach. The study aims to pinpoint deficiencies and obstacles in existing enforcement techniques, evaluate the influence of specialist IP courts on judicial efficiency, and provide recommendations for enhancing IP enforcement procedures. This study will provide significant recommendations for policymakers and practitioners regarding the improvement of intellectual property protection and enforcement. Furthermore, it will establish a basis for subsequent study on the convergence of intellectual property law, economic development, and support for micro, small, and medium enterprises, potentially impacting the formulation and implementation of intellectual property policies in analogous situations.

Keywords: Micro, Small and Medium Enterprises (MSMEs), Intellectual Property (IP), Intellectual Property Right (IPR), Intellectual Property Court (IP Court)

Introduction

Governments in both developed and developing nations have utilized intellectual property as a significant policy instrument to attract investments in knowledge generation and innovation, fostering economic growth, stimulating investment from abroad and assistance for small and medium enterprises (SMEs).² These goals may only be achieved if they are supported by a well-functioning IP legal ecosystem, which, in turn, includes effective IP protection and enforcement mechanisms, providing certainty for IP right holders.³ Moreover, considering the economic importance and the legal intricacies related to intellectual property rights amid ongoing technological advancements, the advantages of establishing a specialist intellectual property court are increasingly acknowledged worldwide. Many countries have either established or have been considering the introduction of various forms of such court.⁴ However, the implementation of such specialized IP courts faces key challenges, including limited funding for infrastructure

¹ Department of Law, Naypyitaw State Academy

² International Chamber of Commerce Commission on International Trade and Business Action to Stop Counterfeiting and Piracy, *Intellectual Property: Powerhouse for Innovation and Economic Growth*, 2011.

³ European Commission, *A Balanced IP Enforcement System Responding to Today's Societal Challenges COM*, 2017.

⁴ International Chamber of Commerce, *Adjudicating Intellectual Property Disputes*, 2016. Retrieved from <https://iccwbo.org/content/uploads/sites/3/2016/04/ICC-report-on-Specialised-IP-Jurisdictions.pdf>.

and training, inadequate judicial capacity to manage complex IP disputes, all of which hinder efficient case management and effective IP enforcement.¹ Despite these obstacles, the specialized IP courts are seen as an essential step toward enhancing the environment of respect, safeguarding, and enforcement of intellectual property rights.²

The Myanmar's Sustainable Development Plan for 2018-2030 outlines how the government intends to boost creativity and innovation to transform the economy. This involves supporting research and improving IP protection. Myanmar has a way to go to achieve this goal and strengthen its IP system. In 2019, the Industrial Design Law, the Trademark Law, the Patent Law, and the Copyright Law were passed, and these new IP laws came into effect in 2023 and 2024 respectively. These laws signify a substantial advancement in the modernization of Myanmar's intellectual property system. Furthermore, these laws empower the Supreme Court of the Union to establish an Intellectual Property Court (IP Court) for the adjudication of cases concerning infringements of intellectual property rights. According to these laws, the Supreme Court of the Union delegated jurisdiction of the IP Court to the relevant courts for adjudicating intellectual property disputes.

Compared with other developing ASEAN countries such as Thailand and Vietnam, however, Myanmar's IP court system remains in its early stages. Thailand's Intellectual Property and International Trade Court, established in 1997, operates efficiently with experienced judges and consistent procedures,³ while Vietnam recently created IP divisions in its major courts under the 2024 judicial reforms to improve expertise and consistency.⁴ Myanmar's IP courts, designated in 2023, offer specialized adjudication of intellectual property disputes, providing clarity and predictability for IP rights holders and businesses (MSMEs). However, they still face challenges such as limited funding, insufficient judicial training, and weak enforcement mechanisms, emphasizing the need for greater institutional development and capacity building. This study primarily addresses the jurisdiction and functions of Myanmar's IP Courts in enhancing intellectual property enforcement for MSMEs.

Research Methods

The study gathers data concerning the present status of MSMEs, intellectual property, intellectual property laws, and specialized intellectual property jurisdictions, analyzes the data, and seeks to derive conclusions from it. The study is based on publicly available data and did not engage stakeholders through systematic questionnaires.

Research Question

- (1) How might the implementation and enforcement of intellectual property rights (IPR) in Myanmar, especially via specialist IP courts, improve the competitiveness, creativity, and legal protection of micro, small, and medium-sized firms (MSMEs)?

¹ Rochelle C. Dreyfuss, *Specialized Adjudication*, Notre Dame Law Review, 2013, pp. 981-983.

² Commission on Intellectual Property Task Force on Specialized IP Jurisdictions, International Chamber of Commerce, *Report on Specialized IP Jurisdictions*. 2016.

³ Intellectual Property and International Trade Court in Thailand. Retrieved from <http://www.thailandcourt.com/intellectual-property-and-international-trade-court-in-thailand>.

⁴ Vietnam's Intellectual Property Legal Framework. Retrieved from <http://www.kenfoxlaw.com/vietnams-intellectual-property-legal-framework-opportunities-and-challenges-for-foreign-investors>.

Discussion

Importance of Intellectual Property for MSMEs

Like other developing countries, micro, small, and medium enterprises (MSMEs) hold a crucial position in Myanmar's economy, contributing about 36 percent of the GDP (Gross Domestic Product). In fact, roughly 90 percent of the businesses in Myanmar are MSMEs and they employ about 70 percent of the workforce. While foreign direct investment (FDI) is important for Myanmar's economic prosperity, investment alone cannot ensure its economic sustainability and stability. MSMEs are considered the backbone of any country's economic sustainability and stability, and Myanmar is not an exception. Although agriculture still contributes the most to GDP (approximately 41 percent), the contributions of the industrial and service sectors have been increasingly steadily. MSMEs are expected to play a critical role in expanding these contributions.¹ Since Micro, Small and Medium Enterprises (MSMEs) are the driving force for the socio-economic development of the country, the Government of Myanmar supports the development of MSMEs and encourages MSMEs to grow in a sustainable way. In 2015, the Small and Medium Enterprises Development Law was enacted, and this law defines the ways in which the Government of Myanmar is supporting SMEs, and contains SME definition. "Small enterprise" is those with between 30-300 permanent employees or with between 50-500 million Kyats in capital investment.² "Medium enterprise" is defined as having between 60-600 permanent employees or between 500-1000 billion in capital investment.³

To do business successfully, an entrepreneur always needs to consider both, (1) the internal strength of the enterprise and its business model and (2) the external conditions that the enterprise is facing. One of the most essential factors for success of an MSME and any enterprise is technology and innovation: technology hereby refers to the way, means and tools to generate the product or service. Innovation means to carry out the processes in MSME in a new way. In an ideal scenario a technologically highly specialized MSME may develop and protect a technological innovation through intellectual property protection (IPP).⁴ The IP protection supports MSMEs in building a business identity through effective branding strategies. It safeguards innovation by securing patents, utility models, and trade secrets. Additionally, it protects creative works through design rights and copyright. Intellectual property protection also deters competitors from replicating products or services. MSMEs gain access to valuable technologies via IP information and licensing agreements, enabling them to reduce unnecessary research and development costs. Moreover, it enhances the company's value by managing and valuing IP assets, while also providing broader access to venture capital and alternative financing options.⁵

The significance of intellectual property protection (IPP) to enterprises has escalated, as seen by the steadily rising volume of intellectual property rights filings. The report from the Commission on Intellectual Property Task Force regarding Specialized IP Jurisdictions,

¹ Hillol Bala, *Micro, Small and Medium Enterprises (MSMEs) in Myanmar: Success Factors and Future Outlooks*, 2016.

² Section 2 (a), the Small and Medium Enterprises Development Law, 2015.

³ *Ibid*, Section 2 (b).

⁴ Felix Christian Haas, *SME Toolkit*, Department of SME Development, Ministry of Industry, Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH, 2018, pp. 9-15.

⁵ <https://www.altacit.com/ip-management/msmes-and-intellectual-property-rights>.

International Chamber of Commerce, identifies the justification for the specialization process as the rapid progression of the global innovation-driven economy, the rising importance of intellectual property protection for enterprises, and the escalating number of applications and registrations for intellectual property rights. As a consequence of the increase in IP rights filings the number of IPR-related disputes has also raised. All these developments have raised entrepreneurial and public awareness of the importance of IP rights and their enforcement, which in turn has fed back into the filing activity. Furthermore, the increase in awareness has prompted deeper consideration regarding the effectiveness, fairness, and consistency of court proceeding for IPR-related disputes.¹ The total rise in IPR-related activities not only signifies the increasing significance of IPRs in economies but also reinforces a heightened awareness and subsequent expansion in the demand for IPRs.²

The enforcement of intellectual property rights is consequently a primary focus and warrants considerable contemplation over its efficacy, fairness, and consistency. One way of addressing the challenges is to set up specialised IP rights jurisdictions (SIPRJs), in order to resolve IPR-related disputes more efficiently, faster, with better quality, higher consistency and more predictability of outcomes in the eyes of the system's stakeholders.³

Consequently, intellectual property (IP), as intangible assets, is a crucial determinant of corporate competitiveness in the global economy. Intellectual property is a fundamental approach for ensuring a return on investment in innovation, especially pertinent to micro, small, and medium-sized firms (MSMEs). Intellectual property (IP) not only assists micro, small, and medium enterprises (MSMEs) in safeguarding their ideas from competitors, but it may also serve as a crucial source of cash flow through licensing agreements or the sale of IP, in addition to being a vital element in attracting investors. Despite the constraints of time and resources faced by MSMEs, recognizing the value of intellectual property to enterprises is essential. IP infringement is one of the most common concerns for businesses, and could lead to loss of business, revenue, reputation and competitive advantage, unless proactive steps are taken to protect IP and deter potential infringers.⁴

Intellectual Property Protection in Myanmar

In 2001, Myanmar became the 176th member of the World Intellectual Property Organization (WIPO). Earlier, in 1994, Myanmar had already signed onto the Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement. As a member of the World Trade Organization (WTO), the country is obliged to comply with and implement the provisions of this agreement. With increasing global attention on Myanmar's growing economy and its efforts to reform an outdated legal framework, finding effective ways to safeguard intellectual property rights has become essential. To meet its international obligations and engage more actively in the area of intellectual property, the government has introduced several key laws, including the Industrial Design Law, the Trademark Law, the Patent Law, and the Copyright Law, all enacted in 2019. Despite these legal reforms, Myanmar is continuing to improve its regulatory system by

¹ <https://iccwbo.org/news-publications/policies-reports/adjudicating-intellectual-property-disputes-an-icc-report-on-specialised-ip-jurisdictions>.

² The European Union Office for the Protection of Intellectual Property, Specialised IP Rights Jurisdictions in the Member States, 2018, p. 2.

³ The European Union Office for the Protection of Intellectual Property, Specialised IP Rights Jurisdictions in the Member States, 2018, p. 2.

⁴ South-East Asia IPR SME Helpdesk - IP Factsheet: Myanmar, 2016, p. 1.

strengthening enforcement, raising public awareness about the significance of intellectual property, and refining the registration process. Furthermore, the country is enhancing collaboration with global organizations and other stakeholders to tackle intellectual property challenges more efficiently. Table 2 summarizes Intellectual Property protection in Myanmar.

Intellectual property rights (IPRs) serve as important assets for both businesses and individuals, offering safeguards for innovation, technological advancements, brand identities, and artistic creations. However, securing intellectual property rights does not ensure they won't be violated, making the enforcement of these rights vital for the success of inventors, business owners, and artists.

Table 2: Intellectual Property Protection in Myanmar

Category	Description	Duration of Protection	Registration Requirement
Trademark	A trademark serves as a unique identifier for the goods or services provided by a specific business, differentiating them from competitors.	10 years, with the possibility of unlimited renewals	Required through the Department of Intellectual Property, Ministry of Commerce.
Copyright	Copyright protects original creative works, including literature, music, and art.	Lists for the lifetime of the creator plus 50 years posthumously.	May be required through the Department of Intellectual Property, Ministry of Commerce.
Industrial Design	Industrial design encompasses the visual and aesthetic elements of functional objects, which can include three-dimensional shapes or two-dimensional designs like patterns and colors.	5 years, renewable for two additional terms.	Required through the Department of Intellectual Property, Ministry of Commerce.
Patent	Patent protects new inventions that are useful, innovative, and applicable in industry.	20 years, subject to annual maintenance fees.	Required through the Department of Intellectual Property, Ministry of Commerce.
Utility Model	Utility model refers to minor inventions that represent technical innovations, such as a new design for a product, a novel arrangement of its components, or enhancements to a part of a product that improve its utility or functionality.	10 years	Required through the Department of Intellectual Property, Ministry of Commerce.

Intellectual Property Enforcement in Myanmar: Intellectual property rights hold little value without proper enforcement. Intellectual property (IP) enforcement involves taking legal steps when IP rights are violated, aiming to halt the infringement, prevent future violations, and address the damages caused. The significance of IP enforcement varies depending on the stakeholder. For businesses, it serves as a vital legal tool to safeguard their investments and maintain fair competition. For consumers, it ensures product safety and quality. For governments, it helps secure revenue for essential public services and fosters a stable business environment to attract investments. The 1995 Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) is the only international treaty that thoroughly addresses IP enforcement. Its Part III outlines the minimum legal requirements for IP enforcement. World Trade Organization (WTO) members have the flexibility to implement the TRIPS Agreement's provisions in a way that balances private and public interests. The remedies under the TRIPS

Agreement include provisional measures, civil and administrative enforcement, border controls, and criminal enforcement.

Civil and administrative enforcement: Civil and administrative processes and solutions are legal tools used to resolve intellectual property violations through civil or administrative bodies.¹ The TRIPS Agreement provides that a right holder must be able to initiate fair and equitable civil judicial procedures against an infringer of IP rights covered under the Agreement. The Courts must be empowered to provide three types of solutions: injunctions that require a party to cease infringing activities, compensation for the harm caused by the violation, and additional remedies, such as the elimination of infringing products from the marketplace or their destruction, under specified conditions.² In Myanmar, the right holder may file not only a civil case in the Intellectual Property (IP) Court but also a civil miscellaneous case for his grievance in the IP Court to order provisional measures.³ Moreover, a person who disagrees with a decision of the Intellectual Property Agency⁴ or a suspension order issued by the Director General of the Customs Department⁵ may apply for judicial review to the relevant IP Court. In civil suits for IPRs infringements, there are three types of remedies that may be passed by the IP Courts: injunctions, damages, and other remedies.

Provisional measures refer to interim actions implemented by a court or administrative body before a final judgment is made. These measures aim to prevent the infringement of intellectual property rights, such as stopping unauthorized goods from entering the market or safeguarding evidence related to alleged infringements. WTO members are obligated to provide swift and effective provisional enforcement in two main scenarios: first, to prevent IP rights violations, particularly by keeping infringing goods out of distribution channels, including after customs clearance; and second, to secure crucial evidence in cases of suspected infringement. In certain cases, such as when delays could lead to irreparable harm or evidence destruction, these measures must be applied without notifying the alleged violator.⁶ In Myanmar, although a civil case is not yet instituted by the right holder, first and foremost, he can seek an order or orders for provisional measures.⁷

Criminal enforcement: Criminal enforcement serves as legal tools to combat IP violations, particularly in cases of trademark counterfeiting and copyright infringement. According to the TRIPS Agreement, such measures are mandatory only when these offenses are committed willfully and on a commercial scale. While member states can choose to apply criminal procedures to other forms of IP infringement, they are not required to do so.⁸ With regard to the infringement of IPRs in Myanmar, the right holder may file a criminal case in the IP

¹ <https://www.wipo.int/en/web/ip-enforcement>.

² https://www.wto.org/english/tratop_e/trips_e/ipenforcement_e.htm.

³ Section 67 of the Industrial Design Law, 2019; Section 67 of the Trademark Law, 2019; Section 96 of the Patent Law, 2019; Section 73 of the Copyright Law, 2019.

⁴ Section 65 of the Industrial Design Law, 2019; Section 66 of the Trademark Law, 2019; Section 94 of the Patent Law, 2019; Section 59 of the Copyright Law, 2019.

⁵ Section 72 of the Trademark Law, 2019; Section 68 of the Copyright Law, 2019.

⁶ https://www.wto.org/english/tratop_e/trips_e/ipenforcement_e.htm.

⁷ Section 67(a) of the Industrial Design Law, 2019; Section 77(a) of the Trademark Law, 2019; Section 96(a) of the Patent Law, 2019; Section 73(a) of the Copyright Law, 2019.

⁸ https://www.wto.org/english/tratop_e/trips_e/ipenforcement_e.htm.

Court.¹ When adjudicating criminal cases under the IP Laws, penalties that may be passed by the IP Courts against the accused imprisonment or monetary fines that are substantial enough to act as a deterrent, and are aligned with the severity of similar crimes. In appropriate cases, remedies must also include seizure, forfeiture and destruction of the infringing goods and of materials and equipment used to produce them.

Border controls: Border controls refer to actions taken at entry points to prevent infringing goods from entering the market. According to the TRIPS Agreement, these measures allow intellectual property (IP) rights holders to work with customs officials to block infringing goods, such as counterfeit trademark or pirated copyright items, from being distributed. The enforcement of these measures is obligatory only in cases involving counterfeit trademarks or pirated copyrights. Generally, the IP rights holder must submit a request for action to customs authorities, as they are not required to act on their own accord, although countries can opt to allow customs to initiate such actions themselves, the right holder must request the customs authorities to take action. The Myanmar Customs Department is a governmental agency of the Ministry of Finance. Customs provide examination and investigation on goods imported and exported in accordance with existing laws, rules and regulations and take action against incompliance; they work in co-operation and co-ordination with other allied law enforcement agencies and support the development of trade and national economic development. The Sea Customs Act, 1878 also prohibits export or import by land or sea of goods bearing a counterfeit mark. The remedies are confiscation of the goods and a fine. Custom officers are authorized to stop and search any person, vessel or vehicle on the grounds of reasonable suspicion.

The Role of the Specialized IP Courts in IP Enforcement

By becoming parties to the World Trade Organization's (WTO) Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), the signatories acknowledge the significance of properly safeguarding and enforcing intellectual property rights (IPR).² Under Article 41 (5) of the TRIPS Agreement, countries have no requirement to establish a legal framework for the enforcement of intellectual property rights that shall be different from the general enforcement of laws. Consequently, nations have the autonomy to determine which judicial entities are authorized to address intellectual property disputes and whether it is appropriate to establish specialized IP courts for adjudicating IP disputes. In other words, the creation and effective functioning of a specialized IP Court is a policy-driven decision which aims at encouraging innovation and investment, raises greater awareness of IP rights and signals governmental priorities in this respect.³

IP Courts and the worldwide trend toward specialization: Recognizing that intellectual property (IP) assets are crucial tools for driving innovation and promoting growth of the global economy and involve legal complexities, numerous countries have either implemented or are contemplating the establishment of specialized courts. Despite the global trend toward specialization, specialized IP courts can differ significantly in their scope depending on the

¹ Section 67(b) of the Industrial Design Law, 2019; Section 77(b) of the Trademark Law, 2019; Section 96(b) of the Patent Law, 2019; Section 73(b) of the Copyright Law, 2019.

² Preamble of the Agreement on Trade-Related Aspects of Intellectual Property Rights, 1995.

³ Jacques de Werra, Specialised IP Courts: Issues and Challenges, Global Perspectives for the Intellectual Property System, Issue Number 2, CEIPI-ICTSD, 2016, p. 17.

jurisdiction. Their roles also vary, with some serving as trial courts and others as appellate bodies, empowered to review lower court decisions.¹

A number of studies on specialized IP courts² suggest that the establishment of specialized courts may have a range of positive outcomes. One of the main advantages of the establishment of a specialized IP court is that it signals to the public that the state is interested in and will protect intellectual property. This may increase faith in the IP system as a whole and in turn encourage investment and innovation.³ Another positive outcome envisaged by the creation of a specialized court is that it is more capable of keeping abreast of developments in its specific areas of law than the non-specialized courts.⁴ In addition, the increase in the level of judicial expertise may result in less reliance on technical experts in decision making, which, in turn, improves the quality and impartiality of such decisions.⁵ Moreover, greater consistency and more uniform judicial practice is another outcome as IP disputes would be adjudicated by the judges, each possessing a greater level of experience and expertise in such disputes.⁶ Case outcomes may therefore become more predictable. This, in turn, may improve business confidence, reduce the caseload for IP courts and the duration of the proceedings. Moreover, it may enable parties to settle their disputes because it may be possible to predict the likely outcome of the dispute due to the consistent application of IP rules.⁷

Ensuring uniformity in legal proceedings is essential as it reduces ambiguity and improves the predictability of case outcomes. This clarity results in a reduction in litigation, as prospective litigants may more readily discern cases devoid of substance. Companies are more certain that their innovative investments will be protected, allowing them to develop their company plans more efficiently, so promoting economic growth. Established and coherent case law from the rulings of IP Courts can be incorporated into practice guidelines for examiners, as it facilitates the extraction of prevailing case law when fewer courts adjudicate on identical problems. Enhanced practice guidelines elevate the rigor in the allocation of intellectual property rights titles. Consequently, the confidence of IP rights practitioners and holders improves as their IPR will eventually be supported in legal settings. This reduces the likelihood of future legal

¹ Yuri Fancher Machado, Maria Eduarda de O. Borrelli Junqueira, and Weixian Zhu, *IP Courts and the Worldwide Trend toward Specialization*, published in *Landslide*, Vol. 16, No. 3, 2024, the American Bar Association.

² Heike Gramckow and Barry Walsh, *Developing Specialized Court Services: International Experiences and Lessons Learned*, 2013, Legal Vice Presidency, the World Bank; World Intellectual Property Organization (WIPO), *Advisory Committee on Enforcement, Mechanisms to Resolve Intellectual Property Disputes in a Balanced, Holistic and Effective Manner*, 2016; International Intellectual Property Institute/US Patent and Trademark Office (IIPI/USPTO), *Study on Specialised Intellectual Property Courts*, 2012; International Chamber of Commerce (ICC), *Commission on Intellectual Property Task Force on Specialised IP Jurisdictions*, Report on Specialised IP Jurisdictions, 2016; Jacques de Werra, *Specialised Intellectual Property Courts – Issues and Challenges*, Global Perspectives for the Intellectual Property System, 2016, CEIPI/ICTSD publication series 2; European Union Office for the Protection of Intellectual Property (EUIPO), *Specialised IP Rights Jurisdictions in the Member States*, 2018.

³ International Intellectual Property Institute/US Patent and Trademark Office (IIPI/USPTO), *Study on Specialised Intellectual Property Courts*, 2012 (n 13) 6.

⁴ Jacques de Werra, *Specialised Intellectual Property Courts – Issues and Challenges*, Global Perspectives for the Intellectual Property System, 2016, CEIPI/ICTSD publication series 2 (n 15) 24.

⁵ *Ibid*, 24.

⁶ *Ibid*, 25.

⁷ *Ibid*.

disputes and simplifies the process for small and medium-sized businesses to safeguard their intellectual property rights without incurring high court costs.¹

The court's specialized knowledge is considered crucial in disputes concerning intellectual property rights, as they are often called upon to make rulings on applications for prompt and effective temporary relief through provisional measures. IP expertise and knowledge may also be boosted by fostering opportunities to improve the transparency of judicial processes and by allowing the participation of third parties. This can be achieved, for example, by allowing submissions of *amicus curiae* briefs in intellectual property litigation, as well as making IP case rulings accessible through online databases.²

When establishing a specialized IP court, it is essential to consider potential disadvantages. First, specialized courts may have a limited scope, focusing heavily on intellectual property issues and potentially overlooking other important aspects such as contract law or competition law in disputes. Second, accessibility could be a concern since these courts might be located in a single area, making it difficult for individuals in remote regions to access justice. Third, countries may encounter various challenges during the creation of such courts, such as the need for substantial investment in human resources and the development of specialized procedural laws. Addressing these challenges is crucial to ensure the efficient operation of specialized IP courts.³

Choosing the optimal option for the organizational and procedural framework of an IP judiciary necessitates a meticulous assessment of multiple factors, including determinations regarding specific structural components. The form of an IP judiciary typically aligns with specific policy objectives and encompasses many foundational issues. For example, the UK's IPEC was created to offer a more accessible and convenient platform for SMEs. The structure of specialized IP courts varies significantly across jurisdictions. In some countries, independent specialized IP courts function either at the trial or appellate levels. In the UK, the specialized IP Court includes trial-level courts such as the Patents Court, the IPEC, and the Chancery Division of the High Court. In other regions, IP disputes are handled by specialized IP divisions within civil or commercial courts.⁴

A general model for creating a specialized intellectual property (IP) judiciary does not exist. The diverse array of global legal systems indicates that a singular methodology for establishing an effective intellectual property court system, which promotes innovation and societal advantages, is non-existent. Before deciding whether to invest in a specialized IP court, it is recommended to assess the volume of IP-related cases currently pending or anticipated under a new legal framework. If the number of cases is minimal and regular courts can handle them

¹ International Intellectual Property Institute/US Patent and Trademark Office, Study on Specialised Intellectual Property Courts, 2012; <http://iipi.org/2012/05/>

² Mechanisms to Resolve Intellectual Property Disputes in a Balanced, Holistic and Effective Manner, WIPO/ACE/11, p. 36.

³ Jacques de Werra, Specialised Intellectual Property Courts – Issues and Challenges, Global Perspectives for the Intellectual Property System, 2016, CEIPICTSD publication series 2 (n 15) 26.

⁴ Olga Gurgula, Maciej Padamczyk, and Noam Shemtov, Specialised IP Judiciary: What Are the Key Elements to Consider when Establishing or Reforming an Effective IP Court, GRUR International, 2021, p. 208.

efficiently, the need for a specialized court diminishes. A cost-effective alternative could be the creation of a specialized IP division within the existing judicial system.¹

The Specialized IP Courts in the United Kingdom (Case Study): This case study examines the practical implementation and concrete results of specialized intellectual property courts, notably for micro, small, and medium-sized firms (MSMEs), with a focus on the jurisdictional specialization of IP rights in the UK, specifically in England and Wales. Historically, the expenses associated with intellectual property (IP) litigation in the UK were deemed too burdensome for small and medium-sized firms (SMEs). In 2010, numerous improvements were implemented in the Intellectual Property Enterprise Court (IPEC). Following the 2009 Intellectual Property Court Users Committee's report and the 2010 Jackson Review on civil litigation costs, significant changes were made to the IPEC (formerly known as the Patents County Court until October 2013). These reforms were designed to enhance access to justice for SMEs by simplifying court procedures, reducing litigation costs, and accelerating claim resolution at both the IPEC's multi-track and small-claims levels. The goal was to better distinguish the cases handled by IPEC from those heard in the High Court and Patents Court (PHC), allowing the IPEC to focus on less complex cases and offering quicker resolutions with capped recoverable costs and damage awards.²

The Intellectual Property Enterprise Court (IPEC) is established to offer justice for small and medium-sized businesses (SMEs) and individuals facing intellectual property disputes, such as those related to patents, trademarks, designs, copyright, and passing off. The court handles cases that are shorter, less complicated, and of lower value than those suited for the Patents Court or the Chancery Division. IPEC is structured with distinct procedures, financial thresholds, and cost regulations. It offers two tracks: the multi-track and the small claims track. The multi-track can handle claims with damages up to £500,000, and cost awards are proportional to the case's complexity, capped at £50,000. The small claims track deals with cases valued at up to £10,000, with limited cost awards. Procedures in the IPEC follow CPR Part 63 and Practice Direction 63, with specific guides for both the multi-track and small claims track.³

A 2015 evaluation determined that the amendments had predominantly succeeded in enhancing access to justice for diverse rights holders across all categories of intellectual property. This encompassed not only small and medium-sized organizations (SMEs) and people but also medium and big corporations. The Intellectual Property Enterprise Court (IPEC) is crucial in protecting and enforcing intellectual property rights in the UK, especially for smaller enterprises and individual creators who may lack the resources to pursue legal recourse through alternative means.

IP Courts of Myanmar: Establishment and Jurisdiction

Myanmar's judiciary is dedicated to guaranteeing equal access to justice for all individuals. It strives to maintain fairness and adhere to the rule of law, ensuring that every

¹ A joint project between the international Intellectual Property Institute (IPI) and the United States Patent and Trademark Office (USPTO), Study on Specialized Intellectual Property Courts, 2012, p. 10.

² The European Union Office for the Protection of Intellectual Property, Specialised IP Rights Jurisdictions in the Member States, 2018, p. 19.

³ [Work of the Intellectual Property Enterprise Court - Courts and Tribunals Judiciary](https://www.judiciary.uk/courts-and-tribunals/business-and-property-courts/business-list-general-chancery/intellectual-property-list/intellectual-property-enterprise-court-ipeec). Retrieved from <https://www.judiciary.uk/courts-and-tribunals/business-and-property-courts/business-list-general-chancery/intellectual-property-list/intellectual-property-enterprise-court-ipeec>.

citizen has the opportunity to seek legal recourse.¹ The judiciary in Myanmar is dedicated to upholding the highest standards of justice and integrity for all individuals appearing in court. One of its core responsibilities is maintaining and enforcing the rule of law.² Both the former Judicial Strategic Plan (2018-2022) and the current one (2023-2027) by Myanmar's Supreme Court aim to outline and put into action strategies for court specialization, with an emphasis on intellectual property (IP) and commercial disputes. The earlier plan focused on assessing various models for specialized courts, and a dedicated commercial branch was created within the Yangon Western District Court to handle commercial cases, including IP-related issues, after the implementation of IP laws. The current plan builds on these efforts, establishing a specialized IP branch in a district court following the enactment of IP laws, while also enhancing procedural guidelines for IP cases.

Formation of Intellectual Property Courts: The judiciary's primary responsibility is to deliver justice whenever citizens seek it from the appropriate courts. Courts established under Myanmar's 2008 Constitution and the 2010 Union Judiciary Law include the Supreme Court of the Union, Regional and State High Courts, District or Self-Administered Division/Zone Courts, Township Courts, and other legally established courts such as Juvenile Courts, Municipal Courts, Traffic Courts, and Intellectual Property Courts.³

"Intellectual Property Court" means the court established by the Supreme Court of the Union under the law to adjudicate intellectual property matters or the court conferred jurisdiction and authority of such court.⁴ The power and authority to establish Intellectual Property Courts is conferred by the IP Laws to the Supreme Court of the Union. Therefore, the Supreme Court of the Union:

- (a) may establish the Intellectual Property Courts in any appropriate places and appoint judges to adjudicate on the criminal or civil cases with respect to intellectual property matters;
- (b) may confer the jurisdiction and authority to the judges appointed under subsection (a) to adjudicate on the intellectual property matters;
- (c) may confer the jurisdiction and authority of the Intellectual Property Courts to the appropriate courts to adjudicate on the intellectual property matters before the establishment of the Intellectual Property Courts under subsection (a);
- (d) shall confer the jurisdiction and authority to the Intellectual Property Courts that have jurisdiction over appeal and revision cases against any judgment, order and decision made by the Intellectual Property Courts;
- (e) shall confer the jurisdiction and authority to the appropriate Intellectual Property Courts to adjudicate on the cases under section 65 of the Industrial Design Law/section 66 of the Trademark Law/section 94 of the Patent Law/section 59 of the Copyright Law.⁵

In Myanmar, prior to the formation of an independent Intellectual Property Court, the Supreme Court of the Union established IP Courts as a specialized branch within existing courts

¹ Judicial Strategic Plan (2018-2022), the Supreme Court of the Union of Myanmar.

² Judicial Strategic Plan (2023-2027), the Supreme Court of the Union of Myanmar.

³ Annual Report (2023), the Supreme Court of the Union, 2023, p. 18.

⁴ Section 2 (r) of the Industrial Design Law, 2019; Section 2 (u) of the Trademark Law, 2019; Section 2 (t) of the Patent Law, 2019; Section 2 (nn) of the Copyright Law, 2019.

⁵ Section 66 of the Industrial Design Law, 2019; Section 67 of the Trademark Law, 2019; Section 95 of the Patent Law, 2019; Section 63 of the Copyright Law, 2019.

by delegating the jurisdiction and authority of the IP Court to the relevant courts following the implementation of IP Laws.

Jurisdiction of the Intellectual Property Courts: The IP Laws including the Industrial Design Law, the Trademark Law, the Patent Law, and the Copyright Law were passed by Pyidaungsu Hluttaw in 2019. Currently, the State Administration Council Notification Nos. 82/2023, 217/2023, 218/2023, and 106/2024 have brought the Trademark Law, the Industrial Design Law, the Copyright Law, and the Patent Law into force respectively. After the enforcement of IP Laws, the Supreme Court of the Union issued the notifications that conferred the jurisdiction and authority of the Intellectual Property Courts to the courts mentioned in these notifications (Table 2).

Table 2: Jurisdiction of the Intellectual Property Court ¹

Jurisdiction of the IP Court	Competent Court
Criminal original jurisdiction ² to try the criminal cases filed under the IP Laws	- Court of Self-Administered Division - Courts of Self-Administered Zones - District Courts
Jurisdiction to try the appeals/revisions filed against the criminal judgments, orders or decisions passed by the Court of Self-Administered Division, Courts of Self-Administered Zones and District Courts ³	High Courts of Regions/States
Civil original jurisdiction ⁴ to adjudicate on (a) Civil suits with regard to IPRs infringements (b) Applications for provisional measures ⁵	Kyauktada District Court
- Jurisdiction to adjudicate on the appeals/revisions against judgments, orders and decisions passed in the civil suits by the IP Court ⁶ - Judicial review on (a) Applications against the decision of the Intellectual Property Agency ⁷ (b) Applications against the suspension order issued by the Director-General of the Customs Department ⁸	The High Court of the Yangon Region

¹ The Supreme Court of the Union Notification Nos. 235/2023, 236/2023, 237/2023, 238/2023 and 239/2023 dated on 24-3-2023; The Supreme Court of the Union Notification Nos. 961/2023, 962/2023, 963/2023, 963/2023, and 965/2023, dated on 27-10-2023; The Supreme Court of the Union Notification Nos. 955/2023, 956/2023, 957/2023, 958/2023 and 959/2023 dated on 27-10-2023; The Supreme Court of the Union Notification Nos. 689/2024, 690/2024, 691/2024, 692/2024 and 693/2024 dated on 3-6-2024.

² Section 66(c) of the Industrial Design Law, 2019; Section 67(c) of the Trademark Law, 2019; Section 95(c) of the Patent Law, 2019; Section 63(c) of the Copyright Law, 2019.

³ Section 66(d) of the Industrial Design Law, 2019; Section 67(d) of the Trademark Law, 2019; Section 95(d) of the Patent Law, 2019; Section 63(d) of the Copyright Law, 2019.

⁴ Section 66(c) of the Industrial Design Law, 2019; Section 67(c) of the Trademark Law, 2019; Section 95(c) of the Patent Law, 2019; Section 63(c) of the Copyright Law, 2019.

⁵ Section 67(a) of the Industrial Design Law, 2019; Section 77(a) of the Trademark Law, 2019; Section 96(a) of the Patent Law, 2019; Section 73(a) of the Copyright Law, 2019.

⁶ Section 66(d) of the Industrial Design Law, 2019; Section 67(d) of the Trademark Law, 2019; Section 95(d) of the Patent Law, 2019; Section 63(d) of the Copyright Law, 2019.

⁷ Section 65 of the Industrial Design Law, 2019; Section 66 of the Trademark Law, 2019; Section 94 of the Patent Law, 2019; Section 59 of the Copyright Law, 2019.

⁸ Section 72 of the Trademark Law, 2019; Section 68 of the Copyright Law, 2019.

The Supreme Court of the Union has designated the Kyauktada District Court with original jurisdiction to adjudicate civil proceedings concerning intellectual property rights infringements and applications for provisional measures, while criminal cases under the relevant IP laws are to be tried by the District Courts or Courts of the Self-Administered Division or Zones. Furthermore, the High Courts of the Region or State possess appellate competence to review appeals or revisions concerning criminal judgments, orders, and decisions rendered under the pertinent Intellectual Property Laws by the District Courts or Courts of the Self-Administered Division or Zones. The High Court of Yangon Region possesses appellate jurisdiction over the IP Court to adjudicate civil appeals or revisions, as well as the authority to conduct judicial reviews of applications contesting decisions made by the Intellectual Property Agency and suspension orders issued by the Director-General of the Customs Department.

Procedures for adjudicating IP cases in the Intellectual Property Courts: Pursuant to the announcement relating to the enforcement of IP Laws and the jurisdiction of IP Courts, the Supreme Court of the Union has consequently issued the procedures for adjudication of proceedings under the Trademark Law by Notification No. 240/2023 dated 24-3-2023, the procedures for adjudication of proceedings under the Industrial Design Law by Notification No. 960/ 2023 dated 27-10-2023, the procedures for adjudication of proceedings under the Copyright Law by Notification No. 973/2023 dated 27-10-2023, and the procedures for adjudication of proceedings under the Patent Law by Notification No. 694/2024 dated 3-6-2024. In addition to these procedures, the Case Management Procedures (2018) ¹ shall be applied to carry out the effective case management. By applying these procedures, it can achieve the results such as fair resolution of disputes, being able to adjudicate in a timely manner, and costs so on.

While adjudicating on the cases with respect to intellectual property matters, the Intellectual Property Court may apply the provisions in the Evidence Act, the Code of Criminal Procedure and the Code of Civil Procedure and other relevant existing laws if it is not provided expressly in the IP Laws in respect of the enforcement actions for infringement of IPRs.² In the stipulated Courts that are empowered to try the IP-related cases, witnesses, domestic and international, who cannot appear before the Court can testify using court technology.³ By complying with the instructions of the Supreme Court of the Union regarding taking testimony by video or audio communication and applying for permission to testify via video or audio communication,⁴ it can achieve the benefits such as making the court users more accessible to justice in IP cases, being able to try as scheduled, etc.

Settlement of IP Infringements by Alternative Dispute Resolution (ADR): IPRs infringement cases may be amicably solved with the intervention of a third party. It is also mentioned in the IP Laws of Myanmar that the disputes on industrial design⁵, trademark right⁶, patent⁷, and copyright or related rights⁸ between the two parties may be settled by means of mutual consultation amicably or arbitration or judicial proceedings. Civil suits concerning IP

¹ The Supreme Court of the Union Notification No. 649/2018 (1. 8. 2018).

² Section 74 of the Industrial Design Law, 2019; Section 86 of the Trademark Law, 2019; Section 104 of the Patent Law, 2019; Section 81 of the Copyright Law, 2019.

³ Tin Nwe Soe, Intellectual Property Courts for Intellectual Property Disputes. Retrieved from <http://www.moi.gov.mm>.

⁴ The Supreme Court of the Union Notification No. 5/2021.

⁵ Section 80 of the Industrial Design Law, 2019.

⁶ Section 104 of the Trademark Law, 2019.

⁷ Section 113 of the Patent Law, 2019.

⁸ Section 95 of the Copyright Law, 2019.

infringements are classified as commercial suits; thus, the parties can resolve their disputes expeditiously and economically through personal negotiation and agreement at the mediation center located in the High Court of Yangon Region prior to the commencement of the trial.

Consequently, Myanmar's court prioritizes equitable access to justice, upholding the rule of law, and fostering integrity. The establishment of specialized Intellectual Property (IP) Courts is integral to this commitment, as stated in the Judicial Strategic Plans. The courts, authorized by the 2019 IP legislation, has jurisdiction over civil and criminal cases, with the Kyauktada District Court addressing civil matters and district courts managing criminal cases. The Supreme Court has implemented procedural norms to ensure speedy and equitable case resolution, incorporating facilities for remote testimony. Alternative dispute resolution procedures, such as arbitration and mediation, offer expedited and more economical solutions for resolving intellectual property issues.

Findings

Intellectual property rights (IPR) are essential for the development and competitiveness of MSMEs in Myanmar, as they safeguard inventions and create income opportunities via licensing. Myanmar's legal system, encompassing the Industrial Design Law, Trademark Law, Patent Law, and Copyright Law, provides safeguards; nonetheless, enforcement is a considerable challenge. The specialist intellectual property courts have been instituted to resolve these matters, providing proficiency and effectiveness in managing intellectual property disputes. Nonetheless, apprehensions over time and expenses persist. Micro, Small, and Medium Enterprises (MSMEs), vital to Myanmar's economy, frequently lack the capacity to properly utilize these protections, rendering education and outreach imperative. Enhancing IPR enforcement via more accessible judicial procedures and alternative dispute resolution methods, such as court-led mediation, can stimulate innovation, attract foreign investment, and promote economic growth.

Recommendations

To strengthen the safeguarding and enforcement of intellectual property (IP) rights for MSMEs in Myanmar, some critical measures should be contemplated. Initially, enhance the capabilities of intellectual property courts by allocating resources for specialized training for judges and legal practitioners to augment their proficiency in managing intricate intellectual property issues. Secondly, enhance knowledge and accessibility of intellectual property protection procedures among micro, small, and medium enterprises (MSMEs) through educational and outreach initiatives, ensuring that businesses comprehend the significance of safeguarding their ideas. Third, establish more efficient and transparent enforcement tools, encompassing civil, criminal, and border actions, to deter intellectual property infringement. Ultimately, advocate for mediation and alternative conflict resolution techniques to provide economical and expedited solutions for MSMEs, alleviating the strain on the formal judicial system.

Conclusion

Intellectual Property Rights (IPR) are crucial for the growth and sustainability of Micro, Small, and Medium-sized Enterprises (MSMEs), particularly in developing economies such as Myanmar. Robust intellectual property protection not only secures innovations and strengthens competitive advantage but also offers significant cash prospects through licensing and sales. Notwithstanding Myanmar's advancements in creating a complete intellectual property legislative

framework, encompassing the Trademark Law, Industrial Design Rights Law, Copyright Law, and Patent Law, considerable obstacles persist in enforcement and implementation.

The enforcement techniques, encompassing civil lawsuits, criminal measures, border enforcement, and mediation, are essential for safeguarding intellectual property rights (IPR). The efficacy of these interventions depends on their execution and the resources allocated for their implementation. The TRIPS Agreement establishes an international benchmark for intellectual property protection and enforcement, seeking to mitigate piracy and counterfeiting while promoting innovation and enticing foreign investment.

The creation of specialized intellectual property courts in Myanmar signifies a crucial advancement in improving judicial efficiency and efficacy in adjudicating intellectual property disputes. These courts, possessing specialized knowledge and efficient procedures, have the capacity to enhance the entire intellectual property enforcement framework. However, they also pose issues about expense, accessibility, and jurisdictional limits. To tackle these problems, it is essential for Myanmar to consistently enhance its intellectual property protection and enforcement policies. This entails utilizing technology, enhancing resource distribution, and promoting improved integration of specialized intellectual property tribunals within the overarching judicial framework. By doing so, Myanmar may enhance its support for MSMEs, foster sustainable economic growth, and establish a more favorable climate for innovation and investment. Future research ought to investigate the enduring effects of these actions on MSMEs and contemplate the creation of more economical and accessible IP enforcement procedures to further improve the IP ecosystem in Myanmar and analogous emerging economies.

Acknowledgements

I wish to convey my profound appreciation to the members of the ERC of Naypyitaw State Academy and the Myanmar Academy of Arts and Science for the opportunity to conduct this research work. I would like to extend my heartfelt gratitude to my family for their unwavering support and encouragement.

References

Convention

The Agreement on Trade-Related Aspects of Intellectual Property Rights, 1995.

Laws

The Copyright Law, 2019: The Pyidaungsu Hluttaw Law No. 15/2019.

The Industrial Design Law, 2019: The Pyidaungsu Hluttaw Law No. 2/2019.

The Patent Law, 2019: The Pyidaungsu Hluttaw Law No. 7/2019.

The Small and Medium Enterprises Development Law, 2015: The Pyidaungsu Hluttaw Law No. 23/2015.

The Trademark Law, 2019: The Pyidaungsu Hluttaw Law No. 3/2019.

Books and Articles

A joint project between the international Intellectual Property Institute (IPI) and the United States Patent and Trademark Office (USPTO), Study on Specialized Intellectual Property Courts, 2012.

Christopher Heath, the Enforcement of Intellectual Property Rights” Japan Patent Office, Asia-Pacific Industrial Property Center, JIII, 2002.

Felix Christian Haas, SME Toolkit, Department of SME Development, Ministry of Industry, Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH, 2018.

Jacques de Werra, A closer look at specialized intellectual property courts, WIPO Magazine, Issue 3/2019 (June).

The Supreme Court of the Union of Myanmar, Annual Report (2023).

The Supreme Court of the Union of Myanmar, Judicial Strategic Plan (2018-2022) and Judicial Strategic Plan (2023-2027)

Tin New Soe, Intellectual Property Courts for Intellectual Property Disputes, Myanmar Alin Newspaper, 3. 4. 2023.

WTO, A Handbook on the WTO TRIPS Agreement, edited by Antony Taubman, Hannu Wager and Jayashree Watal, Cambridge University Press, 2013.

Internet Websites

<https://www.wipo.int>

<https://www.unionsupremecourt.gov.mm>

<https://msmewebportal.gov.mm>