

CHEAPER, BETTER, FASTER: COST-SAVING FEATURES AND SIMPLIFIED PROCESSES UNDERGIRD THE UPCOMING SPECIALISED TRACK FOR INTELLECTUAL PROPERTY LITIGATION

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INTRODUCTION

1. On 13 September 2021, during the Second Reading of the Copyright Bill, the Second Minister for Law Mr. Edwin Tong indicated that a specialised intellectual property litigation "track" in the High Court (the "**Specialised Track**") would be introduced in the coming months.
2. This article provides an overview as to the Specialised Track (based on available information) and provides insight into when the Specialised Track may be useful for parties considering IP litigation, as well as its potential risks and pitfalls.

TRACKING THE DEVELOPMENT OF THE SPECIALISED TRACK

3. The Specialised Track was first mentioned by Mr. Edwin Tong on 5 August 2019, during the Second Reading of the Intellectual Property (Dispute Resolution) Bill.
4. Mr. Edwin Tong revealed that the Ministry of Law and the Supreme Court were looking into the introduction of the Specialised Track, with simplified processes and cost-saving features. This was aimed at ensuring that parties may continue to access the courts in a cost-effective and expeditious manner.
5. The Specialised Track will be useful for less well-resourced parties, such as individuals and SMEs, who may otherwise be unable to enforce their valid IP rights. This is especially so since IP litigation tends to be more expensive than general litigation, given its specialised and highly technical nature, and in some cases, the need for expert witnesses.
6. Litigants in the High Court would generally be able to choose between the Specialised Track for IP cases, and a track where IP cases are treated in a similar manner to other types of civil cases (the "**Default Track**").

SIMPLIFIED PROCESSES AND COST-SAVING FEATURES

7. Mr. Edwin Tong gave the following examples of the Specialised Track's simplified processes and cost-saving features:
- (a) **Early and active case management by the Courts.** This would ensure that cases are managed in an appropriate manner, with procedures that are streamlined and cost-effective. Cases would be "sieved upfront" to ensure that they are appropriate for the Specialised Track.
 - (b) **Damages would be capped.** A cap of S\$500,000 on the value of the claim for damages or an account of profits was considered. Lower value cases, which tend to be less complex, would be more appropriate for the Specialised Track.
 - (c) **Party-and-party costs would be capped.** A cap on party-and-party costs awarded was considered. This would be stage-based, depending on the stage of proceedings of the litigation, with an overall cap of S\$50,000. This was aimed at helping to lower the business risk of litigation.
 - (d) **Length of the trial would be capped.** A two-day cap may be imposed on the length of trial. This would help reduce the time spent at trial and thus, costs for the parties.
 - (e) **The Judge would have the discretion to extend the length of the trial.** Nonetheless, the trial judge would be allowed the discretion to extend the two-day cap in "appropriate circumstances". If the parties decide halfway through a trial that another half a day was necessary, the trial judge would have the discretion to extend the length of the trial.
 - (f) **The Judge's power to grant relief is unchanged.** The trial judge's power to grant interim and final relief would be the same under the Specialised Track or the Default Track. As such, the remedies that one would expect to see under either track would not differ.
 - (g) **Decisions under the Specialised Track are appealable.** Final decisions in cases on the Specialised Track would also be appealable in the same manner as final decisions on the Default Track. However, the appeal would be a separate process, and time spent on the appeal hearing would not be included in the two-day cap for cases on the Specialised Track.

RISKS, PITFALLS AND ALTERNATIVE DISPUTE RESOLUTION OPTIONS

8. The currently disclosed features of the Specialised Track suggest that it will be suitable for parties facing relatively low-value and straightforward IP disputes. Nonetheless, even where a dispute appears to be suitable for the Specialised Track, parties should be aware of the potential risks and pitfalls of the Specialised Track and consider alternative dispute resolution options.

Potential Risks and Pitfalls

9. Parties should not initiate litigation with the expectation that it will qualify for the Specialised Track, as there may be a risk that the Court may determine that the matter is not suitable. As mentioned above, there will be early and active case management by the Courts. It appears

that the Courts would retain the power to determine whether a case is appropriate for the Specialised Track.

10. Parties should also not opt for the Specialised Track if it intends to adduce extensive evidence in support of its case. The discovery process, which surfaces documents that are relevant and necessary to a suit, is often protracted. It stands to reason that the Specialised Track may impose limits on the extent of discovery. In this regard, the Intellectual Property Office of Singapore (“IPOS”) is already piloting a program that limits evidence to be filed in trade mark proceedings before IPOS.¹
11. The recommendations above are subject to clarification in future, upon enactment of legislation implementing the Specialised Track. Such legislation may set out the factors Courts will take into consideration in determining whether any case is appropriate for the Specialised Track.

Parties who are suitable to use the Specialised Track should also consider alternative dispute resolution

12. Parties who are suitable to use the Specialised Track should also consider alternative dispute resolution options. Alternative dispute resolution methods, such as mediation, continue to offer a cost-effective and expeditious way to resolve disputes.
13. In mediation, parties can resolve their IP disputes in an amicable manner before a neutral third-party mediator. Mediation offers several advantages over court proceedings:
 - (a) Parties can resolve their dispute in a flexible, creative, and collaborative manner, and any settlement agreement can be recorded as an order of court, and enforceable under the Mediation Act.
 - (b) Generally, costs for mediation tend to be lower than in court proceedings, especially for IP disputes. For instance, for IP disputes where the sum in dispute is above S\$250,000 and up to S\$500,000, parties need only bear a non-refundable filing fee of S\$267.50, and a mediation fee of S\$2,942.50 per party per day, inclusive of GST. Considering that matters can often be resolved during mediation in one to two days, costs overall would tend to be lower than a two-day hearing in the High Court
 - (c) Subsidies are available should parties wish to mediate their IP disputes. IPOS has offered the Enhanced Mediation Promotion Scheme (“EMPS”), to provide subsidies for the mediation of disputes arising from intellectual property claims.² Under the EMPS, parties will be subsidised up to S\$10,000, or up to S\$12,000 if their dispute includes issues on foreign IP rights, with approval for these subsidies at the sole discretion of IPOS. The EMPS is available until 31 March 2022, or until the fund of S\$180,000, which was set aside for the EMPS, is depleted.
14. As such, parties that qualify for Specialised Track should also consider alternative dispute resolution options, such as mediation, in resolving their IP disputes.

¹ “Pilot Relating to Evidence in Inter Partes Trade Mark Proceedings – Frequently Asked Questions (FAQ)”, (2020), online: *Intellectual Property Office of Singapore* <[https://www.ipos.gov.sg/docs/default-source/resources-library/hearings-and-mediation/guidelines-and-useful-information/faqs-\(page-limits-on-evidence\).pdf](https://www.ipos.gov.sg/docs/default-source/resources-library/hearings-and-mediation/guidelines-and-useful-information/faqs-(page-limits-on-evidence).pdf)>.

² “Other Disputes - Singapore Mediation Centre”, (2021), online: *Singapore Mediation Centre* <<https://www.mediation.com.sg/service/other-disputes>>.

CLIENT NOTE



CONCLUSION

15. More details about the Specialised Track are expected to be announced in due course during the upcoming months.
16. If you have any question on any aspect of this client note, please contact our Mr. Tan Tee Jim, S.C. (tanteejim@leenlee.com.sg), Mr. Jasper Lim (jasperlim@leenlee.com.sg) or Mr. Valen Lim (valenlim@leenlee.com.sg).

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