



FACULTY OF LAW
THAMMASAT UNIVERSITY

Concept Note

**Asian Regional Course for Judges on
Intellectual Property Rights and Public Health
6, 13, 20, 27 August 2021**

Virtual



Introduction

Access to high quality medical products at affordable prices is of particular importance to developing countries. To enhance access to products that are protected by intellectual property rights to address public health needs, the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) of the World Trade Organization (WTO) provides for certain safeguards (known as 'flexibilities'). These flexibilities in the TRIPS Agreement are key for developing countries to promote innovation and access to medicines. They need to be incorporated into national laws. National bodies, including patent offices and courts, should be prepared to fully apply them when necessary.

For this purpose, the South Centre organizes technical training on intellectual property and public health for judges of developing countries, with a focus on patents and test data protection.

The South Centre, in partnership with Thammasat University, Bangkok, will impart an online regional course for Asian judges in August 2021, in four daily sessions over the course of four weeks. Judges completing the course will be invited to a face-to-face follow up retreat in Bangkok, Thailand in the first half of 2022, if international travel is possible in view of the health situation. A peer reviewed publication on the thematic issues of the course authored by the participating judges would also be offered by the South Centre, subject to the consent of each participant.

The South Centre

The South Centre is an intergovernmental organization of developing countries that acts as a Centre for reflection and research based in Geneva (Switzerland). It currently has 54 Member States in Africa, Asia and the Pacific and Latin America and the Caribbean. The main activities of the South Centre are research and policy analysis, technical assistance and capacity building activities, support in international negotiations and the promotion of South-South cooperation through the exchange of experiences. The South Centre counts with re-known international experts in the area of intellectual property and public health with over 20 years of experience providing trainings. For more information, visit the website www.southcentre.int.

For more information on the South Centre training programs, visit the website <https://ipaccessmeds.southcentre.int>.

Please also refer to our case database on IP and TRIPS flexibilities: <https://ipaccessmeds.southcentre.int/case-law-database/>.

Objectives

The course will contribute to improving the understanding of judges participating in the course of the flexibilities provided for in the TRIPS Agreement to protect public health. It will strengthen the knowledge and skills of judges for the interpretation and application of the TRIPS Agreement and national laws in relation to the production and commercialization of medicines. Examples from selected judgments from courts in Asia and around the world will be discussed. The course offers judges an opportunity to network and share experiences with other judges in the region.

Participants

The course is for members of the judiciary, including judges in specialized courts and quasi-judicial administrative tribunals with jurisdiction to hear patent cases. Eligible countries include Bangladesh, Cambodia, China, India, Indonesia, Iran, Jordan, Laos, Malaysia, Myanmar, Pakistan, Philippines, Sri Lanka, Myanmar, Sri Lanka, Thailand and Vietnam. Participants will be selected on the basis of their applications.

Content

The course, of four half-day sessions, will be held over a four-week period, and will be conducted online on the South Centre's e-learning platform. The course will be conducted in English. Simultaneous translation in other languages can be provided upon request. The course will be facilitated by international experts from the South Centre and academia. The sessions will include presentations, individual exercises and group discussions. Reading materials will be provided in preparation for the course sessions. The topics for the sessions will include:

- Overview of the relationship of intellectual property rights and public health, with a focus on patents and data protection
- International legal framework
- The TRIPS flexibilities to protect public health:
 - o Patentability criteria
 - o Patentable subject matter
 - o Limitations and exceptions to patent rights
 - o Protection of test data
 - o Exhaustion regime and parallel importation
 - o Compulsory licensing and government use
 - o IPR enforcement, including provisional and permanent injunctions, border measures
 - o Use of competition law
- Judicial decisions on intellectual property and public health

Facilitators

The course will be facilitated by experts from the South Centre, faculty members academic institutions and former judges with extensive knowledge and experience of cases of application of TRIPS flexibilities under national law and policy to support public health objectives. The facilitators include:

Prof. Carlos M. Correa, Executive Director, South Centre. Prof. Correa Dr. Correa is a renowned international authority on intellectual property and technology issues. He has worked with the Argentine government and has been the Director of the Centre for Interdisciplinary Studies on Industrial Property and Economics at the Law Faculty of the University of Buenos Aires. He was a member of the UK Commission on Intellectual Property Rights, the Commission on Intellectual Property Rights, Innovation and Public Health established by the World Health Assembly and of the FAO Panel of Eminent Experts on Ethics in Food and Agriculture. He has been a visiting professor in post-graduate courses of several universities and a consultant to various regional and international organizations. He has advised several governments on intellectual property, innovation policy and public health. He is the author of many books and numerous articles.

Dr. German Velasquez, Special Advisor, Health and Policy, South Centre. He has served as the Director of the World Health Organization (WHO) Secretariat on Public Health, Innovation and Intellectual Property. He was a pioneer of the activities of the WHO on IP and access to medicines and was a representative of the WHO at the WTO Council for TRIPS from 2001 to 2010.

Justice (retd.) Prabha Sridevan, former Judge High Court at Madras (2000-2010), India, and former Chairperson, Intellectual Property Appellate Board (IPAB), India (2011-2013). During her tenure as a High Court judge, Justice Sridevan dealt with a wide range of cases and delivered several landmark decisions on intellectual property and public health. In her capacity as Chairperson of the IPAB, she delivered a number of important IP decisions including one relating to India's very first (post TRIPS) compulsory licensing case.

Prof. Joshua Sarnoff, DePaul University, Chicago. Prof. Sarnoff is an internationally recognized expert on the intersections of intellectual property law, environmental law, health law, and constitutional, administrative, and international law.

Prof. Irene Calboli, Texas A&M University School of Law. Prof. Calboli is a renowned scholar on intellectual property law. She has held visiting positions including at Bocconi University, Hanken School of Economics, King's College London, the University of Strasbourg, Royal University of Law and Economics of Cambodia, University of Bologna, Tongji University, the University of California at Berkeley, and the Max-Planck Institute for Intellectual Property and Competition Law. She is an elected member of the American Law Institute, the Chair of the Art Law Section of the Association of American Law Schools, and a member of the Council of the International Law Association (Singapore Branch); the Board of the European Policy for Intellectual Property Law Association; and the Legislation and Regulation Committee of the International Trademark Association. She has been an Expert, inter alia, for the World Intellectual Property Organization, the European Intellectual Property Office, the Intellectual Property Office of Singapore, and the Ethiopian Intellectual Property Office.

Prof. Duncan Matthews, Queen Mary University. Prof. Matthews is Director of the Queen Mary Intellectual Property Research Institute and a member of the Centre for Commercial Law Studies. He has acted as an advisor to: Directorate General Trade of the European Commission; the ECAP II EC-

ASEAN Intellectual Property Rights Co-operation Programme; the American Association for the Advancement of Science (AAAS); the United Nations Development Programme (UNDP); the European Parliament Committee on International Trade; the European Patent Office (EPO); the UK Strategic Advisory Board for Intellectual Property Policy (SABIP); and the UK Intellectual Property Office (IPO) Expert Advisory Group on Trade and Development.

Certificate

After successfully completing the four half days of the course, participants will receive a certificate of participation.

Application Process

Judges from eligible countries that are interested in participating in the course should complete the application form attached, via email to ngomeeneme@southcentre.int.

When submitting your application, please clarify whether you would prefer this course to be conducted in a language other than English. If so, please mention which is the preferred language.

Queries

Any questions about the course can be addressed to Mr. Nirmalya Syam, syam@southcentre.int.