

**Report Q205**

in the name of the Indonesian Group

**Exhaustion of IPRs in cases of recycling and repair of goods**

**Questions**

**I) Analysis of the current statutory and case laws**

1) *Exhaustion*

*In your country, is exhaustion of IPRs provided either in statutory law or under case law with respect to patents, designs and trademarks? What legal provisions are applicable to exhaustion? What are the conditions under which an exhaustion of IPRs occurs? What are the legal consequences with regard to infringement and the enforcement of IPRs?*

Indonesia has not yet regulated the provision related to exhaustion of IPRs.

2) *International or national exhaustion*

*Does the law in your country apply international exhaustion for patents, designs or trademarks? If yes, are there any additional conditions for international exhaustion compared to regional or national exhaustion, such as a lack of marking on products that they are designated only for sale in a specific region or country or the non-existence of any contractual restrictions on dealers not to export products out of a certain region? What is the effect of breach of contractual restrictions by a purchaser?*

*If your law does not apply international exhaustion, is there regional exhaustion or is exhaustion limited to the territory of your country?*

*In case your country applies regional or national exhaustion, who has the burden of proof regarding the origin of the products and other prerequisites for exhaustion and to what extent?*

There is no regulation yet in our country, therefore it entirely depends on the contents of the contract signed by the parties concerned.

3) *Implied license*

*Does the theory of implied license have any place in the laws of your country? If so, what differences should be noted between the two concepts of exhaustion and implied license?*

Indonesia has not yet regulated the provision on implied license.

4) *Repair of products protected by patents or designs*

*Under what conditions is a repair of patented or design-protected products permitted under your national law? What factors should be considered and weighed? Does your law provide for a specific definition of the term "repair" in this context?*

Indonesia has not yet regulated the provision repairing of products protected by patents or design.

5) *Recycling of products protected by patents or designs*

*Under what conditions is a recycling of patented or design-protected products permitted under your national law? What factors should be considered and weighed? Does your law provide for a specific definition of the term "recycling" in this context?*

Indonesia has not yet regulated the provision on recycling of products protected by patents and design.

6) *Products bearing trademarks*

*Concerning the repair or recycling of products such as reuse of articles with a protected trademark (see the examples hereabove), has your national law or practice established specific principles? Are there any special issues or case law that govern the exhaustion of trademark rights in your country in case of repair or recycling?*

Indonesia has not yet regulated the provision on repairing or recycling of products protected by trademark. However, the important matter is that the trademark should be removed from the repaired or recycled product.

7) *IPR owners' intention and contractual restrictions*

a) *In determining whether recycling or repair of a patented product is permissible or not, does the express intention of the IPR owner play any role? For example, is it considered meaningful for the purpose of preventing the exhaustion of patent rights to have a marking stating that the product is to be used only once and disposed or returned after one-time use?*

In determining whether recycling or repair of a patented product is permissible only for trademark owner/protection. For example – a bottle of mineral water still using a trademark is refilled by a third party with plain water.

b) *What would be conditions for such kind of intentions to be considered?*

It is considered an infringement if the refilled water is being commercialized.

c) *How decisive are other contractual restrictions in determining whether repair or recycling is permissible? For example, if a license agreement restricts the territory where a licensee can sell or ship products, a patentee may stop sale or shipment of those products by third parties outside the designated territory based on his patents. What would be the conditions for such restrictions to be valid?*

The contractual restriction in determining whether repair or recycling is permissible depends on the agreement of the related parties.

d) *Are there any other objective criteria that play a role besides or instead of factors such as the patentee's intention or contractual restrictions?*

There are no objective criteria that play a role.

e) *How does the situation and legal assessment differ in the case of designs or trademarks?*

The Indonesian Trademark and Design Law does not recognize such case.

8) *Antitrust considerations*

*According to your national law, do antitrust considerations play any role in allowing third parties to recycle or repair products which are patented or protected by designs or which bear trademarks?*

Indonesia has not yet regulated the antitrust Law regarding IPRs.

9) *Other factors to be considered*

*In the opinion of your Group, what factors, besides those mentioned in the Discussion section above, should be considered in order to reach a good policy balance between appropriate IP protection and public interest?*

Beside the above discussion, the following should be considered in order to reach a good policy balance between appropriate IP Protection and public interest:

- a) Trade Dress and delution provision
- b) IP unfair competition/antitrust Law
- c) Recycling & Repair of goods protected by IPR.

10) *Interface with copyrights or unfair competition*

*While the present Question is limited to patents, designs, and trademarks as noted in the Introduction above, does your Group have any comments with respect to the relationship between patent or design protection and copyrights or between trademarks and unfair competition relative to exhaustion and the repair and recycling of goods?*

We are of the opinion that the Government of Indonesia should start taking into consideration on cases related to recycling & repair of goods, which most likely happens in Indonesia but is not dispose to the public yet.

11) *Additional issues*

*In the opinion of your Group, what would be further existing problems associated with recycling and repair of IPR-protected products which have not been touched by these Working Guidelines?*

The above matters would be associated with criminal action, such as fraud, infringement and forgery.

**II) Proposals for uniform rules**

1) *What should be the conditions under which patent rights, design rights and trademark rights are exhausted in cases of repair and recycling of goods?*

The condition under which patent rights, design rights & trademark rights are exhausted in cases of repairs recycling of goods applied as the goods still have economics value.

2) *Should the repair and the recycling of goods be allowed under the concept of an implied license?*

Yes, it is possible that the repair and the recycling of goods be allowed under concept of an implied license.

3) *Where and how should a line be drawn between permissible recycling, repair and reuse of IP-protected products against prohibited reconstruction or infringement of patents, designs and trademarks?*

Yes, as long as the goods are not commercially use.

4) *What effect should the intent of IPR holders and contractual restrictions have on the exhaustion of IPRs with respect to recycling and repair of protected goods?*

The IPR holders and the parties (in the agreement) should draw a limitation on dos and don'ts related to the contents.

- 5) *Should antitrust issues be considered specifically in cases of repair or recycling of goods? If so, to what extent and under which conditions?*

Yes, the antitrust issue could be considered specifically in cases of repair or recycling of goods. The conditions, please see point 9.

- 6) *The Groups are invited to suggest any further issues that should be subject of future harmonization concerning recycling, repair and reuse of IP-protected products.*

To ensure fair protection for IP owner, where it should reserve their right of means/users that has to make use of products that still have economical value or technical function.

- 7) *Based on answers to items 1 to 6 above, the Groups are also invited to provide their opinions about how future harmonization should be achieved.*

See point no. 6.