The concern of judicial improvement on intellectual property matters in the developing countries has been the centre of attention during recent years. Whilst providing special judges or quorums in ordinary courts to review intellectual property matters is an alternative, an increasing number of developing countries select the utmost step by reforming their judicial structures to establish new specialized intellectual property court systems.

Approaching the commitment of establishing specialized court system, developing countries should focus more on a proper attitude and model rather than a hastily need. Among several disparity of justification and readiness between developed countries and developing countries, developing countries cannot merely borrow specialized intellectual property system from any developed country or simply establish one.

In this dissertation, no attempt is made to propose a complete model of specialized intellectual property court because such a model would heavily depend on a number of subject matters; for example, monopoly power, rights, economic growth, and many other issues related to intellectual property protection. Nevertheless, the dissertation aims to derive certain degree of directions in which developing countries should truly take into account in establishing a specialized court system. Certain major considerations include;

(a) Historical and philosophical perspective

The study of intellectual property histories and philosophical theories in Chapter 4 clarifies that the most important characteristics of intellectual property are its monopoly nature, intangible form, and the need to balance such monopoly rights and the public interest. The protection of such private
right with the monopoly character hence should be primarily done by monetary recovery in civil litigation, similar to what observed in most developed countries. However, the practices in most developing countries, particularly in Thailand and Vietnam, have been mainly carried out by criminal prosecutions.

In Chapter 3, this concern is heightened when combined with the pressure from other countries. One of the examples is the Malaysian criminal Intellectual Property Court, established as a pilot project July 2007 to try criminal copyright cases. This unique model was influenced by IIPA Special 301 Report, under the United States Trade Act. The establishment of new court was pleased by IIPA temporarily; however, additional concerns were raised in the following annual reports.

(b) Nature of intellectual property right

The nature of intellectual property right—which may be prescribed by the monopoly character, the need to balance, and the intangible nature—has been integrated into the intellectual property system in most developed countries. The focus on monetary right, through civil litigation, is preferred.

Trade promotion, international obligation, external pressures, and other objectives, nonetheless, play very important role in establishing a new specialized court in most developing countries. Consequently, it is proposed that developing countries need to realize not only the trade promotion, but also the nature of intellectual property right. The nature of monopoly character and the need to balance such monopoly grants and public interest shall be incorporated to the law enactment and judicial perception. Furthermore, the possible risk of intangible nature to the economy and public interest shall be reasonably covered.

(c) Civil approach

Specialized intellectual property courts in the United Kingdom, the United States, and Japan have jurisdiction over solely civil cases. Furthermore, the litigation statistics shown in Chapter 2 evidences that most developed countries generally apply civil litigation to protect intellectual property rights.

On the contrary, a number of developing countries have deviated from the proper rationale by adding and focusing more on criminal jurisdictions in specialized intellectual property courts. The statistics of intellectual property cases show that the ratios of civil cases filed in several developing countries are extremely low. Hence, the rationale of granting the intellectual property right as private right should be truly considered by most developing countries, prior to the establishment of new specialized intellectual property court.

(d) Harmonized practices

Intellectual property right can be claimed and infringed worldwide, not just within territory of any country. For that reason, harmonizing intellectual property laws and comparable practices is a crucial condition for an efficient intellectual property right protection scheme. Every country should take into consideration the
international standard and the harmonizing requirements for their legislatures and practices.

It is worth noting that proportions of civil intellectual property caseload among developed and developing countries shown in Chapter 2 and 3 signal the need for harmonization. The expansion of the harmonization could help blend different practices and standards into a common approach that can provide a more effective and efficient protection.

(e) Specialized court structure

The complete picture of specialized court structure should be previously designed. In Chapter 5, certain salient structures proposed in this dissertation include the comparing studies of (i) jurisdiction, (ii) court, (iii) civil remedies.

(f) Readiness

Establishing a new specialized intellectual property court offers both advantages and disadvantages. A possibly major advantage includes the confidence in the intellectual property system in a particular country, resulted from predictability and certainty of court decisions. Such predictability allows a private sector to better plan its investment.

After all, specialized intellectual property court will place intellectual property disputes outside the general court scheme and the mainstream of law. The specialized court system needs intellectual property expertise in all relevant technological areas. Judges, court personnel, and other enforcing officers need to have the necessary intellectual property law training and certain technical skills to properly apply intellectual property standards with uniformity. Consequently, among other things, the creation of specialized courts is costly; not only from the infrastructure cost but also constantly update training expenses. When making a decision on establishing and maintaining the specialized system, each developing country needs to clearly address its own readiness.