



Kingtime International Ltd v Petronas Carigali Sdn Bhd & Another Appeal [2026] 1 CLJ 563: Privity, Finality And Liability In Patent Enforcement

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The Court of Appeal's decision in *Kingtime International Ltd v Petronas Carigali Sdn Bhd & Another Appeal* addresses a question that often sits in the background of complex projects but rarely gets tested so directly. When a product has already been found to infringe, can a party further down the chain still treat that finding as someone else's problem?

This ruling shows that the answer will depend less on formal roles and more on the reality of what each party did. In working through that question, the court brings together familiar principles and applies them in a way that reflects how commercial projects actually unfold.

Background

Kingtime International Ltd (Kingtime) owns Malaysian patents relating to offshore production technology, specifically a mobile offshore production unit or MOPU, with a detachable wellhead support structure.

In earlier proceedings, Kingtime successfully sued Petrofac E&C Sdn Bhd, the contractor responsible for designing and constructing the MOPU. The High Court found that the patents were valid and had been infringed, and that decision was upheld on appeal and became final.

Kingtime later brought a claim against Petronas Carigali Sdn Bhd (PCSB), which had taken delivery of the same MOPU and used it in its operations. PCSB took a different position. It argued that it was not bound by the earlier judgment and sought to invalidate the patents altogether. The High Court accepted that position. It held that PCSB was not a privy of Petrofac and allowed the invalidation of the patents. Kingtime appealed.

Privity Of Interest And The Binding Effect Of Prior Judgments

The central issue before the Court of Appeal was whether PCSB could properly be treated as a privy of Petrofac in the earlier proceedings, such that it would be bound by the findings on validity and infringement.

The court approached this by focusing on substance rather than form. The relevant question, reflected in *Carl Zeiss Stiftung v Rayner & Keeler Ltd* [1967] 1 AC 853 and *Kluang Wood Products Sdn Bhd v Hong Leong Finance Bhd* [1999] 1 CLJ 1, is whether there is sufficient identification and connection between the parties to make it fair to bind one to a decision involving the other.

On the facts, PCSB's role went beyond that of a party receiving a finished product. It had received and considered a proposal involving features reflected in Kingtime's patented technology, incorporated requirements for a detachable wellhead structure into its tender specifications and also remained involved, to a meaningful extent, in the design and engineering process under the EPCIC contract.

In those circumstances, the court concluded that there was a sufficient connection between PCSB and Petrofac in relation to the MOPU. That connection justified treating PCSB as a privy. As a result, PCSB was bound by the earlier judgment, which had already determined that the patents were valid and that the MOPU infringed those patents.

Res Judicata And Estoppel

Once that conclusion was reached, the application of res judicata followed in a straightforward way. The doctrine reflects a simple but important idea that once a court has conclusively decided an issue, it should not be reopened in later proceedings. The earlier judgment had already settled the question of validity. It was final, and PCSB, as a privy, fell within its scope. In those circumstances, it was not open to PCSB to challenge the validity of the patents again through a separate invalidation action.

The court reiterated the established requirements for issue estoppel, as set out in *Kluang Wood Products Sdn Bhd v Hong Leong Finance Bhd & Anor* [1999] 1 CLJ 1 and found that they were satisfied. The High Court's decision to invalidate the patents was therefore set aside. At the same time, the court drew a clear distinction in relation to Kingtime's claim. The claim against PCSB was based on PCSB's own acts of taking delivery of and using the MOPU. It did not involve re-litigating what had already been decided. On that basis, Kingtime was not estopped from pursuing its infringement claim.

Infringement Arising From Use Of An Infringing Product

With the earlier finding that the MOPU was an infringing product already in place, the court turned to PCSB's conduct. By taking delivery of the unit and using it, PCSB had engaged in acts that fall within the patentee's exclusive rights under the Patents Act 1983. The reasoning is straightforward, but its implications are significant. Where a product has already been determined to infringe, subsequent acts involving that same product, including its use, may give rise to liability, particularly where the party using it is closely connected to how that product came about.

Approach To Patent Invalidation

The Court of Appeal also addressed how the High Court approached the question of invalidity. The difficulty was not simply the outcome, but the way in which that outcome was reached. The High Court had focused on the independent claims without properly considering the dependent claims or whether they contained additional features capable of sustaining validity. The Court of Appeal made it clear that this approach could not stand. As explained in *Merck Sharp & Dohme Corp & Anor v Hovid Bhd* [2019] 9 CLJ 1, each claim must be assessed on its own footing. A patent cannot be invalidated as a whole without that level of analysis. On the evidence before it, the court found that there was no sufficient basis to invalidate all claims, and that the necessary assessment had not been carried out. The finding of invalidity was therefore set aside.

Practical Implications

From a practical perspective, the decision is a reminder that courts will look beyond formal roles and examine the substance of a party's involvement. Where a party plays a meaningful role in shaping or adopting a product, it may be treated as bound by findings made in earlier proceedings concerning that product.

It also reinforces the finality of judicial determinations. Once an issue such as patent validity has been conclusively decided, there is limited scope for it to be reopened by parties who are sufficiently connected to the earlier proceedings.

There is a broader point as well. Decisions made at the procurement and design stage, particularly where specific technical features are adopted, can have legal consequences later on. Those decisions should be approached with that risk in mind.

Finally, the case underscores the need for a careful, claim-specific approach to patent invalidation. Courts will expect a proper analysis of each claim, supported by evidence, rather than a broad conclusion.

Conclusion

The Court of Appeal's decision in *Kingtime International Ltd v Petronas Carigali Sdn Bhd & Another Appeal* does not change the underlying principles, but it does show how they operate in a commercial setting involving multiple parties. It provides a clearer sense of where responsibility may lie and how far earlier findings can reach.

With the matter now remitted to the High Court for the assessment of damages, the financial consequences will follow. The legal position, however, is now settled in a way that is likely to guide similar disputes going forward.

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