



Left | **Chandavya Ing** — Advisor — chandavya.i@tilleke.com

Center | **Socheata Eng** — Advisor — socheata.e@tilleke.com

Right | **Sokmean Chea** — Advisor — sokmean.c@tilleke.com

New Options to Accelerate Patent Registration in Cambodia

Cambodia's patent system is still relatively young, with the Law on Patents, Utility Model Certificates, and Industrial Designs (Law on Patents) enacted in 2003. But over the past two years, the Ministry of Industry and Handicrafts (MIH) has taken important steps to expedite patent protection.

Cambodia has granted 17 patents, according to the Patent Office. While that number may seem small by international standards, it is important to understand that 10 of those patents were granted in 2016 and 6 were granted to date in 2017, so there is a real trend toward facilitating patent protection.

Although Cambodia lacks the infrastructure to examine patent applications, the MIH has made it possible to obtain granted patents in Cambodia through a number of agreements with other governments, with accelerated processes that can be completed in months, not years. These agreements are discussed in further detail below.

Re-registration of Singapore Patents and Designs

On January 20, 2015, the MIH entered into a Memorandum of Understanding on the Cooperation in Industrial Property with the Intellectual Property Office of Singapore (IPOS) to make it possible for holders of Singapore-granted patents to obtain protection in Cambodia under a streamlined re-registration process. To implement this process, the Prakas on Re-registration of Singapore Patents in Cambodia was adopted and became effective in July 2016.

There is no deadline to re-register a Singapore-granted patent in Cambodia, but the Singapore patent must:

- ▶ Be in force at the time that the re-registration request was filed;
- ▶ Have a filing date on or after February 11, 2003; and,
- ▶ Be patentable in Cambodia as indicated under Articles 4 and 9 of the Law on Patents.

It is notable that Cambodia granted its first patent after the MIH entered into this memorandum of understanding with IPOS.

Facilitating Grant of Japanese Patents and Designs

The Cooperation for Facilitating Patent Grant (CPG) program between the MIH and the Japan Patent Office (JPO) will allow applicants to request accelerated decisions on patent applications filed in Cambodia if their patent has previously been examined and granted in Japan.

In order to participate in the CPG program, the following requirements must be met:

- ▶ There must be a Japanese patent application which has the same earliest date (whether a priority date or a filing date)

as the MIH patent application;

- ▶ The corresponding Japanese patent application has been granted by the JPO; and
- ▶ The claims in the MIH patent application have been amended to be the same as one or more claims in the corresponding Japanese patent application granted.

After verifying that all requirements have been met, it takes approximately two to three months for an MIH patent application to be granted.

Patent Cooperation Treaty

Cambodia became the 151st contracting state of the Patent Cooperation Treaty (PCT) on September 8, 2016, with the treaty entering into force in the country on December 8, 2016. Thus, any international patent application filed on or after December 8, 2016, will automatically include the designation of Cambodia and will automatically elect any demand filed in Cambodia.

Furthermore, nationals and residents of Cambodia are entitled, as of December 8, 2016, onward, to file international applications under the PCT. A local applicant in Cambodia can select to conduct patent searches with the IPOS, JPO, or the European Patent Office (EPO) when filing an international application.

Under the PCT, a current holder of an international application filed in a member country has 30 months from the initial priority date of their application to decide which other member countries they would like to seek patent protection in.

Validation of European Patents

Cambodia signed an Agreement on Validation of European Patents with the EPO on January 23, 2017, and the agreement will enter into force on July 1, 2017. Cambodia will be the first Asian country to validate/recognize European patents in its territory, placing it among 43 countries worldwide to allow protection with a single European patent application.

European patent applicants who wish to validate their patents in Cambodia on or after July 1, 2017, will be able to benefit from the new procedures, which involve filing a request for validation with the EPO and paying a validation fee within six months of the date of publication of the European search report in the European Patent Bulletin or within the required period for gaining entry into the European national phase of the qualified PCT international application.

Exceptions for Pharmaceutical Patents

Pharmaceutical patents are subject to a notable exception under all of the patent-granting methods described above. Article 4 of the Law on Patents excludes pharmaceutical products from patent protection in Cambodia until January 2016. However, since Cambodia is a least-developed country, the World Trade Organization's Council for Trade-Related Aspects of Intellectual Property Rights (Council for TRIPS) has decided that Cambodia is not obligated to provide protection to pharmaceutical-related patents until 2033.

Although Cambodia has not amended its Law on Patents to reflect the extension granted by the Council for TRIPS, the MIH anticipates that changes to the law may occur soon. The MIH is therefore reluctant to accept applications for pharmaceutical-related patents, and is likely to reject such applications altogether.

Despite a few limitations, accelerated patent registration via the IPOS, JPO, PCT, and EPO channels has great potential to facilitate increased intellectual property protection in Cambodia. 🇰🇲