

## Draft Amendment to the Patent Act Open for Public Hearing Again

Thailand's Department of Intellectual Property (“**DIP**”) recently published the latest draft of the bill to amend the Patent Act B.E. 2522 (the “**Bill**”) for public hearing and public consultation again from 31<sup>st</sup> January 2018 to 28<sup>th</sup> February 2018 before the DIP revises the Bill and proposes it to the Cabinet.

Under the latest Bill, there will be many major changes to the current law and practice of patent application and registration. For instance, provisions in relation to (“**GRs**”) and traditional knowledge (“**TK**”) will be added in the Bill. The Bill will impose disclosure requirement on an applicant who used GRs or TK in developing the innovation claimed in a patent application. An application is required to identify and disclose the source or origin of the GRs or TK used in the invention and submit evidence of prior informed consent and benefit-sharing when these GRs are used in developing the innovation claimed in a patent application.

The Bill will introduce two new kinds of unpatentable subject matters, i.e. surgical methods and business methods. The Bill will also amend the scope of prior use considered as prior art to be an invention which was widely known or used by others in Thailand or abroad. This will change the prior use art to be under the approach of worldwide novelty.

Furthermore, there will be a new system or scheme of patent registration. Under the current patent law, a patent application is published only after it passes the preliminary examination stage and any person may file an opposition against a patent application within 90 days from the publication date. Under the Bill, a patent application will be published twice. The first publication is a publication within 18 months from the filing date after the preliminary examination and the second publication is a pre-grant publication after the substantive examination. An opposition is allowed within 90 days from the pre-grant publication date, not after the first publication.

An opposition after preliminary examination stage under the current patent law will be changed to a "third-party observation" where any person may submit to the patent examiner an observation paper to challenge the validity or patentability of a pending application.

Under the Bill, the time period to file a request for a substantive examination will be reduced from five years from the publication date to three years from the filling date.

The Bill will introduce a new ground for granting compulsory patent licensing, i.e. to remedy a practice determined after judicial or administrative process to be anti-competitive. This is to make the patent law of Thailand be in line with TRIPS Article 31(k).

The Bill will also add new sections about exportation of patented medicines to less-developed countries or countries that do not have a production capacity accordingly to principles under TRIPS Article 31 bis.

This published Bill is not its final version to be purposed to the Cabinet for their approval. We will update readers on its development in future issues of our newsletters.

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