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PATENT SYSTEM DEVELOPMENT IN CAMBODIAN JURISDICTION – NEW APPROACH OF PATENT EXAMINATION PROCESS

Difference from other developed countries, the Intellectual Property subject matters in the Kingdom of Cambodia have been governed by 3 (three) different authorities:

- The Ministry of Industry, Sciences, Technology and Innovation (MISTI) is responsible for administration and registration of patent, utility models and industrial design, and related matters thereof.
- The Ministry of Commerce (MOC) is responsible for administration, prosecution and registration of the mark (including trade name), franchising agreement, geographical indication (GI) and related matter thereof.
- The Ministry of Culture and Fine Arts (FCFA) is responsible for administration and registration of copyright, neighboring right and related matter thereof.

Each section is governed by different laws and regulations. For instance, the Law on Patent, Utility Model Certificate, and Industrial Design (the “Patent Law”) was adopted in 2003, providing the standard requirement for patent granting by the Government in Section 1 of Chapter 2. It was required the process of examination.

Since the 2000s, Cambodia has adopted IP-related principal laws to determine the conditions necessary to acquire intellectual property rights in its jurisdiction. Unfortunately, in practice the implementation of the laws is quite limited, in particular the patent subject matters, due to lack of human and financial resources. Therefore, the Cambodian government has made a greater effort to improve the system for obtaining intellectual property rights and their protection more effectively. In this respect, from 2015, Cambodia has strived to adhere into various international treaties in the field of patents. Since the adoption of the Patent Law in 2003, there were over 300 applications filed with the Ministry of Industry and Handicraft (MIH), but none of them has been granted.

Recently, Cambodia acceded to various international treaties to improve and facilitate the acquisition patent rights in Cambodia jurisdiction. For instance, Cambodia has acceded to international treaties and bilateral agreements to facilitate the process of obtaining patents in Cambodia.

a) Accession to the Patent Cooperation Treaty (PCT)

In 2016, Cambodia became the 151st member of the PCT. On December 8th, 2016, the PCT entered into force in Cambodia; the designation of Cambodia is included in the International Application (AI). Cambodia may receive the patent filed through PCT from any country members to its national filing process. The national filing is opened for international filing after December 8th, 2016, and the PCT patent documents shall be filed within 30 months from the priority date.

For national filing, there are some requirements among which the translation of patent documents of AI shall be translated into Khmer language. The applicants shall enjoy the right to submit the Khmer translation version to the Cambodian Patent Office within 6 months from filing date.

b) Bilateral Agreement for the Grant and Recognition of a Patent with Singapore (IPOS) - Re-registration Procedure

The re-registration of Singapore Patent is an expedited patent granted procedure by which the owner of the patent granted in Singapore is entitled to request for re-registration as such in Cambodian jurisdiction. To assess the patentability of an invention, Cambodia Patent Office, the MISTI, relies on the final search and examination report drawn up by IPOS.

The re-registration application must have the same filing date as that of the Singapore Patent at IPOS, and it is acceptable for any patent granted in Singapore after February 11th, 2003. Likewise, the re-registration application of such patents shall comply and meet all legal requirements under Cambodian Patent Law, without which the applicants could be rejected by Cambodia patent examiner.

The protection term of such granted patent shall be exclusively governed by Cambodian Patent Law, which is valid for 20 years from the filing date of the Singapore Patent in Singapore.

c) Bilateral Agreement on Cooperation to Facilitate the Granting of Patents (CGP) with Japan (JPO) in 2016

CGP is a fast-track patent granted procedure which allows the Japanese patent owner to file his/her patent application in Cambodian jurisdiction and to obtain the patent in a much shorter time. The MISTI will grant such patent application if the application in Japan is granted by the JPO.

d) The Agreement with the European Patent Office (EPO) in 2017

The Validation Agreement entered into force in Cambodia on 23rd Jan 2017. Cambodia is the 1st Asian country to recognize the validity of patents granted by the EPO in its territory.

The validation process:

- European Patent applications filed after the entry into force of the Agreement;
- A request for validation of European patents in Cambodia will be filed with the EPO;
- EPO will communicate to MISTI on the request of all necessary information concerning the procedure relating to European Patent applications and the patents concerned;
- Amount of validation fee is determined according to the Agreement between the EPO and MISTI;
- Pharmaceutical patents will be excluded from the application of the Agreement until January 1st, 2033.

e) The Agreement with China on the Validation of Chinese Patents (SIPO) in 2018

Cambodia has signed an Agreement with China on Chinese Patent Validation (SIPO) in 2018. Indeed, Ministerial Order No. 080 on the Chinese Patent Validation Procedure was also issued in 2018.

To file the application for validation of patent granted in China in Cambodia, certain conditions must be met:

- The Chinese Patent shall be still valid at the time of filing for validation in Cambodia;
- It must be filed after January 22nd, 2003 in China; and
- The conditions of patentability provided for by Cambodian Patent Law must be respected.