

# PATENT THAILAND





INTELLECTUAL PROPERTY

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Title: Patent Guide in Thailand

Author: TMP Intellectual Property Co, Ltd.

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## Generic considerations & Definitions

For patent matters, Thailand is bound by the following treaties:

Treaty	Monitoring body	Accession date
Paris Convention for the Protection of Industrial Property (1883)	World Intellectual Property Organization (WIPO)	2008
Patent Cooperation Treaty (PCT) (1970)		2009
Trade-Related Aspects of Intellectual Property Rights Agreement (1995)	World Trade Organization (WTO)	1995

The WIPO defines a patent as “*an exclusive right granted for an **invention**, which is a **product or a process** that provides, in general, a **new way of doing something**, or offers a **new technical solution** to a problem*”.

Under Thai law, it is to be noted that “patent” covers both inventions and designs, while “petty patent” covers only inventions. An invention is described by the [Patent Act B.E. 2522 \(1979\)](#) as a **new product or process**, or **any improvement to a known product or process**, while a process refers to a method, art or process of producing, maintaining or improving the quality of a product.

The legal provisions and procedures relating to designs are covered in a separate guide.

## Basic registrability criteria

An invention must meet the following three widespread substantive requirements to be registered as a **patent** in Thailand (Sections 5 to 8 of Patent Act B.E. 2522):

- It must be new, i.e., not part of the state of the art.
- It must be industrially applicable, i.e., made or used in any industry (crafts, agriculture, commerce, etc.).
- It must involve an inventive step, i.e., not being obvious to a person “ordinary skilled in the art”.

### What constitutes the “state of the art”?

By and large, the state of the art refers to the existing knowledge and inventions already known or used in a given field. More specifically, Section 6 of Patent Act B.E. 2522 gives a list of inventions that cannot be considered as “new” under Thai law:

- An invention widely known or used by others before the filing date or for which a patent has already been granted in Thailand.
- An invention described in a document or publication disclosed to the public in Thailand or abroad (before the filing date) – unless such disclosure was due to illegal appropriation of the invention or was made during an international/official exhibition that took place in the 12 months preceding the Thai filing date.
- An invention for which a patent/petty patent application was:
  - Filed abroad more than 18 months before the Thai filing date.
  - Filed abroad and already published.
  - Filed abroad and already resulted in the grant of the patent/petty patent.

These provisions do not prejudice the right for the applicant (derived from the Paris Convention) to file a patent/petty patent application in Thailand within 12 months of the date of filing of the foreign application and claim the corresponding priority date.



For **petty patents**, the requirements are less stringent as only the two first criteria are to be met, i.e., the invention does not need to involve an inventive step.

An invention cannot be the object of both a patent application and a petty patent application,<sup>1</sup> but a patent application can be converted into a petty patent application and vice versa.<sup>2</sup> If a patent and a petty patent application are filed for the same invention, only the petty patent application will be considered by the DIP.<sup>3</sup>

### **Inventions outside the scope of the Patent Act B.E. 2522**

The inventions covering the following subject matters cannot be the object of a patent/petty patent:

- Naturally occurring microorganisms and their components.
- Scientific or mathematical rules or theories.
- Computer programs.
- Methods of diagnosis, treatment or cure of human and animal diseases.
- Inventions contrary to public order, morality, health or public welfare.<sup>4</sup>

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<sup>1</sup> Section 65(3) Patent Act B.E. 2522.

<sup>2</sup> Section 65(4) Patent Act B.E. 2522.

<sup>3</sup> Section 77.5 Patent Act B.E. 2522.

<sup>4</sup> Section 9 Patent Act B.E. 2522.

## Filing requirements

### Basic filing requirements

If a patent/petty patent application is filed for the first time in Thailand, the following documents need to be submitted to the Thai Department of Intellectual Property (DIP):<sup>5</sup>

1. The **abstract, claim and specification in Thai language**, as well as the **drawings**, if any.
2. The original simply signed **Deed of Assignment** if the inventor is not the applicant OR the original **simply signed statement of applicant's right** if the inventor is the applicant.
3. A copy of a notarized **Power of Attorney** (executed by the applicant or their legal representative) appointing the agent in Thailand – this document will cover required information on the applicant (name, address and nationality or country of incorporation).

If the applicant is a Thai national/corporation, a Power of Attorney (simply signed – no notarization needed) can be submitted together with a signed copy of the applicant's national identity card (for individuals) or of the company registration certificate issued in the last 6 months (for corporations).

**Late filing** of the Thai translation, the DOA, the statement of applicant's rights and the POA is possible upon request, within **90 days** from the date of filing the patent application.

The **official fee** for filing is THB500 for patents and THB250 for petty patents.

The patent/petty patent application must be made for one invention only, or for a group of inventions that are so closely connected that they are part of the same concept.<sup>6</sup> If during the examination, the registrar considers that the application covers several inventions that are not closely connected, the applicant may be required to separate the application into as many applications as inventions covered. The applicant must comply with the

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<sup>5</sup> Section 17 Patent Act B.E. 2522 sets out the formal requirements.

<sup>6</sup> Section 18 Patent Act B.E. 2522.

registrar's request within 6 months following the date of receipt of the notice to keep the initial filing date as the filing date of each derived application.<sup>7</sup>

### **Online filing of patent & petty patent applications**

The Thai DIP set up an online filing system, which can be used fully to file patent applications and for most patent prosecution matters. While only the electronic color copies of the required documents need to be submitted, the original must be kept on hand in case they are requested by the registrar.

### **Additional requirements when claiming priority**

For a patent/petty patent application claiming priority of a foreign application, additional documents are required:

1. The English translation of the application – optional but preferred.
2. The original certified copy of the foreign application on which the priority claim is based.

Such priority-based application must be filed within **12 months** of the filing date of the foreign application.

The original certified copy of the foreign application can be submitted within 90 days of the Thai filing date.

### **Assignment of priority right**

Assignment of a priority right is possible for patent/petty patent applications, provided that the owner of the foreign application signs a deed of assignment with the applicant who wishes to file an application for the same invention in Thailand. The original document needs to be submitted to the DIP.

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<sup>7</sup> Section 26 Patent Act B.E. 2522.



## PCT National phase

Thailand accessed the Patent Cooperation Treaty in 2009. Therefore, applicants who filed an “international” patent application will have an additional **18 months** to decide whether they wish to seek patent protection in other designated Contracting States, including Thailand, for a total of **30 months** from the initial national filing date.

If they decide to enter the PCT-national phase in Thailand, the following documents are required:

1. If the PCT application has not yet been published on WIPO's website, the patent application in the local language or its English translation.
2. The Thai translation of the whole application, PCT request (RO101) and IB306 (if any).
3. A scanned copy of a notarized Power of Attorney – legalization is needed only for Taiwanese applicants.
4. If the applicant is an individual, the original simply signed statement of the applicant's right.

### Restoration of a PCT national phase

A PCT applicant may request restoration of the national phase application in Thailand within 2 months after the event that caused the process to be delayed or within 12 months after the priority period of 30 months, whichever expires first.

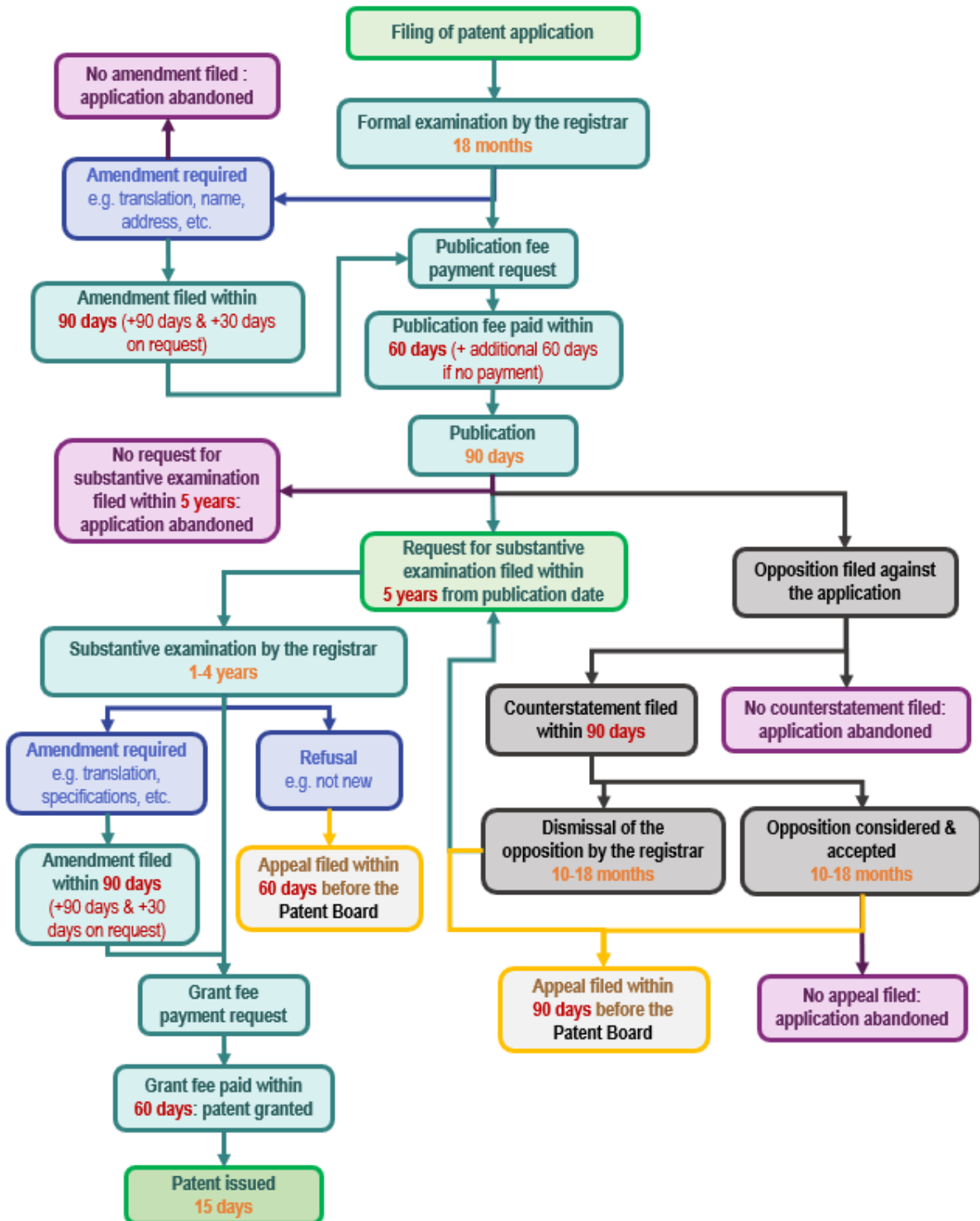
However, the applicant must provide a justification for having failed to file the application within the priority period, such as serious illness of applicant or agent, administrative error from the government, or other force majeure situations. If the competent officer considers that the applicant has an appropriate reason for not having filed an application before the statutory deadline, they may agree to proceed with the national phase of the international application.

The restoration request must be filed with the national phase application with the DIP.

# Prosecution procedure for patents

The patent registration process in Thailand takes on average **5 years**.

## FROM FILING TO GRANT - FLOWCHART





## Formal examination

Following the filing of the application, the Thai Patent Office will take at least 18 months to undertake the preliminary examination or formality check of the application. This will ensure that all documents have been correctly filed and that the invention for which a patent is sought is within the scope of the Patent Act.

For PCT national phase, the examination of the application will only start passed the 30-month period from the priority date. To avoid this delay, a request to proceed before this period has ended must be filed with the Patent Office and be motivated by specific emergency concerns – for instance, claims of patent infringement.

If the application complies with the Thai Patent Regulations, the applicant will be asked to pay the publication fee within 60 days of receiving the corresponding notice. If the applicant fails to pay the publication fee in these 60 days, a second (and last) notice will be issued, granting the applicant another 60 days to process the payment. Once the publication fee has been paid, the application is published in the Thai Patent Gazette.<sup>8</sup>

Third parties may file an opposition against the application within 90 days from the publication date. If an opposition is filed, the applicant will have 90 days from the day of notice to submit a counterstatement, failing which the application will be deemed abandoned.<sup>9</sup>

The appeal process is detailed in Annex.

### Deferring the publication of a patent

It is possible to defer the publication of a patent application for an indefinite period of time. To do so, the applicant or their representative needs to submit a letter to the Patent Office detailing the reasons for the deferment and mentioning a provisional desirable alternative publication date.

<sup>8</sup> Section 28 Patent Act B.E. 2522.

<sup>9</sup> Section 77 septies Patent Act B.E. 2522.



## Substantive examination

Once the application is published, the applicant must file the request for substantive examination within 5 years. In case opposition or appeal proceedings are on-going, the request must be filed within 1 year after the final decision has been made or 5 years from the publication date – whichever deadline expires last.<sup>10</sup>

The examination period in this stage takes 1 to 4 years. To speed up the process, it is advisable to submit a copy of the foreign search report issued in the examining country. If the examiner has to conduct the search on their own, the examination will last longer.

### **How to expedite the substantive examination of a patent in Thailand?**

As the substantive examination tends to be lengthy in Thailand, although reforms are underway to shorten the process, ASEAN and Japanese patent holders may request that the examination be expedited under one of the two operational fast-track systems. It may shorten the process by up to 3 years.

#### **1. The ASEAN Patent Examination Cooperation (ASPEC)**

It is a patent work-sharing program implemented in 9 ASEAN IP offices (Brunei, Cambodia, Indonesia, Lao PDR, Malaysia, the Philippines, Singapore, Thailand and Vietnam), operational in Thailand since 2013. It promotes the use of search and examination reports or PCT reports issued by another participating IP office to speed up the examination by the IP office designated subsequently. It is free of charge for the applicant. The ASPEC request can be filed together with the substantive examination request, at the designated IP office or through the ASEAN IP portal. The required documents are the duly filled request form, a copy of the prior search report and examination results (in English).

As of January 2020, 175 ASPEC requests have been filed in Thailand, mainly by holders of a patent application in Singapore

<sup>10</sup> Section 29 Patent Act B.E. 2522.

(73%). The average time from the filing of the ASPEC request to the first office action in the 5 ASEAN States where it has been used is 8 months.<sup>11</sup>

## **2. PPH pilot program with Japan**

The Thai DIP and the Japanese Patent Office (JPO) are cooperating since 2014 to accelerate the substantive examination of patents based on prior applications filed in Japan or Thailand. This pilot program is currently in force until December 2021 and has already been extended 3 times by 2-year periods.

This procedure is available for (i) applications claiming priority from a JPO application, (ii) national phase PCT applications based on a JPO application, (iii) national phase PCT applications without priority claim or with priority claim of a prior PCT application without priority claim, where the PCT national phase has also been filed in Japan. Once the application or some of its claims is/are declared patentable by the JPO, the applicant may ask that the corresponding patent application pending before the DIP be examined under the PPH program. This is no longer possible once an office action has been issued by the DIP during the substantive examination process.

Several documents are required:

1. Copies of all office actions issued during substantive examination by the JPO (with English or Thai translation).
2. Copies of all claims declared patentable by the JPO (with translation).
3. A table connecting the claims of the JPO application with the application submitted to the DIP.
4. The PPH request form.<sup>12</sup>

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<sup>11</sup> Retrieved from: <https://www.aseanip.org/Statistics/ASEAN-Patent-Examination-Cooperation-ASPEC-Statistics> (last accessed 21/03/2021).

<sup>12</sup> More information available at: [https://www.jpo.go.jp/e/system/patent/shinsa/soki/pph/document/guideline/thailand\\_dip\\_en.pdf](https://www.jpo.go.jp/e/system/patent/shinsa/soki/pph/document/guideline/thailand_dip_en.pdf) (last accessed 20/09/2020).

If any office action is issued, the applicant will have 90 days to respond by filing the required amendment. This deadline can be extended by a further 90 and 30 days upon request. If all necessary amendments have been made and the substantive examination is satisfactory, the applicant will receive a notice to pay the fee for the grant of the patent within 60 days from the receipt date of the notice. Once the fee has been paid, the patent is issued in the following 15 days.

### **Modalities when the examination is outsourced**

The Patent Act gives the possibility to the DIP to request any government department, unit or organization or any foreign or international patent office or organization to examine the application.

If the examination is outsourced, the applicant will be liable for all expenses incurred.<sup>13</sup> In practice, however, it is very seldom that the DIP resort to this outsourcing.

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<sup>13</sup> Sections 25 and 29 Patent Act B.E. 2522.



# Prosecution procedure for petty patent

It takes on average 1 to 2 years to obtain a petty patent in Thailand.

## FROM FILING TO GRANT - FLOWCHART





## Filing, publication and grant

Following the filing of the application, the Thai Patent Office will take 6 to 10 months to undertake the formality check of the application. If it complies with the regulations, the applicant will be asked to pay the publication fee along with the issuance fee, within 60 days of receiving corresponding notice. If the applicant fails to pay the publication fee in these 60 days, a second (and last) notice will be issued, granting the applicant another 60 days to process the payment. Once the publication and issuance fees are paid, the application is published in the Thai Patent Gazette and the petty patent issued.<sup>14</sup>



## Substantive examination

Third parties cannot file an opposition against a petty patent application. However, a substantive examination of the petty patent can be undertaken upon request from the applicant or any third party within 1 year following the publication of the application.<sup>15</sup>

During the substantive examination, if the examiner considers that the petty patent does not meet the basic registrability criteria, the petty patent owner will be notified and required to submit a supporting statement within 60 days of receipt of the notice. The substantive examination might ultimately lead to the cancellation of the petty patent if the owner fails to demonstrate that the invention in question is new or capable of industrial application.

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<sup>14</sup> Section 28 Patent Act B.E. 2522.

<sup>15</sup> Section 65.6 Patent Act B.E. 2522.

## Term of protection



### Patent term

The patent term can be extended for a maximum of 20 years from the filing date (Thai filing date or, for PCT applications, international filing date), provided that the applicant duly pays the annuity fees, yearly or as a lump sum, starting from the 5<sup>th</sup> year, as described below:

Year	Fee	Year	Fee
5 <sup>th</sup> to 20 <sup>th</sup> (lump sum)	140,000	13 <sup>th</sup>	8,200
5 <sup>th</sup>	1,000	14 <sup>th</sup>	10,000
6 <sup>th</sup>	1,200	15 <sup>th</sup>	12,000
7 <sup>th</sup>	1,600	16 <sup>th</sup>	14,200
8 <sup>th</sup>	2,200	17 <sup>th</sup>	16,600
9 <sup>th</sup>	3,000	18 <sup>th</sup>	19,200
10 <sup>th</sup>	4,000	19 <sup>th</sup>	22,000
11 <sup>th</sup>	5,200	20 <sup>th</sup>	25,000
12 <sup>th</sup>	6,600		

The payment of the fees must be made within 60 days from the beginning of each new term. If the patentee fails to extend the patent within this prescribed period, an additional 120-day grace period will be granted to file the request to extend the patent, sanctioned by a 30% surcharge of the annuity fees due.

If the annuity fees are not paid within this timeline and the cancellation of the patent is ordered by the DIP, the patentee will have one last chance to extend the term of the patent by filing such request within 60 days of receiving the notice of the cancellation order, provided that the failure to pay on time can be justified by necessity.<sup>16</sup>

<sup>16</sup> Section 43 Patent Act B.E. 2522.



## Petty patent term

The protection of a petty patent can be extended for a maximum of 10 years from the filing date (Thai filing date or, for PCT applications, international filing date), provided that the applicant duly pays the annuity fees or renewal fees, starting from the 5<sup>th</sup> year, as described below:

Year	Fee
5 <sup>th</sup> to 6 <sup>th</sup> (lump sum)	2,000
5 <sup>th</sup>	750
6 <sup>th</sup>	1,500
7 <sup>th</sup> -8 <sup>th</sup>	6,000
9 <sup>th</sup> -10 <sup>th</sup>	9,000

The payment of the annuity fees must be made within 60 days from the beginning of each new term. The grace period applicable to patents for late payment of the annuities is also applicable for late payment of the annuities (5<sup>th</sup> and 6<sup>th</sup> years) of a petty patent.

For the renewal fees (7-8<sup>th</sup> and 9-10<sup>th</sup> years), the payment must be made within 90 days before the end of the running term of the petty patent and no late payment is allowed.

## Licensing

### ⊕ Voluntary licensing

During the validity period of the patent/petty patent, only after it has been granted, the patentee may license the exclusive rights derived from the patent to any third party, in exchange for the payment of royalties.<sup>17</sup> The license agreement must be recorded at the DIP and must specify the conditions, restrictions and royalty terms of the licensing.

The original notarized licensing contract, signed by the patent owner, the licensee and two witnesses, must be submitted to the DIP. After the submission of the licensing request, the DIP will consider the case and if all requirements are met, ask the applicant to pay the fee for recording the license agreement. The whole process usually takes one month. Only a confirmation letter that the licensing has been registered is issued by the Patent Office.

If a license has been registered for a patent/petty patent, a discount of minimum 50% is granted for the payment of the annuity fees.<sup>18</sup>

### ⊕ Compulsory licensing

#### LICENSES FOR A PRIVATE PARTY IN ORDER TO STIMULATE COMPETITION AND INNOVATION

A third party may apply directly to the DIP for licensing **when the patent/petty patent rights have not been adequately used for no legitimate reason.**<sup>19</sup> This is possible only after the expiration of a 3-year period following the grant of the patent/petty patent and if the person applying for a license has tried but failed to reach an agreement with the patentee. The two following situations are considered to constitute an inadequate use of patent rights:

- When the patented product has not been produced in Thailand or the patented process has not been applied in Thailand.

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<sup>17</sup> Sections 38 and 39 Patent Act B.E. 2522.

<sup>18</sup> Section 45 Patent Act B.E. 2522.

<sup>19</sup> Section 46 Patent Act B.E. 2522.

- When the product produced under the patent/petty patent is not sold in Thailand, or is available in insufficient quantity or at an unreasonably high price in Thailand.

Another patentee may also request a license at the DIP when the exploitation of their **patent/petty patent is dependent on the licensing of another patent/petty patent** and under specific conditions set out in the Patent Act.<sup>20</sup>

## GOVERNMENT USE LICENSES

Government use licenses are a tool available to the Thai government either in the interest of the public<sup>21</sup> or during a state of war or emergency.<sup>22</sup> It has been used in the past by the Ministry of Health to license registered patents for pharmaceuticals.

A **compulsory license** under Sections 46, 47 and 51 **can be terminated when the circumstances that justified such licensing cease to exist.**<sup>23</sup>



## Assignment and transfer

The patentee may assign his patent/petty patent to any third party.<sup>24</sup> The transfer may also occur by inheritance following the death of the patent owner.

The original notarized deed of assignment, the original last will or the original death certificate (as the case may be) should be submitted to the DIP.

The recordal of the assignment should last around one month. No new patent is issued by the Patent Office, only a confirmation letter.

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<sup>20</sup> Sections 47 and 47bis Patent Act B.E. 2522.

<sup>21</sup> Section 51 Patent Act B.E. 2522.

<sup>22</sup> Section 52 Patent Act B.E. 2522.

<sup>23</sup> Section 50bis Patent Act B.E. 2522.

<sup>24</sup> Section 38 Patent Act B.E. 2522.



## Cancellation & Invalidation

A patent/petty patent may be canceled by the DIP if despite an existing license, it has **not been adequately used for 2 years** following the issuance of the license. This covers situations where the patented product has not been produced or the patented process not used, or no patented product or products derived from the patented process have been sold or imported in Thailand, or when the products are sold at an unreasonably high price.<sup>25</sup>

A patent/petty patent can also be canceled **if it has not been licensed according to the regulations** in place.<sup>26</sup>

In addition, a petition to cancel a patent may be introduced before the IP&IT Court by any person **if it appears that it was granted in violation of the provisions of the Patent Act**, for instance if the patented product or process did not meet the novelty requirement, is not industrially applicable or is, in fact, an invention that is not patentable under the Patent Act.<sup>27</sup>

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<sup>25</sup> Section 54(1) Patent Act B.E. 2522.

<sup>26</sup> Section 55(2) Patent Act B.E. 2522.

<sup>27</sup> Section 54 Patent Act B.E. 2522.

## Patent & petty patent rights enforcement

A patent/petty patent confers to its owner the exclusive right to:

- *For a product*: produce, use, sell, stock for sale or import the patented product.
- *For a process*: use the patented process to produce, use, sell, stock for sale or import the product of the patented process.

These exclusive rights can be limited in a few situations, for example for research purposes<sup>28</sup> or in case of compulsory licensing.

In case of infringement, some preventive measures and legal remedies are available to the patent/petty patent owner under Thai law.



### Preventive measures

#### ⊕ Preliminary injunction

If the patent/petty patent owner can present clear evidence that any person is committing or about to commit any act infringing their rights, they may petition the Court to issue a preliminary injunction in order to stop or prevent the infringement.<sup>29</sup> However, Thai courts rarely grant such injunction.

#### ⊕ Anton Piller order

Alternatively, with the aim of seizing evidence of infringement, the patent/petty patent owner may ask the Court to issue an Anton Piller order, provided that it can be demonstrated that it would be critical to ensure that proof of the infringement will not be destroyed once the alleged infringer is notified of the legal proceedings.<sup>30</sup>

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<sup>28</sup> Section 36 Patent Act B.E. 2522.

<sup>29</sup> Section 77 bis Patent Act B.E. 2522.

<sup>30</sup> The Establishment of and Procedure for Intellectual Property and International Trade Court, B.E. 2539 (1996), Sections 28 and 29; Rules for Intellectual and Property and International Trade Cases, B.E. 2540 (1997), Rule 20 and 21.

## Civil proceedings

An infringement action may be filed within 1 year from the date where the claimant discovered the infringement, but not past 10 years from the date of infringement. The petitioner should be able to provide evidence of infringement and proof that they are the owner of a valid patent/petty patent.

The Court can grant damages to the owner of the patent/petty patent, the amount of which will depend on the loss of benefits due to the infringement and the enforcement and judicial expense engaged by the patent/petty patent owner.<sup>31</sup>

## Criminal proceedings

Criminal proceedings may be conducted in parallel with civil proceedings at the initiative of the person who is the owner of a valid patent/petty patent. The Court will consider the evidence of infringement provided, as well as proof that the alleged infringer had the intention to commit the infringement.

The Patent Act provides that the infringement of patent rights can be sanctioned by imprisonment of up to 2 years and/or a fine of a maximum of 400,000THB.<sup>32</sup> For petty patent rights infringement, these sanctions are halved (1 year imprisonment and/or fine of 200,000THB).<sup>33</sup>

## Alternative dispute resolution

The DIP has set up a **mediation** procedure for parties who seek to resolve an IP dispute amicably and at minimal costs.

In addition, parties can always choose to resort to **arbitration**. Thailand has two main bodies that provide arbitration and mediation services: the Thai Arbitration Institute (TAI), founded in 1990, and the Thailand Arbitration Center (THAC), instituted by the 2007 Act of Arbitration Center and functional since 2015.

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<sup>31</sup> Section 77 ter Patent Act B.E. 2522.

<sup>32</sup> Section 85 Patent Act B.E. 2522.

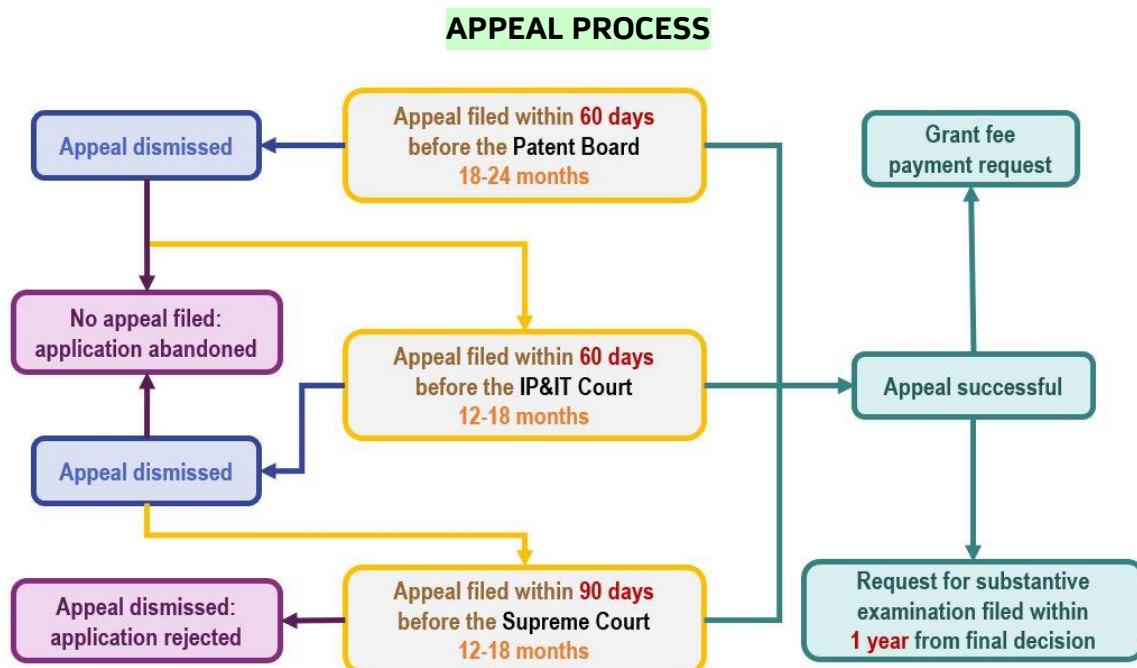
<sup>33</sup> Section 86 Patent Act B.E. 2522.

## ANNEX 1 – Official fees

Type	Patent (THB)	Petty patent (THB)
Filing	500	250
Late filing	50	50
Priority claim fee	50	50
Request for accelerated formal examination (before the 30-month deadline for PCT national phase)	50	50
Publication (+ grant for petty patent)	250	500
Deferring publication	0	-
Substantive examination	250	250
Submission of foreign patent	50	-
Grant	500	-
Opposition	250	250
Amendment	50	50
Appeal	500	500
Assignment of application	50	50
Assignment of patent/petty patent	250	250
Conversion to petty patent/patent application	100	100
Restoration of a PCT national phase	50	-
Conversion to petty patent/patent application	100	100
Submission of PPH/ASPEC request	0	-

All fees can be retrieved from the DIP website.<sup>34</sup>

## ANNEX 2 – Patent appeal flowchart



<sup>34</sup> <https://www.ipthailand.go.th/en/patent-006.html> (last accessed 21/03/2021).

**We assist our clients in protecting their patents and enforcing related rights. For more information, advice or quotation, please do not hesitate to contact us at [patent@tmp-ip.com](mailto:patent@tmp-ip.com).**