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Overview of Patents in Cambodia

Patents grant an inventor the exclusive right to an invention for a set period of time. In Cambodia, the Law on Patents, Utility Model Certificates and Industrial Designs (2003) governs registration, protection and enforcement of patents. The Prakas on the Procedure for the Grant of Patents and Utility Model Certificates (2007) provides details on the administrative procedures for the filing and granting of patents. As patent law is still very much in its infancy in Cambodia, no patents have been finalized and granted to date, and the law is largely untested. However, a review of the law can provide some indications as to what issues to consider when filing and maintaining a patent in Cambodia.

What can be patented in Cambodia?

Patents can cover inventions which are new, involve an inventive step and are industrially applicable. An invention is defined as an idea which permits the solution to a specific problem in the field of technology, and may be, or may relate to, a product or process. However, certain types of inventions are not patentable, such as scientific theories, business methods, surgical treatments, and plants and animals. Plant variety registration is governed by a separate law. Pharmaceutical products are currently excluded from protection until January 1, 2016 (though applications can be filed earlier to be examined after this date). Furthermore, inventions which would cause social harm (such as illegal narcotics) are not patentable.

An invention is considered new if it is not anticipated by prior art. This means that prior to the Cambodian filing (or priority date), any prior public disclosure of the invention anywhere in the

world and by whatever format will be considered prior art and affect the novelty of the invention. An exception is if the disclosure occurred within twelve months prior to the filing date (or if applicable, the priority date) and the disclosure was either by reason or as a result of acts committed by the applicant/predecessor in title, or as an abuse by a third party against the applicant/predecessor in title.

Does Cambodia accept applications claiming priority?

The Department of Industrial Property accepts patent applications filed which claim priority to an earlier national, regional or international application. A certified copy of the priority documents would be required, along with any other documents as later requested by the Patent Office.

What is required to maintain a patent?

A patent is valid for twenty years from the date of filing and is subject to annual maintenance fees. There is a six month grace period for annual fee payments. Should there be no payment, the application shall be considered withdrawn or if already granted, the patent shall lapse. While the law states that annual fees are due starting one year after the filing date of the application, current practice is to require the annual fees beginning with the fifth year of the patent. Changes in ownership, as well as licensing contracts should also be recorded with the Ministry.

Can anyone use my patent without my permission?

Under national law, there are certain circumstances where licenses may be granted to third parties without the prior permission of the patent holder.

The Ministry may permit a government agency or a third party designated by the Ministry to exploit a patent if it is for the purposes of public interest (including matters of national security, nutrition, health, or economic development) or if a court has made a ruling that the patent holder's (or its licensee's) exploitation is anti-competitive. The patent owner and any other interested party have an opportunity to be heard by the Ministry before the license is authorized, and the patent owner is entitled to remuneration. By request of the owner, the Ministry can also terminate the license if it determines that the reasons for permitting the license no longer exist and will



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ABOUT US

BNG Legal is a leading Cambodian law firm providing comprehensive legal services to foreign and local clients.

Registered with the Bar Association of the Kingdom of Cambodia, our legal professionals combine international standards with local expertise.

We differentiate ourselves by coupling a deep understanding of the local business environment with international professionalism and integrity.

We facilitate business, investment and trade between Cambodia and the rest of the world through innovative and cost-effective legal services.

Superior knowledge of local protocol, local procedure, and local people is necessary for any business to succeed in Cambodia.

Conducting daily business in Cambodia, BNG Legal is up to date with the newest procedures and requirements, helping clients efficiently and successfully complete any project.

CAMBODIAN LAW TODAY BLOG

cambodianlaw.wordpress.com

BNG Legal believes expanding access to legal information is crucial to rule of law. To that end, several of our legal professionals write a blog discussing recent developments in the legal landscape. Several of our recent posts cover:

- Ownership of Cambodian Cultural Relics Comes With Strings Attached
- No New Mobile Carriers, Government Announces
- Privacy Law in Cambodia
- Price Dumping Law in the Works

not recur, or the licensee did not comply with the license conditions. However, the Ministry will not terminate the license if it believes it necessary to protect the legitimate interests of the government agency or third party licensee. If requested, the Ministry may also change the terms of the license, if deemed justified.

Furthermore, patent holders who do not sufficiently exploit their inventions within four years of filing or three years of grant date (whichever ends later), risk having non-voluntary licenses be granted to third parties. However, the Ministry will not grant such licenses if the patent owner can sufficiently justify the insufficient or non-existent exploitation. Non-voluntary licenses have a limited scope and time period, and provide for remuneration to the patent owner. The Ministry can also issue a non-voluntary license as necessary to avoid infringement by a later patent that involves an important technical advance of economic importance as related to the prior patent. The owner of the earlier patent can in turn request a non-voluntary license for the later patent.

What rights do I have when I obtain a patent?

Third parties must obtain permission from a patent owner prior to exploitation of a patentable invention. This includes using a patented process and using, making, importing, selling, stocking, or offering for sale the patented product, or a product created as a result of a patented process. The patent owner (or in some circumstances, its licensee) can also prevent infringement by instituting court actions. Infringement can also be subject to fines and/or imprisonment.

Any interested party is permitted to request that a patent be invalidated. A patent may be invalidated if: it does not meet the legal definitions for being patentable material; if the description, claims or drawings are insufficient for the clear understanding and scope of the patent; or if the patent owner is not the inventor or successor in title.

For more details on patents in Cambodia, please see our patent report online.

Additions to our team

MR. PISETH PATH

Mr. Piseth PATH is a legal consultant at BNG Legal. Piseth holds a Bachelor of Law from the Royal University of Law and Economics, and a Master of Comparative Business Law at Université Lumière Lyon II, where he was an Eiffel scholar and earned a Maîtrise of Enterprise Law.

During his exchange program at the Université de Montréal, Piseth interned at Brownstein,

Brownstein & Associates, where he focused on commercial and family law. He also interned at Ponderis S.A., a French corporate firm where he provided consultation on the Chinese financial markets.

At BNG Legal, Piseth specializes mainly in contract law, intellectual property law, labor law and corporate law.

Piseth speaks Khmer, English, French and Thai.

LEGAL UPDATES

Royal Kram No. NS/RKM/0112/004 dated January 14, 2012 on Promulgation of the Law on Public Procurement. (R/L/Lu&Z/Khm/2012) (Royal Gazette, Year 12, No. 08, dated January 31, 2012)

This law is intended to regulate the public procurement process regarding purchases, construction, repair, and consultancy services. This law governs all public procurement in Cambodia, except procurement under financing by development partners and procurement concerning public security and national defense.

The procurement procedure for consultancy services or large public projects is subject to public bidding competitions open to local and foreign parties. Bidding for small projects will not be subject to a public competition. Special projects can also be exempt from public competition, but requires prior approval from the Ministry of Economy and Finance.

The law details how the public procurement procedure is processed. These processes are governed by a Joint-Prakas from the Ministry of Economy and Finance and the Ministry of Interior.

The law also governs the settlement of conflicts and complaints in the procurement process. A bidder may file a complaint with the Ministry of Economy and Finance, which can be later followed by a court filing.

Prakas No. B.7.011.243 (NBC) dated December 27, 2011 on Transparency in Credit Services of Bank and Financial Institutions. (L/R/Bank/Khm&Eng/2012) (Royal Gazette, Year 12, No. 10, dated February 08, 2012)

This Prakas concerns transparency in credit services of banks and financial institutions. Its aim is to make sure that advertising and terms used for advertisements by banks and financial institutions are fair, clear and not misleading, and that customers are given clear information about products and services. It also guarantees that customers are informed in advance about changes to interest rates, charges or terms and conditions. Customer information is also to be treated as private and confidential. Banks and financial institutions shall also provide secure and reliable core banking and payment systems.