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2019

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Thailand

泰国



IP Authorities

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Ministry of Commerce

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知识产权服务机构名单

A

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A.S.A.P LAW FIRM

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IP OVERVIEW OF THAILAND (2019)

Thailand has no formality requirement for obtaining copyright, authors are granted automatic protection upon the creation of the works. Under the Thai Copyright Act, copyrighted works include: cinematographic works, sound recordings, broadcasts and photographic works etc. Nonetheless, it is recommended that the author apply for a recordation with Thailand Department of Intellectual Property (DIP), it will take roughly 1~3 months to obtain a Thai Copyright Recordal.

At present, the Thai Government introduced 4 new amendments to the Thai Copyright Act. These proposed amendments, save for one, are still under consideration. The proposed amendments encompassed the following:

- Effective: Improved accessibility to copyrighted works for the disabled;
- Under consideration: Extended term of protection for photographic works;
- Under consideration: Technological protection measures (TPMs);
- Under consideration: Notice and Takedown procedure.

To conform Thailand's copyright practice to the Marrakesh Treaty, the Thai Government has made an amendment to further facilitate the disabled. The main purpose of this amendment is to provide exceptions for the reproduction, distribution and making available of copyrighted works to facilitate the disabled. Thailand has adopted a rule that would not only limit physical disabilities to those that prevents the disabled from holding and/or manipulating a book.

Additionally, photographic works will enjoy the term of protection for the life of the author and 50 years after his or her death. The extension of such protection term will result in a longer period for the copyright owner and its successors to benefit from the photographic works. Whereas, the term of protection for: audiovisual works, cinematographic works, sound recordings or broadcasts, photographic the protection remain as 50 years from the creation of such work, or 50 years after the first publication of the work.

The provision on technological protection measures (TPMs) for copyrighted works has also been amended in regard to anti-circumvention of such technology. A new section was added to prevent the tampering and/or disabling of TPMs. Moreover, another section was also added to impose punishment on any person who is found to facilitate the circumvention of TPMs.

Lastly, with the increased usage of social media, copyright infringement issues have become more prevalent in the Thai online society, these include infringement activities such as: live streaming of copyrighted contents (i.e. film, show or music) or unauthorized publication of comics/magazines, of which have become very common in online platforms. With the new Notice and Takedown procedure, copyright owners can file an infringement complaint with the internet service provider (ISP) directly. Assuming that the copyright owner filed the complaint in good faith, ISP is required to halt all communications of the alleged content and notify the alleged infringer of the takedown protocol. Following this, the alleged infringer will be allowed to file a counter-statement (optional), and the ISP will revive the blocked content within 15 days from the date of its receipt of the counter-statement. To prevent the ISP from doing so, the copyright owner is required to file a formal lawsuit against the alleged infringer before the Thai court within the prescribed period and notify the ISP accordingly. The new Notice and Takedown procedure is designed as a swift and cost-effective measure against online copyright infringement when compared to the long-drawn court process.

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K

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Patents

Under the Thai Patent Act, right holders are able to file: Patent for Invention, Utility Model/Petty Patent and Design Patent with Thailand Department of Intellectual Property (DIP).

Patent for Invention may be filed via Paris Convention within a 12- month deadline, or via PCT within a 30- month deadline. The typical timeline from filing till grant is 5 years with a formality and substantive examination requirements. To facilitate a smooth substantive process, it is recommended that a granted foreign corresponding application along with its search and examination report be submitted before DIP. After grant, should the patent remain of an economic value, right holder has the option of maintaining the patent by renewing it every consecutive year for the total of a 20-year period. In contrary, should the patent no longer be of an economic value, right holder may allow the patent to lapse by not renewing the patent.

Utility Model or Petty Patent may claim priority within 12 months from its priority application. Unlike Patent for Invention, Utility Model will only be subjected to a formality examination. Whereas an interested party may request a substantive examination within 1 year after the Utility Model has been published. The term of protection of Utility Model is 6 years and may be renewed twice (2 years each), making a total of 10 years.

Design Patent may also claim priority within 6 months from the priority application. For examination, Design Patent is subjected to both formality and substantive examination. The typical timeline for Design Patent from filing till grant is 1.5 ~ 3 years. Similar to Patent of Invention, depending on the economic value, right holder has the choice to maintain the design patent by renewing it every consecutive year for the total of a 10-year period.

It should be noted that Thailand has a rather strict policy on patentable subject matters. Subjects including: natural organism or plant/animal extract, scientific method and theory, computer programs, method of diagnosis/treatment and invention contrary to public order/good morals are not patent eligible. Despite this, it is possible to furnish a supplementary letter to DIP arguing the facts to overcome the above restrictions. For instance, restriction on natural organism or plant/animal extract can be overcome by illustrating man's intervention and elaborating the invention in a clear and concise manner. Moreover, a clear argument pointing out the technical effects of a computer program/computer application may surmount the unpatentable subject matter restrictions. Ultimately, with the right arguments, right holders can be sure to obtain a full patent protection in Thailand despite the strict regulations.

Trademark

Trademark application in Thailand can be filed via both conventional route and Madrid Protocol/International Registration (IR). For conventional route, a trademark application will generally take roughly 18 months from filing until registration. As for IR, it will usually take 18 months for Thailand Department of Intellectual Property (DIP) to issue a notification of refusal. In the absence of any refusals, IR application will proceed to publication and registration.

One important take away for Thai IR process is known as a "central attack". A central attack means that if a basic Thai application should be refused or a basic Thai registration should be cancelled within the five- year period of an IR, the IR will also become invalid. In a different circumstance, if an IR had already existed for a 5-year period, it will be considered as independent from the Thai application/registration regardless of any refusals or cancellations.

Most conventional trademark applications in Thailand will consist of a word, a device or the combination of both. Although, Thailand does allow the filing of non-conventional trademarks such as: sound, shape or picture, they are still rather difficult to obtain as there is a strict distinctive requirement in place. In accordance with the Thai regulations an applied mark must be distinctive and represent no relation to the applied goods or services. For example, generic words such as: clear or crystal will be refused if the applied goods consist of cosmetic or beauty products. Additionally, if a mark consists of both word and device, it is recommended that the device be made larger in proportion to the word to avoid a refusal. Moreover, stylization of a numeral or character mark may also decrease the likelihood of refusal.

Ultimately, to ensure a smooth prosecution and enforcement of intellectual property assets in Thailand, it is recommended that authors, right holders and owners seek appropriate assistance from experienced counsel.

L

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M

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McWalden & Bailey
Meiers Law Office LLC

N

Nagadatta & Doyle Ltd.
Norton Rose Fulbright (Thailand) Limited

P

Pattaya Law Center

Q

Quantico Ltd.

R

Rouse & Co. International

S

S & I International
Satyapon & Partners Limited.
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Seri Manop & Doyle Ltd.
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Siam Trademark Associates
Sukonta Law Office Co., Ltd.

T

TGC Thailand Intellectual Property Law Office
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泰国知识产权概况 (2019)

版权

泰国没有注册版权的正式要求，作者在创作作品时获得自动保护。根据泰国版权法，受版权保护的作品包括：电影作品、录音、广播和摄影作品等。尽管如此，也建议作者向泰国知识产权局 (DIP) 申请备案，获得泰国版权记录大约需要 1-3 个月。

目前，泰国政府对《泰国版权法》提出了 4 项新的修正案。这些拟议修正案，除一项外，仍在审议之中。拟议修正案包括以下内容：

生效事项：改善残疾人获得版权作品的机会；

审议事项：延长摄影作品的保护期；

审议事项：技术保护措施 (TPMs)；

审议事项：通知和拆卸程序。

为了使泰国的版权实践符合《马拉喀什条约》，泰国政府作出了一项修正，以进一步便利残疾人。本修正案的主要目的是为复制、分发和提供受版权保护的作品以方便残疾人提供例外。泰国通过了一项规则，不仅将身体残疾限制在那些阻止残疾人持有和 / 或操纵书籍的人身上。

此外，摄影作品还享有作者终身和作者去世后 50 年的保护期。这种保护期的延长将使版权人及其继承人从摄影作品中受益的时间更长。而音像作品、电影作品、录音、广播、摄影的保护期为创作之日起五十年，或者作品首次发表之日起五十年。

关于对受版权保护的作品采取技术保护措施 (TPMs) 的规定，在反规避此类技术方面也作了修订。增加了一个新的部分，以防止篡改和 / 或禁用胎压监测系统。此外，还增加了另一节，以惩罚任何被发现有助于规避胎压监测系统的人。

最后，随着社交媒体使用的增加，版权侵权问题在泰国网络社会中变得更加普遍，其中包括侵权活动，例如：有版权内容（即电影、表演或音乐）的直播或未经授权出版漫画 / 杂志，其中已经成为非常普遍的在线平台。通过新的通知和撤销程序，版权所有者可以直接向互联网服务提供商 (ISP) 提出侵权投诉。假设版权所有人真诚地提出了投诉，ISP 必须停止所有关于所称内容的通信，并将撤销协议通知所称侵权人。在此之后，被指控的侵权人将被允许提交反声明（可选），ISP 将在收到反声明之日起 15 天内恢复被阻止的内容。为了防止 ISP 这样做，版权所有人必须在规定的期限内向泰国法院对被控侵权人提起正式诉讼，并相应地通知 ISP。与漫长的法院程序相比，新的通知和撤销程序是一种快速、成本效益高的打击网络版权侵权的措施。

专利

根据泰国专利法，权利持有人可以向泰国知识产权部 (DIP) 申请：发明专利、实用新型 / 小专利和设计专利。

发明专利可以在 12 个月期限内通过巴黎公约申请，也可以在 30 个月期限内通过 PCT 申请。从申请到批准的典型时间是 5 年，有形式和实质性的审查要求。为促进实质性程序的顺利进行，建议在 DIP 前提交一份已批准的外国相应申请及其检索和审查报告。授予专利权后，如果该专利仍具有经济价值，权利人有权选择在连续的 20 年内每年续展一次。相反，如果专利不再具有经济价值，权利人可以不更新专利而允许专利失效。

实用新型或者小专利自优先权申请之日起 12 个月内可以要求优先权。与发明专利不同，本实用新型只进行形式审查。鉴于利害关系方可以在本实用新型公布后 1 年内要求进行实质性审查。本实用新型的保护期为 6 年，可续期两次（每次 2 年），共 10 年。

外观设计专利也可以在优先权申请之日起 6 个月内要求优先权。外观设计专利审查分为形式审查和实质审查。外观设计专利从申请到授予的典型时间为 1.5-3 年。与发明专利类似，权利人根据其经济价值的不同，可以选择每连续一年续展外观设计专利，续展期为 10 年。

应当指出的是，泰国对可申请专利的主题事项有着相当严格的政策。包括：天然生物或动植物提取物、科学方法和理论、计算机程序、诊断 / 治疗方法、违反公共秩序 / 良好道德的发明等科目均不具备专利资格。尽管如此，还是有可能提供一封补充信，说明克服上述限制的事实。例如，可以通过说明人类的干预并以清晰和简洁的方式阐述本发明来克服对自然有机体或动植物提取物的限制。此外，指出计

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Udomsin Andrew & Associates Ltd.
UNITED SOLICITORS LIMITED.

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Vickery & Worachai Ltd.

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WEERAWONG C & P



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算机程序 / 计算机应用的技术效果的明确论点可以超越不可专利的主题限制。最终，有了正确的论据，尽管泰国有严格的规定，但权利持有人仍然可以确保在泰国获得全面的专利保护。

商标

泰国的商标申请可以通过传统途径和马德里协议 / 国际注册 (IR) 进行。对于传统的方式，商标申请通常需要大约 18 个月从申请到注册。至于 IR，泰国知识产权部 (DIP) 通常需要 18 个月才能发出拒绝通知。在没有任何拒绝的情况下，IR 申请将继续发布和注册。

泰国红外过程中一个重要的外賣就是所谓的“中心攻击”。中央攻击意味着，如果基本泰国申请被拒绝或基本泰国注册应在五年内取消，也将成为无效的。在不同的情况下，如果 IR 已经存在了 5 年的时间，它将被视为独立于泰国申请 / 注册，无论异议或无效。

泰国的大多数传统商标申请将由一个文字、图形或二者的组合组成。尽管泰国允许非传统商标的申请，例如：声音、形状或图片，但由于有严格的特殊要求，它们仍然很难获得。根据泰国法规，商标必须是独特的，与应用的商品或服务无关。例如，如果所申请的商品由化妆品或美容产品组成，诸如“透明”或“水晶”之类的通用词将被拒绝。此外，如果标记由单词和图形组成，建议图形比例大于文字，以避免拒绝。此外，数字或字符标记的样式化也可以降低拒绝的可能性。

最后，为了确保在泰国顺利起诉和执行知识产权资产，作者建议权利持有人或所有人向有经验的律师寻求协助。

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WE HAVE OVER 50 YEARS OF EXPERIENCE PROVIDING LEGAL SERVICES

International Legal Counsellors Thailand Ltd. ("ILCT") is a full-service law firm with over 50 years of history. ILCT was built under the vision to become a leading legal service provider. We aim to elevate both domestic and international markets whilst fully providing a one-stop legal assistance.

ILCT's Intellectual Property (IP) Team comprises legal experts from various fields and is able to handle all IP related matters including patent, trademark and copyright. In addition our worldwide network also allows us to assist clients on a global scale, making ILCT a one-stop service law firm.

OUR SERVICES

- Patents
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