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Thailand PCT National Phase

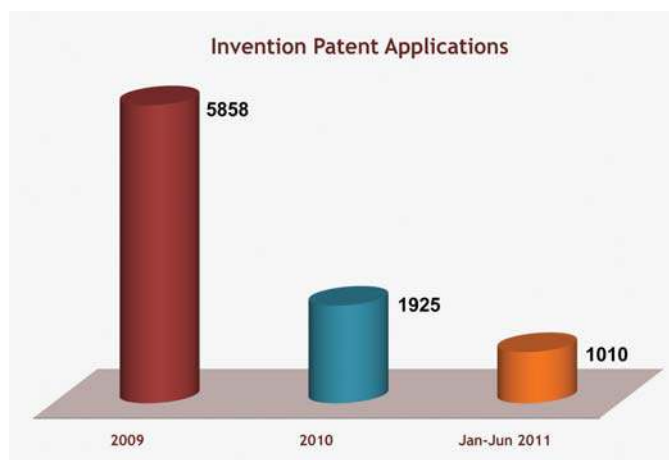
After coming into force in Thailand on December 24, 2009, the Patent Cooperation Treaty (PCT) gave patent owners additional time to enter their patents in Thailand. This resulted in a sharp reduction in applications, as some applicants took a brief hiatus, before returning in strength after the 18-month extension period ended in June 2011.

Filing Trends

Using the PCT essentially allowed patent owners to have an additional 18 months—from the non-PCT allotted period of 12 months from the first filing date, to 30 months from the first filing date under the PCT system—to decide whether, and in which countries, to file their patents.

The period from the introduction of the PCT to the first 18-month extension period (i.e., from December 24, 2009, to June 24, 2011) effectively saw a 67 percent and 68 percent reduction in the number of patent applications filed in 2010 and the first half of 2011, compared to the total number of new patent applications filed in 2009.

To illustrate this trend, the graph below shows the number of new patent applications that were filed in 2009, 2010, and the first six months of 2011.



However, the ending of the 18-month extension period in June 2011 has led to a sharp recovery in the number of patent applications being filed under the PCT

National Phase in Thailand. In July 2011, a total of 344 new patent applications were filed, which represents only a 30 percent reduction from the average monthly filings in 2009.

Filing Requirements

Patent owners who have filed an international PCT application, and who wish to obtain patent protection in Thailand via the PCT route, must file a national phase entry application in Thailand within 30 months from the first filing date of the basic application.

The following documents are required for submission with the PCT National Phase application:

1. Application Form Sor Por/Or Sor Por/001-Kor (PCT)—prepared by local patent agents.
2. Thai translation of the patent specification.
3. A copy of the PCT Request Form (PCT/RO/101) and its Thai translation.
4. Applicable fees.
5. A copy of the deed of assignment.

Thai Translation of the Patent Specification

The time stipulated for the Thai translation of the patent specification has now become an issue for both the patent owners and the patent practitioners. According to

the Ministerial Regulations concerning the Request for Protection of Inventions under the PCT, Clause 22 specifies that the Thai translation of a foreign-language specification must be submitted within the thirtieth month after the filing date of the

“ the ending of the 18-month extension period in June 2011 has led to a sharp recovery in the number of patent applications being filed under the PCT National Phase in Thailand ”

basic application.

In this regard, it is typically recommended that the patent owner send instructions to their patent lawyer, requesting them to file the PCT National Phase and patent specification as early as possible. Many patent practitioners, including those employed within our firm, have been working with the Patent Office to seek the possibility of an extension of time for filing the Thai translation.

In response to these requests for time extensions, the Patent Office will review each case and discuss the matter internally. However, for the time being, the Patent Office has requested that if the translation cannot be completed by the deadline, then at least the title, claims, and abstract should be submitted ahead of the deadline.

It should be noted, however, that this suggestion from the Patent Office is not supported by any legislation or regulation. Therefore, if the complete translation of the description is not available for submission, it is highly likely that it will be regarded as invalid.

As a result, patent applicants would subsequently be required to file an application for restoration to revalidate the patent application, together with supporting reasons, within the stipulated time. This, in turn, will increase costs and extend the timelines for patent owners. 🐼