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Regulatory Reform Makes Headway in Clearing Thailand's Patent Backlog

By and large, government regulations are adopted to achieve certain economic, social, and cultural objectives. However, excessive regulation can impose high burdens on society that outweigh these benefits. The current government of Thailand has undertaken regulatory reforms to address the problems posed by poorly designed regulations. The regulatory reforms adopted by the Thai government are based on the Organization for Economic Cooperation and Development's (OECD) guidelines for promoting public consultation in policy-making and strengthening regulatory impact assessment.

As part of its regulatory reform policy, Thailand adopted the Licensing Facilitation Act B.E. 2558 (2015), implemented on July 21, 2015, to boost regulatory quality and streamline implementation. The Act expedites registration procedures with Thai government authorities. Details were provided in public manuals setting out rules, procedures, requirements, costs, and timeframes relating to the granting of licenses to fill in regulatory gaps left by existing laws. The Act inevitably affects patent-granting procedures. The Department of Intellectual Property (DIP) is one such government body that must abide by the rules under the Act, which stipulates that the registration of an invention patent be completed within 55 months, a design registration within 15 months, and a petty patent registration within 3 months.

Thailand's Patent Office, a subdivision of the DIP, has been going through major changes to fulfill the publicly announced vision of handling issues in a manner that is "accurate, timely and meets international standards." The Patent Office's priority is clearing its infamous backlog, which has been addressed mainly by improving its processes and equipment, and by staffing and training more patent examiners. Further, the Patent Office has introduced standard reporting forms for patent examination to improve the clarity and quality of the reports.

Statistics available to us show that the number of office actions issued by the Thai Patent Office has increased over the past few years. Since May 2017, there has been a significant increase in all types of office actions that were issued to our firm (i.e., amendment instructions for both the preliminary examination and substantive examination stages for substantive and non-substantive issues, publication fee payment instructions, and registration fee payment instructions). Over the past two years, the average timeframe for granting a patent, from substantive examination through to grant, was 689 days (23 months), which is a significant improvement on the past.

Further improvements are on the agenda. Reportedly, the Patent Office is now working on a proposal to set up a supervisory working group to review all office actions before they are sent to the applicants, and to provide internal feedback to prioritize and resolve any errors. Such errors often lead to unnecessary requests for clarifications, which delay the procedures. The Patent Office is also pushing for the enactment of a draft amendment to the Patents Act, which contains provisions that would help speed up the application process. For example, the current Patents Act requires the applicant to formally request a substantive examination within five years after the first publication. The proposed amendment substantially accelerates this timeframe, requiring substantive examination requests to be made no more than three years after the filing date. Moreover, the DIP's official Manual on the Examination of Patent and Petty Patent Applications is now being substantially revised for the first time since the most recent edition, which was published in 2012. It is expected that the new edition of the manual will clarify and harmonize the Patent Office's practices in many areas.

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Overall, it appears that the Patent Office has been serious with these initiatives, as well as being inclusive, careful, and transparent. The drafts of the abovementioned standard reporting form, new Examination Manual, and the draft amendment to the Patents Act were distributed to interested parties (including law firms) for feedback and comments. There have been public consultations and discussions, at which progress has been positively reported from attendees, government officials have reported their own ongoing successes in internal streamlining, and a great deal of constructive dialogue has been had. These promising developments show no sign of slowing.

Increasing the number of Patent Examiners, and continuing the ongoing regulatory reforms, should have a positive impact on the patent system in Thailand, and in particular should make the process of patent examination faster and more efficient. We believe that the Thai government is doing its best to resolve the backlog issue, and the improvements seen in the past few years, and the ongoing progress that is being made, are clear evidence of how their intentions are being put into action. 🚧