

## Editorial

The amended Law on Intellectual Property (“Amended IP Law”) in Vietnam was passed by the National Assembly of Vietnam on June 16, 2022 and the new law will take effect on January 1, 2023. The crucial part of patent-related amendments includes “Secret Prior Art” in the part of assessing the novelty of inventions (*Art. 60\**). For the first time in Vietnam, a patent application with an earlier filing date or priority date but published on or after the filing date or priority date of an examined patent application is introduced as a prior art document.

In addition, the grounds for invalidating patent protection titles (*Art. 96\**) was amended to include additional grounds for patent invalidation. The two current grounds are (i) the applicant did not have the right or did not have the right transferred to him or her, to register the invention, or (ii) the subject matter of the invention did not meet the protection criteria.

Although the new bill has been passed in June, but until now the reliable English translation for the whole text of the passed law is not available. We expect to receive a full translation from legal publications at the end of August earliest.

After reviewing the summary, we found that there are many unclear points in the amended law that requires clarification on precise interpretation. Hopefully, the IP Vietnam will provide explanation to some ambiguities together with official English translation of the amended law soon.

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### Reference\*:

English translations for Article 60 and Article 96 as follows:

#### **Article 60:**

"1. An invention is be deemed novel if it does not fall into one of the following cases:

a) Publicly disclosed in the form of use, written description or any other forms within the country or abroad prior to the the filing date or priority date of the patent registration application in the case of the patent application claims priority rights;

b) Disclosed in another patent application with an earlier filing date or priority date but published on or after the filing date or priority date of that patent application.”.

**Article 96.** Cancellation of effectiveness of protection titles:

1. A protection title shall be completely invalidated in the following cases:

a) The applicant for registration of the mark with malicious intent;

b) A patent registration application filed contrary to the regulations on security control of patents specified in Article 89a of this Law;

c) Patent application for inventions which are directly created based on genetic resources or traditional knowledge about genetic resources but fail to disclose or incorrectly disclose the origin of genetic resources or traditional knowledge about genetic resources included in the application.

2. A protection title shall be invalidated in whole or in part if the whole or the part of such protection title fails to satisfy the provisions of this Law on registration rights, protection conditions, conditions for amendments, supplements of patent application, invention disclosure, and first-to-file principle in the following cases:

a) The applicant for the application does not have the right to register and was not transferred the registration right by the person with the right to register for an invention, industrial design, layout design or trademark;

b) The industrial property subject fails to satisfy the protection conditions specified in Articles 8 and Chapter VII of this Law;

c) The amendment or supplementation of an industrial property registration application expands the scope of subject matter already disclosed or stated in such application or changes the nature of the subject matter of registration stated in the application;

d) The invention has not been disclosed sufficiently and clearly to the extent that it is possible for a person with average knowledge of the relevant technical field to execute the invention;

dd) The patent granted protection title exceeding the scope of disclosure in the original description of the patent application;

e) The invention does not satisfy the first-to-file principle specified in Article 90 of this Law.

3. If a protection title is completely or partially invalidated as prescribed in Clauses 1 and 2 of this Article, the whole or the part of such invalidation will not take effect from the time of grant of the protection title.

4. Organizations and individuals have the right to request the state management agency in charge of industrial property rights to cancel the validity of a protection title in the cases specified in Clauses 1 and 2 of this Article, provided that they must pay fees and charges.

The statute of limitations for exercising the right to request invalidation of a protection title is throughout the protection term; except for the case of requesting for invalidation of a protection title for a mark for the reasons specified in Clause 2 of this Article, the statute of limitations is five years from the date of grant of the protection title or from the effective date of the international registration of the mark in Vietnam.

5. Based on the results of considering the application for invalidation of a protection title and the opinions of relevant parties, the state management agency in charge of industrial property rights shall decide to invalidate the protection title. or notice of refusal to cancel the validity of the protection title.

6. The provisions of Clauses 1, 2, 3, 4 and 5 of this Article also apply to the invalidation of international registration of marks and industrial designs.

7. The Minister of Science and Technology shall detail Clauses 1 and 2 of this Article.”.

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## **IP NEWS**

### **1. Chinese lockdowns hitting Thai producers**

*(From Bangkok Post, Thailand, May 23, 2022)*

**Bangkok** – China’s lockdowns are having an adverse effect on the Thai manufacturing sector and its supply chains, warns the National Economic and Social Development Council (NESDC). The closure of Chinese deep-sea ports, paralyzed major industrial hubs, and disrupted the mainland’s supply chains. The lockdown in Shanghai, Shenzhen and significant ports such as Qingdao and Xiamen, goods and raw materials cannot be exported. According to an NESDC study, a sharp slowdown has occurred for exports of various chemical products, components of electrical appliances, rubber and rubber products, paper, fertilizer, and woods. Those raw materials are key to Thai manufacturing supply chains.

### **2. Manufacturing expands for 5<sup>th</sup> month in a row**

*(From Bangkok Post, Thailand, June 3, 2022)*

**Bangkok** – The S&P Global Thailand Purchasing Managers Index (PMI) measured 51.9 in May. The figure represents manufacturing performance, and a number above 50 indicates expansion. The figure is calculated using Thai purchasing managers’ responses to questions about their new orders, output, employment, suppliers’ delivery times, and stocks of purchases. But it did not reflect an improvement in demand as overall new orders, including new business from abroad, were depressed because of higher product costs. Markets strategist said the increasing price pressure from higher input costs and supply chain disruption push to higher final goods prices. Thailand’s PMI is in the same positive territory as Vietnam.

### **3. BoI, funds support key R&D projects**

*(From Bangkok Post, Thailand, June 6, 2022)*

**Bangkok** – Thailand Science Research and Innovation (TSRI), which handles the Global Partnership Fund, discussed with the Board of Investment (BoI) using existing funds as a tool to draw foreign investment. The BoI agreed to use its Competitiveness Fund worth 10 billion baht to support R&D projects that can be developed to commercial scale. The fund was established in 2020 to strengthen national science, research and innovation. It is supported by the

government's annual budget through the TSRI, and is supervised by the National Higher Education Science, Research and Innovation Policy Council. The fund has allocated a combined 864 million baht in the past three years. The top three industries with the most R&D investment were food, petroleum, and finance and insurance.

#### **4. NIA joins hands with 15 alliances launching “Tiger Warrior” project**

*(From [www.nationthailand.com](http://www.nationthailand.com), June 6, 2022)*

**Bangkok** – The National Innovation Agency (NIA), Ministry of Higher Education, Science, Research and Innovation launched the project “Tiger Warrior” and sign cooperation agreements for “Non-financial support Mechanism in innovation” with 15 alliances from public sector, private sector and institutions to support innovative entrepreneurs to access to services and benefits from consultants/service providers. The supports cover the entire value chain in 7 areas including innovation manufacturing, innovation management, and innovation for growth. Dr. Krithpaka Boonfueng of NIA said “Tiger Warrior are NIA’s new support mechanism that focuses on promoting business capabilities of SMEs who are like “tigers” to sharpen their claws which turn them to the “warrior”.

#### **5. Thai exports to Asean up 17% in first four months**

*(From [www.nationthailand.com](http://www.nationthailand.com), June 12, 2022)*

**Bangkok** – The value of Thai exports to Asean rose 17 per cent in the first four months from the same period last year, the Trade Negotiations Department reported. Thailand’s exports to the region worth US\$24 billion. Asean is Thailand’s largest export market, accounting for 24.7 per cent of the total exports. The export growth up 60 per cent to Singapore, 34 per cent to Indonesia, 24 per cent to Myanmar, 11 per cent to Malaysia, 8 per cent to Laos, 7 per cent to Cambodia, and 0.4 per cent to Vietnam. The export was driven by sugar, wheat and instant foods, animal and vegetable fat/oil, animal feed and tapioca, Agricultural products accounted for 16 per cent of all exports to Asean.

#### **6. BOI grants privileges to four mega-projects worth THB209 billion**

*(From [www.nationthailand.com](http://www.nationthailand.com), June 13, 2022)*

**Bangkok** – The Board of Investment (BOI) approved tax privileges to four mega-projects with combined investment value of 209.478 billion baht. The projects include battery electronic vehicles (BEV) manufacturer, Horizon Plus Co Ltd with investment value of 36.1 billion baht. The BOI also granted incentives to Asia Era One Co Ltd for its high-speed train project linking the Don Mueang, Suvarnapbhumi and U-Tapao airports with value of 162.318 billion baht. CP Groups is the major shareholder. The BOI approvals for the mega-projects as they would benefit

the country, increasing potential to become a base for making EVs, and lead to further investments in infrastructure in the Eastern Economic Corridor.

## **7. Foreign trade by land shows marginal increase in first five months**

*(From [www.nationthailand.com](http://www.nationthailand.com), July 4, 2022)*

**Bangkok** – The value of foreign trade by land has risen to 688.822 billion baht, up by 1.74 per cent, following the easing of Covid travel restrictions. Of the 688.822 billion baht, 404.585 billion baht was the value of exports, while imports amounted to 284.237 billion baht. Of the total trade, 441.788 billion baht worth of goods trading was conducted with border nations. Malaysia remained the top cross-border bilateral trade partner. Myanmar was the second highest with 13.442 billion. Cambodia was third with Thai exports amounting to 13.405 billion baht and Laos was fourth with export value of 13.2223 billion baht. China remained the top export destination for Thai exports by land across bordering nations.

## **8. Thailand commences FTA talks with Efta**

*(From [Bangkok Post, Thailand](#), July 5, 2022)*

**Bangkok** – Thailand hosted the first round of Thai-Efta FTA meetings in Bangkok which comprised a chief negotiators' meeting and a negotiation panels' meeting. The chief negotiators had discussed the overview of FTA negotiations, FTA structure, guidelines and negotiation formats. Thailand has proposed to conclude the negotiations within two years. Efta comprises Iceland, Liechtenstein, Norway and Switzerland. The association was Thailand's 17<sup>th</sup> largest trading partner in 2021. The trade volume last year stood at US\$7.5 billion, representing 1.39% of Thailand's total trade. The study concluded that it would boost Thailand's competitiveness and attract investors specializing in high technology and innovations.

## **9. Public Health Ministry aims to make Thailand 'herbal hub'**

*(From [www.nationthailand.com](http://www.nationthailand.com), July 6, 2022)*

**Bangkok** – Thailand would generate revenue of at least 48 million baht from traditional and alternative medicines, said Public Health Minister. The ministry aims to make Thailand the herbal hub of the region and the leader in traditional and alternative medicines. The country's 20-year strategic plan also include traditional medicine and it would promote the herbs in Thai food to be known worldwide. The Thailand Herbal Expo 2022 or the 19<sup>th</sup> National Herbal Exhibition has drawn more than 200,000 attendants each year. The fair has an innovation zone that showcases technologies and products related to Thai herbs and business matchings.

## **10. Vietnamese tech firms urged to expand cooperation**

*(From [www.nationthailand.com](http://www.nationthailand.com), July 6, 2022)*

Ho Chi Minh City – Expert urged Vietnamese tech firms to expand cooperation in research and development and technology transfer to be able to make electronics, information technology and telecommunications (ITC) products branded “Made in Vietnam”. Vietnam’s electronics and ITC industries remained dependent on imports due to lack of high-tech production capability, he added. Experts said the continued relocation of the global supply chain and supply diversification is a great opportunity for Vietnam to develop its electronics and ITC industries. The government report that total revenue of the ITC industry in 2020 reached US\$120 billion in 2020 which the hardware industry accounted for over \$107 billion, the software industry over \$5 billion and the digital industry over \$900 million.