

Kingdom of Cambodia
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Ministry of Industry and Handicraft

No.282 MIH / 2017

PRAKAS (Declaration)
ON THE DETERMINATION OF THE PRINCIPLES AND PROCEDURES
FOR VALIDATION OF EUROPEAN PATENTS IN CAMBODIA

- Having seen the Constitution of the Kingdom of Cambodia;
- Having seen Royal Degree No. NS/RKT/0913/903 dated 24 September 2013 on the Appointment of the Royal Government of the Kingdom of Cambodia,
- Having seen Royal Degree No. NS/RKT/1213/1393 dated 21 December 2013 on the Revision and Supplement of the Composition of the Royal Government of Cambodia;
- Having seen Royal Kram No. 02/NS/94 dated 20 July 1994 promulgating the Law on the Organization and Functioning of the Council of the Ministers;
- Having seen Royal Kram No. NS/RKM/1213/018 dated 09 December 2013 promulgating the Law on Establishment of the Ministry of Industry and Handicraft;
- Having seen Royal Kram No. NS/RKM/0103/005 dated 23 January 2003 promulgating the Law on Patents, Utility Model Certificates and Industrial Designs;
- Having seen Royal Kram No. NS/RKM/1117/016 dated 24 November 2017 promulgating the Law Amendment of the Articles 37, 38, 109 and 136 of the Law on Patents, Utility Model Certificates and Industrial Designs;
- Having seen Royal Kram No. NS/RKM/1117/017 dated 24 November 2017 on the Ratification of the Agreement on Validation of European Patents between the Royal Government of the Kingdom of Cambodia and European Patent Organization;
- Having seen the Sub-Decree No. 575 ANKR.BK dated 24 December 2013 on the Organization and Functioning of the Ministry of Industry and Handicraft;
- Having seen the Prakas No. 451 MIH/2014 dated 28 May 2014 on the Organization and Functioning of the Department of Industry Property;
- Referring to the necessity of the Ministry of Industry and Handicraft.

HEREBY DECIDES

SECTION I
GENERAL PROVISIONS

Article 1._ Objectives

The objective of this declaration is to implement the validation of European patents in Cambodia in accordance with the Law on Patents, Utility Model Certificates and Industrial Designs and the Law on the Ratification of the Agreement between the Royal Government of the Kingdom of Cambodia and the European Patent Organization on Validation of European patents.

Article 2._ Purposes

The purposes of this declaration are:

- to determine the procedures for validating European patents in Cambodia;
- to determine the formalities to maintain validation of European patents in Cambodia;
- to determine the mechanism for overseeing and managing European patents validated in Cambodia;

Article 3._ Scope

The scope of this declaration covers the request for validation of European patents in accordance with the Law on Patents, Utility Model Certificates and Industrial Designs and the Law on the Ratification of the Agreement on Validation of European Patents between the Royal Government of the Kingdom of Cambodia and European Patent Organization.

Article 4._ Duty of Registration Department

The registration department shall, subject to the Law on Patents, Utility Model Certificates and Industrial Designs and the Law on the Ratification of the Agreement on Validation of European Patents between the Royal Government of the Kingdom of Cambodia and the European Patent Organization, receive and examine European patent applications for validation in Cambodia in order to manage and protect the rights of inventors.

Article 5._ Terms

Terms used in this declaration shall be interpreted as follows:

- Law on Patents refers to the Law on Patents, Utility Model Certificates and Industrial Designs which was promulgated by Royal Kram No. NS/RKM/0103/005 dated 22 January 2003 and the Law on Amendment on the Articles 37, 38, 109 and 136 of the Law on Patents, Utility Model Certificates and Industrial Designs promulgated by Royal Kram No. NS/RKM/1117/016 dated 24 November 2017.
- European patent application means an application for a European patent filed under the European Patent Convention (hereinafter referred to as "EPC"), as well as an international application filed under the Patent Cooperation Treaty (hereinafter referred to as "PCT") for which the European Patent Office (hereinafter referred to as "EPO") is designated or elected Office, and which has been accorded an international date of filing, and in which Cambodia is designated.

- Validated European patent means a European patent granted by the European Patent Office on a European patent application in respect of which validation in Cambodia has been requested.
- European phase means an international patent application filed under the PCT and is being processed, examined and granted by the EPO.
- National patent application means a patent application filed under the Patent Law with the Ministry of Industry and Handicraft (hereinafter referred to as "MIH").
- National patent means a patent granted on a national patent application.
- Minister means the Minister of the Ministry of Industry and Handicraft.
- Registrar means the director of Department of Industrial Property.
- Registration Department means the Department of Industrial Property.

SECTION II

PROCEDURES ON VALIDATION OF EUROPEAN PATENTS

Article 6._ Validation of European Patent

A European patent application and a European patent validated in Cambodia shall, subject to the following provisions, have the effect of and be subject to the same conditions as a national patent application and a national patent under the Law on Patents.

Article 7._ Request for Validation

A request for validation of patent is as follows:

- 1- A European patent application and a European patent granted on such application shall be validated in Cambodia at the request of the applicant. The request for validation shall be deemed to be filed with any European patent application filed on or after the date on which the validation agreement between the Royal Government of the Kingdom of Cambodia and the European Patent Organization enters into force.
- 2- The Ministry of Industry and Handicraft shall publish any request for validation as soon as possible after it has been informed by the EPO that the prescribed validation fee has been paid, but not before the expiry of 18 months from filing date or, if priority has been claimed, the earliest priority date.
- 3- The request for validation may be withdrawn at any time. It shall be deemed withdrawn where the prescribed validation fee has not been paid in time or where the European patent application has been finally refused, withdrawn or deemed withdrawn. The Ministry of Industry and Handicraft shall publish this as soon as possible if the request for validation has already been published by it in accordance with paragraph 2 of this Article.

Article 8._ Effects of European patent applications

A European patent application which has been accorded a filing date shall be equivalent to a regular national patent application, where appropriate with the priority claims for the European patent application, whatever its outcome may be.

Article 9._ Effects of European Patents

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Effectiveness of granted European patent is as follows:

- 1- A validated European patent shall, subject to paragraph 2 to 7 of this Article, confer as from the date of publication of the mention of its grant by the EPO the same rights as would be conferred by a national patent under the Patent Law.
- 2- Within three months of the date on which the mention of grant of the European patent has been published, the proprietor of the patent shall furnish to the MIH the translation into Khmer and English of the claims and pay the prescribed fee for publication.
- 3- If, as a result of an opposition or a request for limitation filed with the EPO, the European patent is maintained in amended form, the proprietor of the patent shall, within three months of the date on which the mention of the decision to maintain the European patent as amended or to limit it was published, furnish to the MIH the translation into Khmer and English of the amended claims and pay the prescribed fee for publication.
- 4- Where the text of claims contains reference signs used in the drawings, such drawings shall be attached to the translation referred to in paragraph 2 or 3 of this Article.
- 5- The MIH shall publish any translation duly filed under the paragraph 2 or 3 of this Article as soon as possible.
- 6- If the translation specified in paragraph 2 or 3 of this Article is not filed in due time or the publication fee is not paid in due time, the validation European patent shall be deemed to be void *ab initio*. The translation may still be validly filed within an additional period of three months after expiry of the relevant periods referred to in paragraphs 2 and 3 of this Article.
- 7- A validated European patent shall be deemed not to have had *ab initio* the effects specified in paragraph 1 of this Article to the extent that the patent has been revoked in opposition or central revocation proceedings or limited in limitation proceedings before the EPO.

Article 10._ Authentic text of European patent applications or European patents

The authentic text of patent application shall be:

- 1- The text of the European patent application or a European patent in the language of the proceedings before the EPO shall be the authentic text in any proceeding in Cambodia.
- 2- However, the translation as provided for under the Article 9 shall be regarded as authentic, except in revocation proceedings, should the patent in the language of the translation confer protection which is narrower than that conferred by it in the language of the proceedings.
- 3- The patent proprietor of a validated European patent may file, at any time, a corrected translation. The corrected translation of the claims of a validated European patent shall not have any legal effect until it has been made available to the public by the MIH.
- 4- Any person who, in good faith, uses or has made effective and serious preparations for using an invention, the use of which would not constitute infringement of the patent in the original translation may, after the corrected translation takes effect, continue such use in the course of his business or for the needs thereof without payment.

Article 11._ Rights of Earlier Date

Rights of earlier date are as follows:

- 1- A European patent application for which the validation fee has been paid and a validated European patent, shall have, with regard to a national patent application and a national patent, the same prior-art effect as a national patent application and a national patent.
- 2- A national patent application and a national patent shall have, with regard to a validated European patent, the same prior-art effect as they have with regard to a national patent.

Article 12._ Simultaneous Protection

If a validated European patent and a national patent with the same filing date or, where priority has been claimed, the same priority date, have been granted to the same person or his successor in title, the national patent, to the extent that it covers the same invention as the validated European patent, shall have no effect as from the date on which the time limited for filing an opposition to the European patent has expired without an opposition having been filed, or as from the date on which a final decision maintaining the European patent has been taken.

Article 13._ Applicability of the EPO

The provisions of the EPO and its implementing regulations shall not apply unless otherwise provided in the present provisions.

SECTION III FEES AND OTHER SERVICES

Article 14._ Validation Fee

The validation fee shall be implements are as follows:

- 1- The validation fee under the Article 7(2) shall be paid to the EPO following the date of publication of the mention in the European Patent Bulletin of the publication of the European search report, but no later than within six months of that date, or, where the application, within the period of performing the acts required for entry into the European phase of an international application within the meaning of the paragraph 2 of the Article 5.
- 2- The validation fee may still be validly paid within an additional period of two months of expiry of the relevant period referred to in paragraph 1 of this Article, provided that a 50% surcharge is paid within this additional period.
- 3- For the payment of validation fees, the EPO Rules relating to fees shall apply mutatis mutandis. Validation fees validly paid shall not be refunded.

Article 15._ Annual Fees for Validated European Patents

- 1- Annual fees for a validated European patent shall be paid to the MIH for the years following the year in which mention of the grant of the European patent was published.
- 2- If annual fees for a validated European patent fall due within two months as from the date on which the mention of the grant of the patent was published in the European Patent Bulletin, they shall be deemed to have been validly paid provided they were paid to the MIH within the period mentioned.

Article 16._ Payment the Official Fees in Cambodia

For payment of the official fees and other fees in Cambodia concerning the validation of European patents the joint Declaration on Public Services Fees between the Ministry of Industry and Handicraft and the Ministry of Economy and Finance shall apply.

SECTION IV DISPUTE SETTLEMENT AND COOPERATION

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Article 17._ Dispute Settlement

The Department of Industrial Property, General Department of Industry of the Ministry of Industry and Handicraft shall have competence to coordinate and settle any issues related to validation of European patents in Cambodia. If the issues are not settled, a party can go to the competent court.

Article 18._ Cooperation

The Department of Industrial Property, General Department of Industry of the Ministry of Industry and Handicraft shall cooperate with European Patent Organization and concerned institutions for promoting the protection of European patents in Cambodia.

SECTION V FINAL PROVISIONS

Article 19._ Abrogation

Any provisions which is contrary to this Declaration shall be abrogated.

Article 20._ Implementing Authorities

Chief of cabinet, general director, general inspector, director of institutions, director of center, director of the department of industry property, director of department of accounting and finance and all units under the Ministry of Industry and Handicraft and legal and natural persons shall implement this Declaration.

Article 21._ Entering into Force

This Declaration enters into force from the date of signing.

Phnom Penh, Friday 8 December 2017

Senior Minister

Minister of the Ministry of Industry and Handicraft

[Seal and Signature]

Cham Prasidh

CC:

- Cabinet of Prime Minister
- Council of Ministers
- Ministry of Economy and Finance
- Ministry of Commerce
- All ministries and concerned institutions

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- Municipality- provincial
- As the Article 20
- Document - Achieve