

Intellectual Property Systems in Asian Countries

Japan Patent Office
Asia-Pacific Industrial Property Center, JIII

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Introduction

The intellectual property systems of Asian countries have changed dramatically over the past decade. This is because they were obligated to establish their intellectual property systems by 2000, the deadline for the developing countries in the TRIPS Agreement of the WTO that came into effect in 1995. Because Asian countries scrambled to develop intellectual property systems, most of them are now compliant with the provisions of the TRIPS Agreement of the WTO. In this sense, it may be no exaggeration to say that their intellectual property systems are comparable to those of advanced countries.

However, the TRIPS Agreement of the WTO defines only minimum requirements for the state party to execute and does not necessarily include every provision concerning the protection of intellectual property rights. It follows that intellectual property systems of Asian countries, while based on the TRIPS Agreement of the WTO, include provisions unique to the respective countries. The following is an introductory outline of the intellectual property systems of 10 representative Asian countries, including the international treaties they signed.

1. China

1.1 Outline

Patent law was put into force on April 1, 1985 and amended on January 1, 1993 and July 1, 2001; it includes the protection of the substance patent of medical goods and chemical goods, extension of the term of protection of rights (20 years after the application), and protection of utility model and design.

Trademark law was put into force on April 1, 1983 and amended on July 1, 1993 and December 1, 2001 to strengthen the protection of service marks and punitive clauses. Other activities include:

March 1, 1995: Measures taken concerning the registration and management of associated trademarks and recognition

March 1, 1996: Putting into force of corporate trademark management rule

August 14, 1996: Putting into force of recognition and management rule for famous trademarks

October 26, 2005: Putting into force of trademark trial rule

Copyright law was put into force on June 1, 1991 and amended on October 27, 2001 to add explicit stipulation regarding the protection of computer programs (Article 3 (8)). The Regulations on Computer Software Protection were put into force on January 1, 2002.

Unfair competition prevention law was put into force on December 1, 1993 and a regulation to prohibit the infringement of trade secrets was put into force on November 23, 1995.

1.2 International treaties

Major international treaties that China has joined are as follows:

Convention establishing the WIPO (June 3, 1980)

Paris Convention (Stockholm Amendment: March 19, 1985)

Madrid Agreement (October 4, 1989)

Berne Convention (Paris Amendment: October 15, 1992)

Universal Copyright Convention (October 30, 1992)
Convention for the Protection of Producers of Phonograms (April 30, 1993)
Patent Cooperation Treaty (January 1, 1994)
Nice Agreement (August 9, 1994)
Trademark Law Treaty (Signed on October 28, 1994)
Budapest Treaty (July 1, 1995)
Madrid Protocol (December 1, 1995)
Locarno Agreement (September 19, 1996)
Strasbourg Agreement Concerning the International Patent Classification (June 19, 1997)
UPOV Convention (August 23, 1999)
TRIPS Agreement (December 10, 2001)
WIPO Copyright Treaty (June 9, 2007)
WIPO Performances and Phonograms Treaty (June 9, 2007)

1.3 Situation of intellectual property laws

1.3.1 Patent law (patent, utility model, design)

Outline of China's patent law is as follows:

- (a) "Patent" consists of "patent for invention," "patent for utility model," and "patent for design."
- (b) In principle, the right holder shall be the inventor but the right for an employee's invention belongs to the employer (Article 6).
- (c) A foreigner, a foreign business, or a foreign organization that does not have permanent residence or a presence in China has eligibility to enforce the right based on either bilateral agreement, international treaty, or reciprocity relationship (Article 18).
- (d) There is a regulation concerning the foreigner's capacity to proceed. A foreigner who wishes to file a patent application in China is required to entrust the procedure to a patent representation agency that the State Council designates (Article 19).
- (e) Internal priority system (12 months for patent and utility model, none for design) (Article 29)

- (f) For patent application of invention, substantive requirements are examined (Article 39).
- (g) Only elementary examination for utility model and design (formal requirements and public order and morality) (Article 40).
- (h) Period for request for examination is three years from the application (Article 35)
- (i) Duration of a patent right: 20 years from the filing date for invention and 10 years for utility model and design (Article 42)
- (j) If an applicant disagrees with the decision of rejection of the application, he/she may request re-examination by the Patent Re-examination Committee within three months. If the applicant disagrees with the decision of the re-examination of the Patent Re-examination Committee, he/she may file a complaint to a people's court within three months (Article 41).
- (k) Against infringement of a patent right, official action may be requested from the patent management organization or the case may be presented directly to a people's court (Article 57).

1.3.2 Trademark law

Outline of the China's trademark law is as follows:

- (a) Service mark registration system (Article 4)
- (b) Three-dimensional trademark system (Article 8, Article 12)
- (c) Famous trademark protection system (Article 13, Article 14)
- (d) Priority under the Paris Convention (June) (Article 24)
- (e) Publication and opposition systems (Three months after publication) (Article 30)
- (f) Appeal against the decision of rejection of application shall be made to the Trademark Review and Adjudication Board within 15 days. If the applicant disagrees with the decision of the reexamination of the Trademark Review and Adjudication Board, he/she may file a complaint to a people's court within 30 days (Article 32).
- (g) System of request to the Trademark Review and Adjudication Board for ruling of cancellation of registered trademark (Article 1).

- (h) Prohibition of double jeopardy of motion of objection and ruling (Article 42).
- (i) Appeal against a ruling of the Trademark Review and Adjudication Board shall be filed to a people's court within 30 days (Article 43).
- (j) A case against infringement of a trademark right may be filed to the State Administration for Industry and Commerce or a people's court (Article 53).

1.3.3 Copyright Law

Because China is a member of the WTO, its copyright law is consistent with the TRIPS Agreement and the Berne Convention.

Outline of China's copyright law is as follows:

- (a) Copyright central control organization (Article 8)
- (b) Works for legal entity, works for hire (Article 11, Article 16)
- (c) Provisions to limit rights (Article 22, Article 23)
- (d) Infringement of moral rights and copyrights of authors (Article 46), infringement of neighboring rights (Article 47)
- (e) Demands for injunction, destruction or removal, compensation for damage and rehabilitation measures (Article 48)
- (f) Provisional disposition/injunction and provision for protection on assets (Article 49), provision for preservation of evidence (Article 50)

In China, computer programs are protected under the Regulations on the Computer Software Protection, which has provisions on infringement (Article 23, Article 24), exceptions to infringement of rights in use for research purposes, etc. (Article 16, Article 17), relief against infringement (Article 26, Article 27), and others.

1.3.4 Unfair Competition Prevention Law

Unfair Competition Prevention Law of China provides relief against various unfair competition while providing protection for unregistered trademarks and trade dress, as long as they are well known. The law also provides protection for trade secrets.

1.3.5 Other intellectual property–related laws

There are product-quality assurance law (defines passing of, etc. from the perspective of quality protection), law concerning semiconductor-integrated circuits, technology import/export control ordinance (provides provisions on the control of technology import/export, ordinance for the protection of new varieties of plants, etc.)

2. Republic of Korea

2.1 Outline

Current patent law was established in 1990 and amended in 1993, 1995, 1997, 1998, 2001, 2002, 2005, and 2006 with the last amendment put into force in 2007.

Current utility model law was established in 1998 and amended in 2001, 2002, 2005, and 2006 with the last amendment made in 2007.

Current design law was established in 1990 and amended in 1993, 1995, 1997, 1998, 2001, 2002, 2004, 2005, and 2006 with the last amendment put into force in 2007. Items put into force in 2007 include extension of the period of request for secret design, exclusion of the status of prior application for the denied or abandoned application, and expansion of reason for refusal / rejection.

Current trademark law was established in 1990 and amended in 1995, 1997, 1998, 2001, 2002, and 2004 with the last amendment put into force in 2007. Items put into force in 2007 include expansion of the subject of protection as trademark (motion mark, hologram mark, etc.), prior user's right, extension of opposition period (two months), and expansion of the scope of change in application.

Current copyright law was established in 1986 and, after several amendments, the last amendment was put into force in 2007. Items put into force in 2007 include the introduction of the copyright certification system, expansion of the copyright restriction provisions (copying of political speech, school education, editorials, etc.), and extension of the protection period of neighboring rights.

In Korea, a computer program protection law (2000), an unfair competition prevention law (1986), and a semiconductor tip act (1992) were established and amended several times.

2.2 International treaties

Major international treaties Korea that has joined are as follows:

Convention Establishing the WIPO (March 1, 1979)

Paris Convention (Stockholm Amendment: May 4, 1980)

Patent Cooperation Treaty (August 10, 1984)

Universal Copyright Convention (October 1, 1987)

Budapest Treaty (March 28, 1988)

TRIPS Agreement (January 1, 1995)

Berne Convention (August 21, 1996)

Nice Agreement (January 8, 1999)

Strasbourg Agreement (October 8, 1999)

UPOV Convention (January 7, 2001)

Trademark Law Treaty (February 25, 2003)

Madrid Protocol (April 10, 2003)

WIPO Copyright Treaty (June 24, 2004)

2.3 Situation of intellectual property laws

2.3.1 Patent law

Outline of Korea's patent law is as follows:

- (a) Electronic application system (Article 28.2f)
- (b) Publicly known/used elsewhere in the world (Article 29)
- (c) Plant invention patent system (Article 31)
- (d) Relaxing of description requirements of description (Article 42.3)
- (e) Respite for description requirements of claims until the time of publication of the unexamined applications (Article 42.5)
- (f) Converted application system (Article 53)
- (g) Internal priority system (Article 55, Article 56)
- (h) Clear description of reason for refusal/rejection (Article 62.2)
- (i) 5-year period from filing for request for examination (Article 59)
- (j) Early laid-open publication system (can be earlier than 18 months before filing if requested)(Article 64)
- (k) Integration of the opposition system to the trial for invalidation system (Deletion of

Article 69f., Article 133)

- (l) Extension of parent right duration (Article 89f)
- (m) Special provision for international patent application (Article 199f.)

2.3.2 Utility model law

Korea's utility model law provides a large number of provisions as its patent law does.

Outline of recent amendments of the utility model law is as follows:

- (a) Introduction of the examination registration system (Article 3)
- (b) Consistency with the provisions of the patent law (Article 4, Article 5, Article 10, Article 31)
- (c) Integration of opposition system into the system of trial for invalidation (Article 32)

2.3.3 Design law

Outline of the Korea's design law is as follows:

- (a) Choice between examination and no-examination for application for design registration (Article 9)
- (b) Application for multiple design registration in no-examination application (Article 11.2)
- (c) System of earlier publication on request (Article 23.2)
- (d) System of opposition against no-examination application for design registration (Article 29.2f.)

2.3.4 Trademark law

Outline of the Korea's trademark law is as follows:

- (a) Color trademark, three-dimensional trademark (Article 2)
- (b) Multi-class application system (Article 10)
- (c) Request for trademark search to a specialized research agency (Article 22.2)
- (d) System of objection before registration (Article 27 f.)
- (e) System of international application for trademark registration based on the Madrid

Protocol (Article 86.2 f.)

2.3.5 Copyright law

Because Korea is a member of the WTO, its copyright law is consistent with the TRIPS Agreement and the Berne Convention.

Outline of Korea's copyright law is as follows:

- (a) Provisions concerning the limitation of responsibilities of on-line service providers (Article 77, Article 77.2)
- (b) Provision of infringement deemed (Article 92)
- (c) Demands for injunction, destruction or removal, compensation for damage, and rehabilitation of honor (Article 91, Article 93, Article 95)
- (d) Detailed provisions concerning criminal penalties (Article 97.5, Article 98, Article 99)

In Korea, computer programs are protected under the Computer Programs Protection Act, which has provisions on program copyright (Article 7 f.), exceptions to infringement of rights in use for research purposes (Articles 12, 12.2), registration (Article 23 f.), acts that are deemed as infringement (Article 29), remedy against infringement (Article 31, Article 32), and others.

2.3.6 Unfair Competition Prevention Law and the law concerning maintenance of trade secrets

Outline of acts deemed as acts of unfair competition in Korea's Unfair Competition Prevention Law is as follows:

- (a) Acts that may lead to confusion over well-known goods and well-known business
- (b) Unauthorized acts of famous trademark
- (c) Misleading acts concerning the source
- (d) Misleading acts concerning the place of production, etc. of goods
- (e) False statement concerning the name of goods
- (f) Misidentifying acts concerning the quality, etc. of goods

- (g) Infringement of trade secret
- (h) Use concerning a national flag/emblem
- (i) Use of trademark by a representative without authority

Unfair Competition Prevention Law of Korea has provisions for presumption of amount of damage.

2.3.7 Law Concerning the Circuit Layout of Semiconductor-Integrated Circuits

The law was made public on December 8, 1992, put into force on September 1, 1993 and amended in 1996 to respond to the TRIPS Agreement followed by amendments in 1999 and 2007.

Layout design right is effective for 10 years after the registration of the establishment.

2.3.8 Other intellectual property–related laws

There is a customs law, a law concerning monopoly control and fair trade, a law on external trade, a technology development promotion law, an invention promotion law, a guideline on false indication/advertisement related to industrial property rights and their treatment, and a guideline on fair trade for indication/advertisement of patent, etc.

3 Chinese Taipei

3.1 Outline

Current patent law, which also protects utility models and designs, was established in 1994 and amended for consistency with the TRIPS Agreement in 1997 followed by amendments in 2001 and 2003.

Current trademark law was established in 1993 and amended for consistency with the TRIPS Agreement in 1997 followed by amendments in 2003.

Current copyright law was established in 1993 and amended for consistency with the TRIPS Agreement after 1998 with the last amendments in 2006.

In addition, there is a fair trade law (1992), a law for protection of the circuit layout of semiconductor-integrated circuits (1995), and a trade secret protection law (1996) established in Taiwan.

3.2 International treaties

Taiwan, which had concluded bilateral agreement with a large number of countries, joined the WTO on January 1, 2002. Consequently, intellectual property laws of Taiwan are consistent with the TRIPS Agreement.

3.3 Current status of intellectual property laws

3.3.1 Patent law (patent, utility model, and design.)

Patent law of Taiwan has provisions on patent, utility model, and design.

Among the provisions of the patent law, an outline of those concerning patents is as follows:

- (a) Absolute novelty (publicly known/used at home and abroad: Article 22)
- (b) Right of priority system (WTO member countries and principle of reciprocity: Article 27)
- (c) System of laying open of unexamined applications (Article 36)
- (d) System of request for examination (3 years after the filing: Article 37)

- (e) Preferential examination system (Article 39)
- (f) Right to demand compensation after publication (Article 40)
- (g) System of extension of patent right duration (Article 51 f.)
- (h) Acceptance of parallel import (Article 57)
- (i) Mandatory indication of a patent (without indication, compensation may not be demanded (Article 79))
- (j) Provision for presumption of amount of damage (Article 85)
- (k) Shifting of burden of proof or process patent infringement (Article 87)

Among the provisions of the patent law, an outline of those concerning utility model is as follows:

- (1) Non-substantive examination system for utility models (Article 97f.)
- (2) Technology evaluation report system (Article 103f.)
- (3) System of conversion of application (Article 102)

Among the provisions of the patent law, an outline of those concerning design is as follows:

- (1) Related design registration system (Article 110, Article 124, etc.)
- (2) System of conversion of application (Article 114, Article 115)

3.3.2 Trademark law

Outline of Taiwan's trademark law is as follows:

- (a) Claim of priority (6 months) based on a foreign application (principle of reciprocity) is accepted. (Article 4)
- (b) Protection of sound trademarks and three-dimensional trademarks (Article 5)
- (c) Multi-class application system (Article 17)
- (d) System of objection after registration (Article 40f.)
- (e) System of trial for invalidation (Article 50f.)
- (f) System of trial for cancellation (Article 57f.)
- (g) Presumption of amount of damage (Article 63)

- (h) Regulation at the border (Article 65f.)
- (i) System of certification mark (Article 72, Article 73)
- (j) Member of collective mark system (Article 74, Article 75)
- (k) Collective trademark system (Article 76, Article 77)

3.3.3 Copyright Law

Because Taiwan is a member of the WTO, its copyright law is consistent with the TRIPS Agreement. Although it is not a party of the Berne Convention, the law's contents are consistent with the convention. The current copyright law is characterized by having provisions on work made for hire (Article 11) and commissioned work (Article 12).

3.3.4 Fair trade law

In Taiwan, a fair trade law was established in 1992 that includes provisions to protect the indication of well-known goods, etc. An outline of the provisions related to intellectual property in the fair trade law is as follows:

- (a) Protection of indications of well-known goods, etc. (Article 20)
- (b) Prohibition of misleading indication of source, etc. (Article 21)
- (c) Civil remedies (Article 30, Article 31)
- (d) Increase of amount of damage for intentional infringement (Article 32)
- (e) Prescription (Article 33)
- (f) Publishing of decisions in newspapers (Article 34)

In Taiwan, a trade secret protection law was established in 1996 to protect trade secrets.

3.3.5 Law for protection of semiconductor-integrated circuits

In Taiwan, a law for protection of semiconductor-integrated circuits was established in 1995 and amended in 2002. Outline of the law is as follows:

- (a) Infringement (Article 17)
- (b) Exclusion provision (Article 18)

- (c) Attachment of a written expert opinion at the time of enforcement (Article 29)
- (d) Civil remedies (Article 29, Article 31)

3.3.6 Other intellectual property–related laws

In 2007, Taiwan established a law on intellectual property court organization and a law on intellectual property case trial concerning the procedural provisions of a intellectual property court at the same time.

4. Thailand

4.1 Outline

Current patent law, which protects not only patents but also utility models and designs, was amended in 1992 and 1999.

Current trademark law was established in 1991 and amended in 2000, introducing a service mark registration system and a three-dimensional trademark system.

Current copyright law was amended in 1994 with provisions for the protection of computer programs and performers.

For trade secrets, a trade secret law was established in 2002.

4.2 International treaties

Thailand is a party of the Berne Convention (July 17, 1931, Articles 1 to 21 of the Paris Amendment: May 23, 1995, Article 22 to 38: September 29, 1980) and the Convention Establishing the WIPO (December 25, 1989). Because Thailand became a member of the WTO (January 1, 1995), its intellectual property law complies with the TRIP Agreement.

4.3 Current status of intellectual property laws

4.3.1 Patent law (utility model, design)

Outline of the provisions of the Thai patent law concerning patent is as follows:

(a) The following are defined as not patentable: (Article 9)

- *Microorganisms and their components found in nature, animals, plants, and extracts from animals or plants

- *Scientific or mathematical proposition/theorem

- *Computer programs

- *Method of treatment or diagnosis of humans or animals

- *Inventions that disregard government orders, ethics, health, or well-being of people

- (b) Patent of employee invention belongs to the employer in principle (Article 11)
- (c) Employee invention compensation system (Article 12)
- (d) System of request for examination (Article 29)
- (e) Opposition system (Article 31f.)
- (f) Exceptions to the effect of patent right (Article 36)
- (g) Compulsory license (Article 46f.)
- (h) Cancellation of a patent (Article 55)

Outline of the provisions of the Thai patent law concerning utility model is as follows:

- (a) Registration requirements are only novelty and industrial applicability (Article 65.2)
- (b) System of conversion of application between patents (Article 65.3)
- (c) Right is granted without substantive examination (Article 65.4)
- (d) Substantive examination of conflict with patent is made on request within one year after publication (Article 65.5)
- (e) Duration of a right is six years after the date of application (renewable two times with a maximum term of 10 years: Article 65.7)

Outline of the provisions of the Thai patent law concerning design is as follows:

- (a) Publicly known/used at home (Article 57)
- (b) Duration of a right is 10 years after the application (Article 62)

4.3.2 Trademark law

Outline of the trademark law of Thailand is as follows:

- (a) Color only may be registered (Article 4)
- (b) Three-dimensional trademark system (Article 4)
- (c) Multi-class application system (Article 9)
- (d) Petition of objection to the trademark committee (Article 18f.)
- (e) System of objection by a registration officer after publication of application (Article

30f.)

- (f) System of objection by a third party (Article 35f.)
- (g) System of certification mark (Article 82f.)

4.3.3 Copyright law

Established in 1893, the copyright law of Thailand is the oldest of its intellectual property-related laws.

Outline of the current copyright law is as follows:

- (a) Infringements (Articles 27, 28, 30) and secondary infringements (Article 31)
- (b) Provision to limit copyrights of computer programs (Article 35)
- (c) Exceptions for copying by the government (Article 43)
- (d) Infringements are property of the right holder (Article 75)
- (e) Half the amount of the fine is given to the copyright holder (Article 76)

4.3.4 Trade secret law

The law is intended to prevent the improper disclosure of trade secrets but has provisions where certain acts including independent development are not deemed as infringement (Article 7).

For infringement of trade secrets, criminal penalties (Article 31f.) are provided in addition to civil remedy (Article 8).

4.3.5 Other intellectual property-related laws

Thailand set up an international trade intellectual property court in 1996. Unfair competition prevention law is not established but unregistered famous trademarks are protected from passing off based on the criminal law, civil code, and commercial code.

Thai Law Concerning the Circuit Layout of Semiconductor-Integrated Circuits (2000) and a law for the protection of new varieties of plants have been established.

Goods that infringe on trademark right or copyright are controlled by Customs at the border.

5. Indonesia

5.1 Outline

As a member country of the WTO, Indonesia conducted major amendments of its patent law, trademark law, and copyright law in 1997 in accordance with the TRIPS Agreement.

Later, an industrial design law, a trade secret law, and a semiconductor-integrated circuits law were established in 2000. The patent law and the trademark law were amended in 2001 while the copyright law was amended in 2002.

5.2 International treaties

Major international treaties Indonesia has joined are as follows:

Paris Convention (December 24, 1950, Article 1 to 12 of Stockholm Amendment: September 5, 1997, Article 13 to 30: December 20, 1979)

Hague Agreement (December 24, 1950)

Convention Establishing the WIPO (December 18, 1979)

TRIPS Agreement (January 1, 1995)

Patent Cooperation Treaty (September 5, 1997)

Berne Convention (September 5, 1997)

Trademark Law Treaty (September 5, 1997)

WIPO Copyright Treaty (March 6, 2002)

WIPO Performances and Phonograms Treaty (February 15, 2005)

5.3 Current status of intellectual property laws

5.3.1 Patent law

Outline of the patent law of Indonesia is as follows:

- (a) Protection of utility model (petty patent) (Article 6)
- (b) Biological method to produce organisms other than microorganisms (plants or

animals are not patentable)(Article 7)

- (c) Duration of utility model (petty patent) is 10 years after the filing (Article 9)
- (d) Right to be granted of patent for employee's invention belongs to the employer (Article 12)
- (e) Secureness of the filing date with English description (Article 30)
- (f) Adoption of the system of laying open of unexamined applications (Article 42: Petty patents are made open 3 months after filing)
- (g) System of requests for examination for 3 years after filing (Article 49: 6 months after filing for petty patents)
- (h) Time limit for examination (Article 54: Patent: 36 months after the request for examination, petty patent: 24 months after the filing)
- (i) Trial by a patent trial committee concerning rejected application (Articles 60 and 61)
- (j) Filing to the commercial court against decision of the patent trial committee (Article 62)
- (k) Filing of a suit against a decision to the commercial court (Article 91f.)
- (l) System of provisional injunction (Article 125f.)
- (m) Investigation of infringement (Article 129)

5.3.2 Design law

Outline of the Design Law of Indonesia is as follows:

- (a) Term of protection of design is 10 years from the filing date (Article 5)
- (b) One application for multiple designs is allowed if they form a unity or fall under the same category (Article 13)
- (c) Publication within 3 months after the application (Article 25)
- (d) Opposition is accepted within 3 months after the publication. Substantive examination is conducted for the case of opposition. (Article 26)
- (e) If an application is rejected, a suit may be filed to a commercial court (Article 28)
- (f) Filing of a suit with a commercial court for cancellation of design registration

(Article 38f.)

- (g) System of provisional disposition/injunction (Article 49f.)
- (h) Investigation of infringement (Article 54)

5.3.3 Trademark law

Outline of Indonesia's trademark law is as follows:

- (a) Multi-class application system (Article 8)
- (b) Start of substantive examination within 30 days after application and completion of examination within 9 months (Article 18)
- (c) System of objection after publication (Articles 24 and 25)
- (d) Re-examination of the objected application (Articles 26 and 27)
- (e) Demand for trial of rejected application to the mark trial committee (Article 29f.)
- (f) Suit against a decision of the mark trial committee to a commercial court (Article 31)
- (g) Collective mark system (Article 50f.), geographical indication, and indication of source (Article 56f.)
- (h) Provisional disposition system (Article 85f.)

5.3.4 Copyright law

Copyright law of Indonesia was amended in 1987 to clearly articulate the protection of computer programs, followed by the amendment in 1997 to strengthen the crack down on pirated copies and to respond to the TRIPS Agreement. The latest amendment was made in 2002 to clearly articulate the protection of database and to strengthen punitive clauses.

Outline of Indonesia's copyright law is as follows:

- (a) Term of protection is 70 years after the death of the author (Articles 30 and 31)
- (b) Copyright is registered by a consultant who is registered at the Directorate General of Intellectual Property Rights. (Article 37)
- (c) Registration made within one year after the first publication was deemed to be

made at the time of the first publication (Article 40).

- (d) Filing of demand for cancellation of copyright registration at the commercial court (Article 42)

5.3.5 Unfair competition prevention law

Indonesia does not have special legislation for unfair competition or passing off. Protection of trade secrets is covered by a trade secret law.

Outline of the trade secret law is as follows:

- (a) Trade secret right: Right on trade secrets as granted based on the trade secret law (Article 1)
- (b) Subject of protection: Nature of the secret, economic value, maintenance of secrecy (Article 3)
- (c) Right of the holder of trade secret right: Right to use trade secret, right to prohibit use by a third party, right to license or disclose to a third party (Article 4).
- (d) Transfer of trade secret right: Recording at the Directorate General of Intellectual Property Rights (Article 5)
- (e) Grant of working license of trade secret right: Recording at the Directorate General of Intellectual Property Rights (Article 8).

5.3.6 Other intellectual property–related laws

Indonesia established a law concerning the circuit layout of semiconductor-integrated circuits (2000) and a competition law (1999).

6. The Philippines

6.1 Outline

In the Philippines, an intellectual property law was established in 1997 to unify its patent law (including utility model and design), trademark law, and copyright law.

6.2 International treaties

Major international treaties the Philippines has joined are as follows:

Berne Convention (August 1, 1951: Article 22 to 38 of the Paris Amendment: July 16,

1980, Article 1 to 21 of the Paris Amendment: June 18, 1997)

Paris Convention (September 27, 1965, Articles 13 to 30 of the Stockholm Amendment:

July 16, 1980)

Convention Establishing the WIPO (July 14, 1980)

Budapest Treaty (October 21, 1981)

Roma convention (September 25, 1984)

TRIPS Agreement (January 1, 1995)

Patent Cooperation Treaty (August 17, 2001)

WIPO Copyright Treaty (October 4, 2002)

WIPO Performances and Phonograms Treaty (October 4, 2002)

6.3 Current status of intellectual property laws

In the Philippines, an intellectual property law was passed in parliament in June 1997 and put into force on January 1, 1998.

The intellectual property law consists of the following:

Part 1: Intellectual Property Office

Part 2: Law concerning patent

Part 3: Law concerning trademark, service mark, and trade name

Part 4: Law concerning copyright

Part 5: Final provisions

The intellectual property law defines intellectual property as “Protection of copyrights and related rights, trademarks and service marks, geographical indications, designs, patents, circuit layout of semiconductor-integrated circuits, and undisclosed information” (Article 4).

6.3.1 Patent law (Utility model/design)

Philippine’s patent law has provisions on patent, utility model, and design. Its outline is as follows:

- (a) Principle of absolute novelty and function (Article 24)
- (b) Unpatentable inventions (Article 22)
 - *Discovery, proposition, mathematical solution
 - *Psychological acts, rules, or methods of game or business and computer programs
 - *Method of treatment or diagnosis for humans and animals
 - *Plant or animal species or biological methods for the production of plants or animals
 - *Artistic creations
 - *Inventions against public order and morality
- (c) First-to-file system (Article 29)
- (d) System of the laying open of unexamined applications accompanied by search reports (Article 44)
- (e) System of request for examination (Article 48: within 6 months after the laying open of the application)
- (f) Prior user’s right (Article 73)
- (g) Burden of proof of process patent (Article 78)

For a patent concerning the product manufacturing process, if the products manufactured using the process are “new” or if “products are very likely to be manufactured using the process,” the products are presumed to be obtained through the process and the burden of proof of the fact is shifted to the defendant.

Outline of the provisions concerning utility model in the patent law is as follows:

- (a) Non-substantive examination system (Article 109)
- (b) Duration (Article 109: 7 years after the application)
- (c) Conversion from patent application (Article 110)

Outline of the provisions concerning design in the patent law is as follows:

- (a) Definition of design (Article 112: Composition of three-dimensional form, pattern, and color of industrial products or handicrafts)
- (b) Registration requirement (Article 113: new or creative design, excluding technical or functional crafts design that has technical consequences and industrial designs that are against public order, health, or morality)
- (c) Multiple design application (Article 115)
- (d) System of registration without substantive examination (Articles 116 and 117)
- (e) Duration (Article 118: 5 years after the application. Renewal of 5 years + 5 years is possible)

6.3.2 Trademark law

Outline of the Trademark law is as follows:

- (a) Protection of famous foreign trademark (Article 123: Protection of trademarks deemed as famous trademark both internationally and in the Philippines)
- (b) Multi-class application system (Article 128)
- (c) System of objection after publication (Article 134)
- (d) Duration (Article 145:10 years. Submission of testimony and evidence of use is required within 1 year after 5 years from the date of registration)
- (e) Cancellation of registered trademark (Article 151)
- (f) Collective mark system (Article 167)
- (g) Unfair competition (Article 168)
- (h) False marking of indication of source (Article 169)

6.3.3 Copyright law

Because the Philippines is a party of the Berne Convention and the TRIPS Agreement, its copyright law is consistent with them.

Outline of the copyright law is as follows:

- (a) Protection of computer programs (Article 171 defines computers and computer programs and specifies computer programs as subjects of protection.)
- (b) Subjects that are not protected (Article 175: Idea, procedure, system, method, discovery, concept, mere data)
- (c) Fair use (Article 185: Clear notification that the fair use of works for purposes including remark, commentary, news report, education, scholarship, and research does not infringe copyright. Decompiling in computer programs is also stipulated as fair use.

When making judgment on fair use, the following factors shall be considered:

- *Purpose and nature of the use such as whether the use is commercial or nonprofit education
- *Nature of the work
- *Significance and substantive value of the part used
- *Potential market of the work or value of the work

- (d) Registration and deposit (Article 91: National Library and the library of the supreme court)
- (e) Protected period (Article 213: 50 years in principle. 25 years for applied arts.)

6.3.4 Unfair competition prevention law

In the intellectual property law, if a person who has obtained goodwill for his/her own goods/service, the trademark concerned has property value to be protected regardless whether it is registered or not, and passing off of such trademark is deemed as unfair competition (Article 168). The following acts are deemed as constituting unfair competition:

- (a) Act of using a trademark of other person with goodwill, imitating his/her goods, package of the goods, etc. leading to false recognition as goods offered by the other

person.

- (b) Act of solicitation that presents services as those of the other person.
- (c) Act of generating false information on the nature of goods, businesses, services, etc. of other person

6.3.5 Other intellectual property–related laws

An intellectual property law has provisions concerning the protection of indication of source (Article 169). The law concerning the circuit layout of semiconductor-integrated circuits was amended in 2001 while undisclosed information is protected through criminal penalty in the criminal code in addition to protection by the intellectual property law.

Furthermore, a law for the protection of new varieties of plants was established in 2002 and an e-commerce law in 2000.

7. Malaysia

7.1 Outline

Current patent law of Malaysia that includes provisions concerning utility models was established in 1983 (put into force on October 1, 1986). The patent law was later amended in 1993, 2000, 2003, and 2006.

Current design law of Malaysia was established in 1996 (put into force on September 1, 1999). The design law was later amended in 2000.

Current trademark law of Malaysia was established in 1976 and later amended in 1994 and 2000. In addition, the Trade Descriptions Act was established in 1972 to clamp down on trademark infringement and the manufacturers of counterfeit goods. The current copyright law of Malaysia was established in 1987 and later amended in 1990, 1996, 1997, 2000, and 2003.

7.2 International treaties

Major international treaties that Malaysia has joined are as follows:

Paris Convention (January 1, 1989)

Convention Establishing the WIPO (January 1, 1989)

Berne Convention (October 1, 1990)

TRIPS Agreement (January 1, 1995)

Patent Cooperation Treaty (August 16, 2006)

Nice Agreement (September 28, 2007)

7.3 Current status of intellectual property laws

7.3.1 Patent/utility model law

Outline of the patent law of Malaysia is as follows:

- (a) Publicly known/used elsewhere in the world (Article 14)
- (b) Protection of utility models (Article 17f., Article 17A: Provisions for patent are applied mutatis mutandis and inventive step is not needed. Article 17B: Change of

application must be within 6 months after the receipt of the search report. Article 17C: No overlap protection with patent)

- (c) Employee's invention belongs to the employer in principle. (Article 20)
- (d) Unity of invention (Article 26)
- (e) Preliminary examination (Article 29: Formality examination)
- (f) Substantive examination and limited substantive examination (Article 29Af: Patent right is granted if the application is consistent with the examination result of English-speaking countries including EPO and USPTO)
- (g) Restoration of patent right (Article 35A)
- (h) Prior user's right (Article 38)
- (i) Suits for invalidation of a patent (Article 56)
- (j) International application based on the Patent Cooperation Treaty (Article 78Af.)

7.3.2 Design law

Outline of Malaysian design law is as follows:

- (a) Definition of design (Article 3)
- (b) Public known in the country (Article 12)
- (c) Multiple applications (Article 15: One application is allowed for the multiple designs of goods that fall under the same category of the International Classification as well as for a series of designs; One application is allowed for a combination of goods and their components.)
- (d) Registration just by formality examination (Article 22)
- (e) Registration of application of the same design for other goods (Article 23)
- (f) Duration (Article 25: 5 years from the filing date, renewable two times for five years)
- (g) Restoration of registration (Article 26: restorable within one year after extinction)
- (h) Suits for cancellation of registration (Article 27)

7.3.3 Trademark law

Outline of China's Trademark law is as follows:

- (a) Registration requirement (Article 10: General requirement and requirements concerning distinctive feature)
- (b) Multi-class application system (Article 17)
- (c) Associated trademark (Articles 22 and 23)
- (d) Series of trademarks (Article 24)
- (e) Registration just by formality examination (Article 27)
- (f) System of objection (Article 28)
- (g) Duration (Article 32)
- (h) Renewal of registration (Articles 41 and 42)
- (i) Suit to demand cancellation of registered trademark not in use (Article 46)
- (j) Certification trademark (Article 56)
- (k) Defensive mark (Article 57)
- (l) Treaties and international agreements (Article 70f.)
- (m) Border measures (Article 70Cf.)

7.3.4 Copyright law

Current copyright law was established in 1987 and amended to join the Berne Convention (1989) and to change criminal penalty provisions. Later, the law was amended in 1997, 1999, 2000, and 2003. Because Malaysia is a party of the Berne Convention and the TRIPS Agreement, its copyright law adheres to them. Outline of Malaysia's copyright law is as follows:

- (a) There are seven categories of copyright: literary works, musical works, fine arts, cinematographic works, phonographic works, broadcasting, and publications.
- (b) Drawings of industrial design are excluded from the scope of copyright protection.
- (c) If a dispute on matters concerning license arises, arbitration function shall be expanded.

- (d) Copyright protection is not provided to functional designs.
- (e) Right to allow the lending of computer programs is recognized. Right to lend is recognized for cinematographic works with some conditions.

7.3.5 Trade Descriptions Act

The Trade Descriptions Act was established in 1972 and recognized for its effectiveness in controlling infringement of trademark/design rights, unfair competition acts, commercial fraud, etc. Outline of the Trade Descriptions Act is as follows:

- (a) Prohibition of deceptive trade descriptions
- (b) Deceptive trade descriptions
- (c) Suits against trademark right infringement and passing off
- (d) Trade description order by a high court
- (e) Penalty for crime
- (f) Presumption of instigating a crime abroad
- (g) Enforcement by the executive office (authority to investigate and seize goods and documents, authority of arrestment/search/indictment, confiscation of goods)

7.3.6 Other intellectual property–related laws

A law concerning semiconductor-integrated circuits, a law concerning indication of source, and an optical disc law were established in 2000.

8. Singapore

8.1 Outline

On the occasion of the establishment of the TRIPS Agreement, Singapore joined treaties related to intellectual property rights and established its own intellectual property laws including a patent law completing the development of intellectual property laws that meet the minimum requirements as defined in the TRIPS Agreement.

Patent law of Singapore was established in 1995 and later amended in 1996, 2001, 2002, 2004, 2006, and 2007.

Design law of Singapore was established in 2000 and amended in 2004.

The Trade Marks Act of Singapore was established in 1998 and amended in 2004.

Copyright law of Singapore was established in 1987 and amended in 1994, 1998, 1999, 2004, and 2005.

8.2 International treaties

Major international treaties Singapore that has joined are as follows:

Convention Establishing the WIPO (December 10, 1990)

TRIPS Agreement (January 1, 1995)

Paris Convention (February 23, 1995)

Patent Cooperation Treaty (February 23, 1995)

Budapest Treaty (February 23, 1995)

Berne Convention (December 21, 1998)

Nice Agreement (March 18, 1999)

Madrid Protocol (October 31, 2000)

UPOV Convention (July 30, 2004)

WIPO Copyright Treaty (April 17, 2005)

WIPO Performances and Phonograms Treaty (April 17, 2005)

Hague Agreement (April 17, 2005)

8.3 Current status of intellectual property laws

8.3.1 Patent law

(a) Patent law of Singapore was amended in 1995 to ensure consistency with the TRIPS Agreement, which was followed by frequent amendments. Outline of the patent law of Singapore is as follows:

Publicly known/used elsewhere in the world (Article 14)

- (b) Restoration of right of priority (Article 17)
- (c) System of the laying open of applications (Article 27)
- (d) Provision of information on request for search/examination and overseas application (Article 29)
- (e) Restriction of overseas application by residents in Singapore (Article 34)
- (f) Restoration of expired patent (Article 39)
- (g) Employee's invention belongs to the employer in principle (Article 49)
- (h) Shifting of the burden of proof in the case of process patent infringement (Article 68)
- (i) Right to demand compensation related to the laying open of application (Article 76)
- (j) Cancellation of patent (Article 79f.)
- (k) International application (Article 85f.)

8.3.2 Design law

Design law of Singapore was established in 2000 and amended in 2004.

Outline of the design law of Singapore is as follows:

- (a) Publicly known elsewhere in the world (Article 5)
- (b) Registration is not allowed for a computer program or a circuit layout of semiconductor-integrated circuits (Article 7)
- (c) Registration of design for other goods (Article 10)
- (d) Registration just by formality examination (Article 18)
- (e) Registration as on the filing date (Article 20)

- (f) Duration (Article 21: 5 years, two extensions of 5 years is possible.)
- (g) Suit for decision on attribution of rights after registration (Articles 23 and 24)

8.3.3 Trademark law

Trademark law of Singapore was established in 1998 and amended in 2004. Outline of Singapore's Trademark law is as follows:

- (a) Protection of three-dimensional trademark (Article 2: Subject of trademark must be visually recognizable.)
- (b) Absolute reason for rejection of registration (Article 7)
- (c) Relative reason for rejection of registration (Article 8)
- (d) System of objection after publication (Article 13)
- (e) Registration of a series of trademarks (Article 17: A series of trademarks may be registered with one application)
- (f) Duration (Article 18: 10 years. Renewable every 10 years.)
- (g) Cancellation of registration of trademark not in use (Article 22)
- (h) Invalidation of registration (Article 23)
- (i) International exhaustion (Article 29: If the right holder or person who obtained his/her consent [or license] used a trademark, the use of the trademark is deemed as exhausted in Singapore, regardless of the market where the trademark was used.)
- (j) Remedy for ungrounded infringement lawsuit (Article 35)
- (k) Collective mark (Article 60: detailed provision in additional clause 1)
- (l) Certification mark (Article 61: detailed provision in additional clause 2)
- (m) Border measures (Article 81f.)
- (n) Right to investigate (Article 94f.)

8.3.4 Copyright law

Copyright law of Singapore was established 1987 and amended after joining the Berne Convention in 1998, followed by amendments in 1999, 2004, and 2005.

8.3.5 Other intellectual property–related laws

Singapore does not have an unfair competition prevention law but can prohibit offences concerning unfair competition based on common law.

Singapore's law concerning semiconductor-integrated circuits was established in 1999.

The law does not require registration or deposit for protection. The term of protection is 10 years after the date of first public sales or 15 years after the date of creation, if the work is sold within 5 years after creation.

Singapore has also established an e-commerce law, a law concerning the wrongful use of computers, a law concerning geographical name, etc.

9. Vietnam

9.1 Outline

Vietnam has long protected its intellectual property through provisions of its civil code, etc. Its intellectual property law was established in 2005 and put into force on July 1, 2006. The intellectual property law consists of: Part 1 – General Rule, Part 2 – copyright and neighboring rights, Part 3 – Industrial property rights (invention, design, circuit layout of semiconductor-integrated circuits, trademark, trade name, geographical indication, trade secret, protection against infringement), Part 4 – Rights concerning plant varieties, Part 5 – Protection of intellectual property (relief against infringement), and Part 6 – Provisions concerning enforcement.

9.2 International treaties

Major international treaties Vietnam has joined are as follows:

Paris Convention (Stockholm Amendment (March 8, 1949: Stockholm Amendment)

Madrid Agreement (March 8, 1949)

Convention Establishing the WIPO (July 2, 1976)

Patent Cooperation Treaty (March 10, 1993)

Berne Convention (October 26, 2004)

Madrid Protocol (July 11, 2006)

UPOV Convention (December 24, 2006)

TRIPS Agreement (January 11, 2007)

Rome Convention (March 1, 2007)

9.3 Current status of intellectual property laws

9.3.1 Patent law (utility model)

Outline of the provisions concerning patent (utility model) in the intellectual property law of Vietnam is as follows:

- (a) Definition of invention (Article 4)
- (b) Protection of patent and utility model (Article 58)
- (c) Objects that are not protected (Article 59)
- (d) Publicly known/used elsewhere in the world (Article 60)
- (e) Employee inventions belong to the employer in principle. (Articles 86 and 135: Payment of compensation is required.)
- (f) First-to-file system (Article 90)
- (g) Internal priority (Article 91)
- (h) Protection term of utility model (Article 93: 10 years after the application)
- (i) System of publication and opposition after publication (Articles 110 and 112)
- (j) System of request for examination (Article 13, Invention: within 42 months after the application, Utility model: Within 36 months after the application)
- (k) Time limit for substantive examination (Article 119: Within 12 months)
- (l) International application (Article 120)
- (m) Exhaustion of patent right (Article 125)
- (n) Prior user's right (Article 134)
- (o) Patent application obligation (Article 136)

9.3.2 Design law

Outline of the provisions concerning design in the intellectual property law of Vietnam is as follows (provisions common with patents are omitted):

- (a) Definition of industrial design (Article 4)
- (b) Subjects that are not protected (Article 64)
- (c) Publicly known/used elsewhere in the world (65)
- (d) Creativity (Article 66)
- (e) Industrial applicability (Article 67)

9.3.3 Trademark law

Outline of the provisions concerning trademark in the intellectual property law of Vietnam is as follows (provisions common with patents are omitted):

- (a) Protection of collective trademark, certification mark, and associated trademark (Article 4)
- (b) Three-dimensional trademark system (Article 72)
- (c) Marks that are not protected (Article 73)
- (d) Distinctive feature of trademark (Article 74)
- (e) Criteria of well-known trademark (Article 75)
- (f) Protection of trade name (Article 76f.)
- (g) Protection of geographical indication (Article 79f.)
- (h) Right to register trademark (Article 87)
- (i) Unfair competition act (Article 30)

9.3.4 Copyright law

Outline of the provisions concerning copyright in the intellectual property law of Vietnam is as follows:

- (a) Definition of reproduction, broadcasting, and fixed object (Article 4)
- (b) Provisions to limit copyright (Articles 25 and 26)
- (c) Registration of copyright (Article 49f.)

9.3.5 Other provisions of the intellectual property law

Outline of other provisions of the intellectual property law of Vietnam is as follows:

- (a) Protection of the circuit layout of semiconductor-integrated circuits (Articles 68, 69, 70, and 71)
- (b) Protection of trade secrets (Articles 84 and 85)
- (c) Rights concerning varieties of plants (Article 157f.)
- (d) Administrative and criminal remedy measures (Article 211f.)
- (e) Control of imported/exported goods related to intellectual property (Article 216f.)

9.3.6 Other intellectual property–related laws

Vietnam provides protection concerning unfair competition and trade secrets under the competition law (put into force on July 1, 2005).

10. India

10.1 Outline

Current patent law of India was established in 1970 and later amended in 1999, 2002, and 2005. The amendment in 1999 related to the interim protection of medical goods and agricultural chemical goods as provided in the TRIPS Agreement and was applied retroactively from January 1, 1995.

Current design law of India was established in 2000.

Current trademark law of India was established in 1999 and put into force in 2003.

Current copyright law of India was established in 1957 and later amended in 1983, 1984, 1991, 1992, 1994, and 1999.

10.2 International treaties

Major international treaties India has joined are as follows:

Berne Convention (April 1, 1928: Article 1 to 21 of the Paris Amendment: May 6, 1984, Article 22 to 38: January 10, 1975)

Convention Establishing the WIPO (May 1, 1975)

TRIPS Agreement (January 1, 1995)

Paris Convention (December 7, 1998)

Patent Cooperation Treaty (December 7, 1998)

Budapest Treaty (December 17, 2001)

Madrid Protocol (July 11, 2006)

10.3 Current status of intellectual property laws

10.3.1 Patent law

Outline of the patent law of India is as follows:

- (a) Unpatentable inventions (Article 3: Those that are not recognized as inventions, Article 4: Inventions concerning nuclear power)

- (b) System of provisional specification (Article 9)
- (c) Laying open of unexamined applications (Article 11A: 18 months after application)
- (d) System of request for examination (Article 11B: Within 36 months after application)
- (e) Opposition (Article 25(1): Before grant of patent, 25(2): after grant of patent right, Article 26)
- (f) Additional patent (Articles 54 and 55)
- (g) Restoration of patent right (Article 60f.)
- (h) Cancellation of patent (Article 64f.)

10.3.2 Design law

Outline of the design law of India is as follows:

- (a) Protection of partial design (Article 2)
- (b) Designs that cannot be registered (Article 4)
- (c) Registration just by formality examination (Article 5)
- (d) One application for multiple articles (Article 6)
- (e) Duration (Article 11: 10 years after registration with the possibility of a 5-year extension)
- (f) Restoration of lapsed design (Articles 12, 13, and 14)
- (g) Cancellation of registration (Article 19)

10.3.3 Trademark law

Outline of India's Trademark law is as follows:

- (a) Definition of certification mark, collective trademark, publicly known trademark, etc. (Article 2)
- (b) Absolute reason for rejection of registration (Article 9)
- (c) Relative reason for rejection of registration (Article 11)
- (d) Registration of a series of trademarks (Article 15)
- (e) Associated trademark (Article 16)

- (f) Publication after formality examination (Article 20)
- (g) System of objection before registration (Article 21: 3 months after publication)
- (h) Duration (Article 25: 10 years after registration)
- (i) Limitation of effect of trademark right (Article 30)
- (j) Prior user's right (Article 34)
- (k) Cancellation of registered trademark not in use (Article 47)
- (l) Collective mark (Article 61f.)
- (m) Certification trademark (Article 69f.)
- (n) Special provision concerning textile (Article 79f.)

10.3.4 Copyright law

Outline of the copyright law of India is as follows:

- (a) Protection of computer programs and databases (Article 2)
- (b) Right of lending computer programs (Article 14)
- (c) Work made for hire (Article 14)
- (d) Duration (Article 22f.: 60 years)
- (e) Administrative remedy (53: Import regulation)
- (f) Civil remedy (Article 55)
- (g) Criminal penalty (Article 63f.)

10.3.5 Other intellectual property–related laws

India does not have a special law for unfair competition or trade secrets. Protection is provided under common laws.

In India, a plant variety law was put into force on May 20, 2007.

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