

**THAILAND**

**Trademark Regulation**

Ministerial Regulation B.E. 2560

Trademark Registration under the Madrid Protocol

Come into force on November 7, 2017

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**Article 1**

This Ministerial Regulation shall come into force on November 7, 2017.

## **Chapter 1 General Provisions**

### **Article 2**

In this Ministerial Regulation:

"International registration" means an international registration of trademark, which is maintained by the International Bureau, and includes official information related to such registration;

"Basic application" means a Thai application for trademark registration, which is used as the basis for the filing of an international application under the Madrid Protocol;

"Basic registration" means a Thai trademark registration, which is used as the basis for the filing of an international application under the Madrid Protocol; and

"Applicant" means an applicant for international trademark registration, and includes their agent(s).

### **Article 3**

International applications, other applications and relevant information, which will be submitted to the International Bureau through the Department of Intellectual Property, the Ministry of Commerce, shall be in English.

Communication between an applicant and the Department of Intellectual Property shall be in Thai; except for any notification letter of the International Bureau's order sent to an applicant, who has filed an application in Thailand, to designate other Contracting Parties in which the mark is to be protected, which shall be in English.

## **Chapter 2 International Applications Filed in Thailand to Designate Other Contracting Parties**

### **Part 1 Filing of International Applications**

#### **Article 4**

An international application filed under the Madrid Protocol shall be in the form as notified and prescribed by the Director-General. An application under paragraph one shall be filed with the Registrar at the Department of Intellectual Property, the Ministry of Commerce, or by any other means as notified and prescribed by the Director-General.

#### **Article 5**

An applicant shall fill in and complete an international application in English, in the form as notified and prescribed by the Director-General in Article 4. The following information, at the least, shall be provided:

- (1) The name and address of the trademark owner, which shall correspond with the name and address given in the relevant basic application or basic registration;
  - (2) The mark displayed in an international application, which shall be the same mark as shown in the relevant basic application or basic registration;
  - (3) The list of goods indicated in an international application, which shall be in line with and shall not be broader than whatsoever indicated in the relevant basic application or basic registration;
- and
- (4) Designated Contracting Party/Parties.

In the case of designating a Contracting Party that requires communications in another language, in addition to English, an applicant shall indicate such language.

In the case of designating a Contracting Party that requires submission of a declaration of intention to use the mark, an applicant must submit the declaration of intention to use the mark in the form as notified and prescribed by the Director-General.

#### **Article 6**

Applicants shall pay the following fees:

- (1) Fees for preparation and delivery of an international application under the Madrid Protocol; and

(2) International registration fees charged by the International Bureau.

**Article 7**

Applicants shall indicate, in writing, one of the following communication means with the Registrar:

- (1) Mail with advice of receipt;
- (2) Email;
- (3) Facsimile; or
- (4) Other means as notified and prescribed by the Director-General.

**Part 2 Examination of International Applications by the Registrar,  
as the Office of Origin**

**Article 8**

Upon receipt of an international application, its supporting documents and the fees for preparation and delivery thereof, the Registrar shall indicate the date of receipt and issue a receipt number for reference.

**Article 9**

Upon indicating the date of receipt and issuing a receipt number for reference, the Registrar shall examine the correctness and completeness of an international application and its supporting documents, as required in Article 5, within twenty five (25) days as from the date of receipt.

In the event that it is deemed that the information indicated in an international application and its supporting documents is not correct or complete, the Registrar shall notify the applicant and offer advice in order for the applicant to correct and complete any amendments, which must be made within fifteen (15) days as from the notification date. Upon the applicant's correct and completed amendments and submission to the Registrar within the specified time limit, the Registrar shall finalize their consideration of the amendments within fifteen (15) days, as from the receipt of notification on such amendments.

In the event that it is deemed that the information indicated in an international application and its supporting documents is correct and complete, or the applicant made correct and complete amendments within the time limit specified in paragraph two, the Registrar shall notify the applicant so that the international registration fees charged by the International Bureau can be transferred within three (3) days, as from the notification date. Upon such fee payment, the applicant shall inform the reference number of such transfer to the Registrar. The Registrar shall certify the correctness and completeness of the information in the international application and its supporting documents, and submit them to the International Bureau.

In the event that the Registrar submits the documents under paragraph three to the International Bureau within two (2) months, as from the date of receipt of the application, the date of receipt of such application by the Department of Intellectual Property shall

be deemed the filing date of the international application. In the event that the Registrar fails to satisfy such time limit, the date of receipt of the application by the International Bureau shall be deemed the filing date of the international application.

In the event that an applicant fails to make the correct and complete amendments to the documents under paragraph two, or to pay the fees under paragraph three, as the case may be, within one hundred twenty (120) days, as from the notification date, it shall be deemed that the applicant does not desire to proceed further, and the Registrar shall remove the application from the system.

#### **Article 10**

During the Registrar's pending submission of an international application and its supporting documents to the International Bureau, an applicant may request an amendment of the international application and the supporting documents by means of a written notification describing the to-be-amended particulars.

In the case where the Registrar submitted an international application and its supporting documents to the International Bureau, an applicant shall notify a request for an amendment to the international application directly to the International Bureau.



### **Part 3 Correction of Errors in Accordance with the International Bureau's Notification**

#### **Article 11**

In the case where the International Bureau informs the Department of Intellectual Property that a submitted international application has an error, the Registrar shall correct such error within the time limit specified by the International Bureau.

In the case where the International Bureau requests additional fees from an applicant and provides suggestions on amendments to a list of goods or reclassification of the goods, the applicant shall pay the fees, consider such suggestions, and inform the Registrar of their decision so that the Registrar can further notify the International Bureau within the time limit specified by the International Bureau.

In the case where the International Bureau notifies an applicant to correct an error, the applicant shall correct such error within the time limit specified by the International Bureau.

If an applicant fails to amend a list of goods or reclassify the goods according to the International Bureau's suggestions within the time limit specified by the International Bureau under paragraph two, the International Bureau will reconsider the list of goods or classification of the goods, as they deem appropriate.

If an applicant fails to pay the additional fees under paragraph two, or to correct the error under paragraph three, it shall be deemed that the applicant has abandoned the application, as stipulated in the Madrid Protocol.

#### **Article 12**

In the case where the International Bureau informs an applicant of a designated Contracting Party's information requesting the applicant to carry out any action within a specified time limit, the applicant shall complete it within such specified time limit.

In the case where an applicant fails to satisfy the specified time limit under paragraph one, the international application shall be subject to the Contracting Party's rules for consideration of applications under the Madrid Protocol.

## **Part 4 Filing of Other Applications**

### **Article 13**

In filing an application for additional protection, an applicant shall fill in and complete the application in English in the form as notified and prescribed by the Director-General. The application shall be filed with the Registrar of the Department of Intellectual Property, the Ministry of Commerce, or by any other means as notified and prescribed by the Director-General, or may be filed with the International Bureau.

Filing of an application for additional protection, examination of an application for additional protection by the Registrar as the Office of Origin, payment of fees, and correction of errors according to the International Bureau's notification shall apply *mutatis mutandis* to the provisions of Parts 1 to 3 of Chapter 2.

### **Article 14**

Other applications under the Madrid Protocol, in addition to the applications under Article 13, shall be in the forms as notified and prescribed by the Director-General.

In filing other applications under paragraph one, an applicant shall fill in and complete the applications in English. The applications shall be filed with the Registrar at the Department of Intellectual Property, the Ministry of Commerce, or by any other means as notified and prescribed by the Director-General, or may be filed with the International Bureau.

In the case of filing with the Department of Intellectual Property, the Ministry of Commerce, or by any other means as notified and prescribed by the Director-General, an applicant shall pay fees for the preparation and delivery of the other applications to the Department of Intellectual Property, and other fees as charged by the International Bureau. The Registrar shall further deliver the applications and their supporting documents to the International Bureau upon the applicant's payment of the fees for preparation and delivery of the other applications.

In the case of directly filing with the International Bureau, an applicant shall pay other fees as charged by the International Bureau.

**Part 5 Results of the Ceasing of Effect of a Basic Application or Basic Registration, and Restriction of Rights to an International Registration**

**Article 15**

In the case where a basic application or a basic registration is withdrawn, abandoned, rejected or cancelled for any reasons within five (5) years as from the date of an international registration; or opposition, appeal, petition or prosecution is carried out within such period of time, which may be grounds for subsequent withdrawal, abandon, rejection or cancellation, the Registrar shall notify the International Bureau of facts and an order, decision or judgment thereof, and request that the International Bureau cancel the international registration for the entire list of goods or certain goods affected.

**Article 16**

In the case where it appears to the Registrar that an international registration is restricted with respect to the rights to assignment, licensing, or otherwise, whether in whole or in part, by a juristic act or an order of the Registrar, the Board [*of Trademarks*] or the Court, the Registrar shall promptly notify the International Bureau about the restriction of the rights thereto.

### **Chapter 3 International Applications Designating Thailand as a Designated Country Sent by the International Bureau**

#### **Article 17**

Upon the Department of Intellectual Property's receipt of an international application designating Thailand as a designated country or in a subsequent designation, which is sent by the International Bureau, the Registrar shall translate necessary parts thereof into Thai, and shall issue a number for the national application so that it is orderly taken into registration process.

#### **Article 18**

Examination of an international application shall be subject to the same rules and procedures as those applicable to examination of a national application, unless it is otherwise stipulated herein.

#### **Article 19**

Subject to Articles 20, 23 and 24, in examining an international application, the Registrar shall examine an international application and approve the registration within eighteen (18) months, as from the International Bureau's notification on a designation of Thailand. Upon approval of the registration, the Registrar shall notify the International Bureau of the granting of protection.

In the case where the Registrar fails to satisfy the specified time limit under paragraph one, such application shall be deemed registered.

#### **Article 20**

Upon consideration, if the Registrar opines that the trademark for which protection is being sought in Thailand as a designated country is not registrable, or registration of such trademark does not comply with the Thai trademark law, the Registrar shall issue an order rejecting the registration and inform the International Bureau of such order before reaching the period of eighteen (18) months, as from the International Bureau's notification on a request for a designation of Thailand.

With respect to amendments to an application or compliance with the Registrar's order, appealing against an order, or any other actions pursuant to the Registrar's order under paragraph one, an applicant shall appoint an agent in Thailand to proceed with it within sixty

(60) days, as from the date deemed that the applicant received the Registrar's notification on an order under Article 33.

#### **Article 21**

Upon an applicant's correct amendments pursuant to the Registrar's order, the Registrar shall order to publish the application.

#### **Article 22**

Subject to Article 24, when the Registrar orders to publish an international application, and an opposition is filed, the Registrar shall reject the registration because of the opposition. Such order shall be notified to the International Bureau, including the opposition's details, before reaching the period of eighteen (18) months, as from the International Bureau's notification on a request for a designation of Thailand. The applicant is required to appoint an agent in Thailand in order to file an answer to the opposition within sixty (60) days, as from the date deemed that the applicant received the Registrar's notification on an order under Article 33. Details of a notification of opposition shall, at the least, include the following particulars:

- (1) International Registration Number;
- (2) Name and address of the opposer;
- (3) Reasons for filing the opposition;
- (4) Provisions of the laws referred as the reasons for filing the opposition; and
- (5) Mark and application/registration number (if any) of the opposer's trademark, if filing on the grounds of an identical or similar mark.

Upon consideration of the opposition, the Registrar shall inform the International Bureau, the applicant's agent in Thailand and the opposer of the results.

#### **Article 23**

In the case where the period for opposition will end within thirty (30) days before reaching the period of eighteen (18) months under Article 19, the Registrar shall inform the application number and the name of the applicant so that the International Bureau knows that the application may be opposed. If an opposition is filed, the Registrar shall inform the International Bureau of the opposition to such application within one (1) month, as from the filing date of such opposition.

In the case where there is no opposition under paragraph one, the Registrar shall provide a written notification on the granting of protection to the International Bureau.

#### **Article 24**

In the case where the period for opposition ends after reaching the period of eighteen (18) months under Article 19, the Registrar shall notify the International Bureau that an opposition may be filed after such period was reached, unless the application was previously rejected by the Registrar's order.

In the case where an opposition is filed under paragraph one, the Registrar shall notify such opposition and its details under Article 22 to the International Bureau within one (1) month as from the end of the period for opposition, but not later than seven (7) months as from the start of the period for opposition.

In the case where there is no opposition, the Registrar shall approve the registration and provide a written notification on the granting of protection to the International Bureau and the applicant.

#### **Article 25**

In the case where an applicant fails to comply with the Registrar's order and does not appeal the Registrar's order within a specified time limit, or fails to complete the entire order of the Registrar, the Registrar shall further consider and proceed with the available documents, and shall impose one of the following orders:

(1) In the case where an application includes a partially registrable list of goods, the Registrar shall order publication of such partially registrable list of goods; or

(2) In the case where an application is not registrable, the Registrar shall issue an order rejecting the registration of such application, and notify the order to the International Bureau and the applicant's agent in Thailand, as the case may be. The Registrar shall subsequently remove the application from the system.

#### **Article 26**

Upon the Registrar's provision of a written notification on the granting of protection, if any order, decision or judgment affects such protection, the Registrar shall notify the results of the order, decision or judgment to the International Bureau.

**Article 27**

In the case where the Registrar's order, the Board's decision or the Court's judgment finalizes that an international trademark granted protection in Thailand be invalidated, the Registrar shall notify such invalidation to the International Bureau.

**Article 28**

In the case where there is an amendment, modification, transfer, renewal or recordal of any particular in an international registration, it shall be deemed that it is also made to its national registration. Upon receipt of a notification thereon from the International Bureau, the Registrar shall amend, modify, transfer, renew or record particulars, as notified.

In the case where an amendment or transfer is contrary to laws, public order, morality or public policy, or may confuse or mislead the public as to the proprietorship or origin of the goods, the Registrar shall reject such amendment or transfer, and notify it to the International Bureau.

**Article 29**

In the case where the International Bureau notifies that a trademark licensing agreement shall be recorded, the Registrar shall reject such recordal, and inform the International Bureau of it so that the trademark owner or its licensee can proceed with the registration of the licensing agreement in Thailand.

**Article 30**

In the case where a mark for which protection is being sought in Thailand as a designated country is a certification mark or a collective mark, the applicant shall submit to the Registrar the terms on the use of the certification mark, or a list of persons eligible with regard to the collective mark, which must be prepared in Thai.

In the case where an applicant fails to submit the documents under paragraph one, the Registrar shall issue an order rejecting the registration, notify such order to the International Bureau and instruct the owner of the mark to submit the documents within sixty (60) days, as from the date deemed that the applicant received the Registrar's notification on an order under Article 33.

In the case where an applicant fails to submit the documents within the specified time limit under paragraph two, the application for

international registration shall be deemed abandoned.

### **Article 31**

In the case where the trademark owner requests recordal of an international trademark in place of a national registration, either for the entire list of goods or for only the same items included in both registrations, a request for recordal of an international registration in place of a national registration shall be filled and completed in the form notified and prescribed by the Director-General; and shall be filed with the Registrar at the Department of Intellectual Property, the Ministry of Commerce, or by any other means, as notified and prescribed by the Director-General. Fees for a request for recordal of an international registration in place of a national registration shall also be paid.

Upon the Registrar's receipt of a request for recordal of an international registration in place of a national registration, the Registrar shall record such replacement in a registration and inform the International Bureau of the following particulars:

- (1) Recorded international registration number;
- (2) A list of goods, only if it is requested to record such list in the international registration;
- (3) Filing date and application number of the mark originally registered in Thailand;
- (4) Registration date and registration number of the mark originally registered in Thailand;
- (5) Priority date, as claimed in the registration of the mark originally registered in Thailand;
- (6) Other information related to the rights obtained from the registration in Thailand.

The recordal of an international registration under paragraph two does not cancel a national registration.

### **Article 32**

In the case where cancellation of an international registration designating Thailand is requested from the International Bureau within five (5) years as from the international registration date, either for the entire list of goods or certain goods indicated in the international registration, the owner of the international registration may file a national application for such mark for the same list of goods indicated in the international registration designating Thailand, with the Department of Intellectual Property,



the Ministry of Commerce, within three (3) months as from the cancellation of the international registration. Provisions related to applications for national registration of trademarks shall be applied *mutatis mutandis*.

An application for trademark registration under paragraph one shall be in the form as notified and prescribed by the Director-General. It shall, at the least, include the following particulars:

- (1) Statement indicating that this application for registration is converted from an international registration;
- (2) Cancelled international registration number;
- (3) Registration date of the international registration or the date of a designation of Thailand, as the case may be;
- (4) Cancellation date of the international registration; and
- (5) Priority date, as claimed in the international application and as recorded in the international registration (if any).

In the case where an international registration of a mark is granted protection in Thailand before or on the cancellation date of the international registration, if a national registration converted from the international registration is in accordance with the rules specified in paragraph one, the Registrar shall approve the registration of such trademark. In such case, it shall be deemed that the registration date of the international registration designating Thailand or the date of a subsequent designation of Thailand shall be deemed the registration date of such trademark in Thailand. Any claim of priority in the cancelled international registration shall remain effective for the national registration. In the case where an international registration of a mark has not yet been granted protection in Thailand before or on the cancellation date of the international registration, actions carried out before or on the filing date of a request for conversion of the international registration shall be deemed actions performed for the purposes of filing an application resulting from such conversion. In such case, the registration date of the international registration designating Thailand or the date of a subsequent designation of Thailand shall be deemed the filing date of the application for registration.

### **Article 33**

Notifications on the granting of protection, notifications on an opposition, notifications on an order rejecting registration, notifications on the results of an opposition, notifications on the

results of an order, decision or judgment, a registration certificate, requests for appearance and any other letter to the International Bureau, an applicant or a trademark owner, shall be in the forms as notified and prescribed by the Director-General.

After a letter under paragraph one has been submitted and the period of thirty (30) days has lapsed, it shall be deemed that an applicant or a trademark owner received such letter.

In the case where the International Bureau notifies that there is an error and the error has been made by the Department of Intellectual Property, the Ministry of Commerce, the Registrar shall cancel original letters and orders (if any), and shall issue a new letter and order. The time limit under paragraph two shall start from the delivery date of the new letter.