

# Judicial Symposium on Intellectual Property October 21, 2021

## **Administrative Enforcement Action against Infringing and Counterfeit Goods**

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# Content.

- IP administrative organization
- Legal Framework
- IP Specific Fact
- Administrative Enforcement against counterfeit goods

## Brief about DIP.

- ❑ The Intellectual Property activities are considered to be an important element of the Lao Government policy and so that the Intellectual Property system was established in 1990;
- ❑ DIP, under Ministry of Industry and Commerce is the central IP administrative organization is in charge of registration of Industrial Property, New Plant Variety and Copyright and Related Right in the nation wide;
- ❑ Provincial, Capital Department of Industry and Commerce under Ministry of Commerce;
- ❑ District, Municipal Office of Industry and Commerce.

## The main roles and duties:

- ❖ To study policies, strategies, laws involving the development of IP activities;
- ❖ To execute policies, strategies and laws by formulating them into plans programs and project;
- ❖ Draft laws and regulations, instruction, recommendation on IPR to insure the protection of the rights of legal owners and the consumers.
- ❖ To implement laws by means of registration and providing IP service matter;
- ❖ To resolve the administrative IP dispute Resolution;
- ❖ To disseminate and organize the IP public awareness activities;

- ❖ To provide the cancellation of registration of industrial property, New Plant Variety and copyright and related right;
- ❖ To establish committees concerning intellectual property;
- ❖ To coordinate with relevant authorities to administer intellectual property throughout the country;
- ❖ To cooperate with international organizations and other countries in the field of Intellectual Property.

# Legal Framework

## IP Laws

- **1<sup>st</sup> edition: No. 08/NA 2007**
- **2<sup>nd</sup> edition: No. 01/NA 2011**
- **3<sup>rd</sup> edition: No. 38/NA 2017.**

## Ministerial Decisions

- **Patent and petty patent**
- **Trademarks**
- **Trademarks through Madrid Protocol;**
- **Industrial Design;**
- **Geographical Indications;**
- **Copyright and related rights;**
- **Integrated circuit layout-design.**

# National IP Registration system.

**1990** Started to receive Trademark applications

**2004** Started to receive Patent, Petty Patent and Industrial Design applications

**2009** Started to receive Copyrights and Related Rights Notifications

**2016** Started to receive GI applications

**2019** Started to receive New Plant Variety applications

# IP Specific Fact

**Patent**

**petty patent**

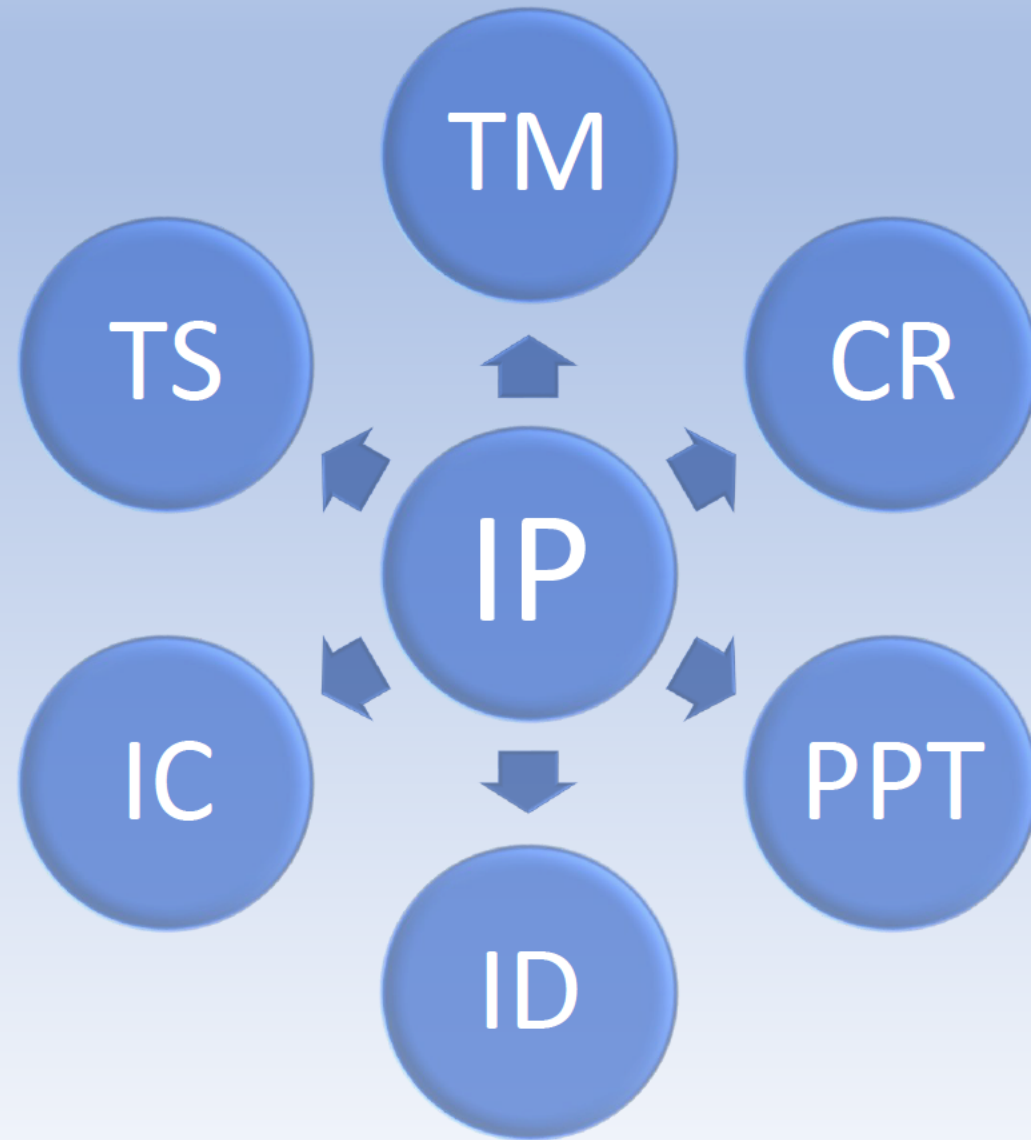
**Trademarks**

**Industrial Design;**

**Geographical Indications;**

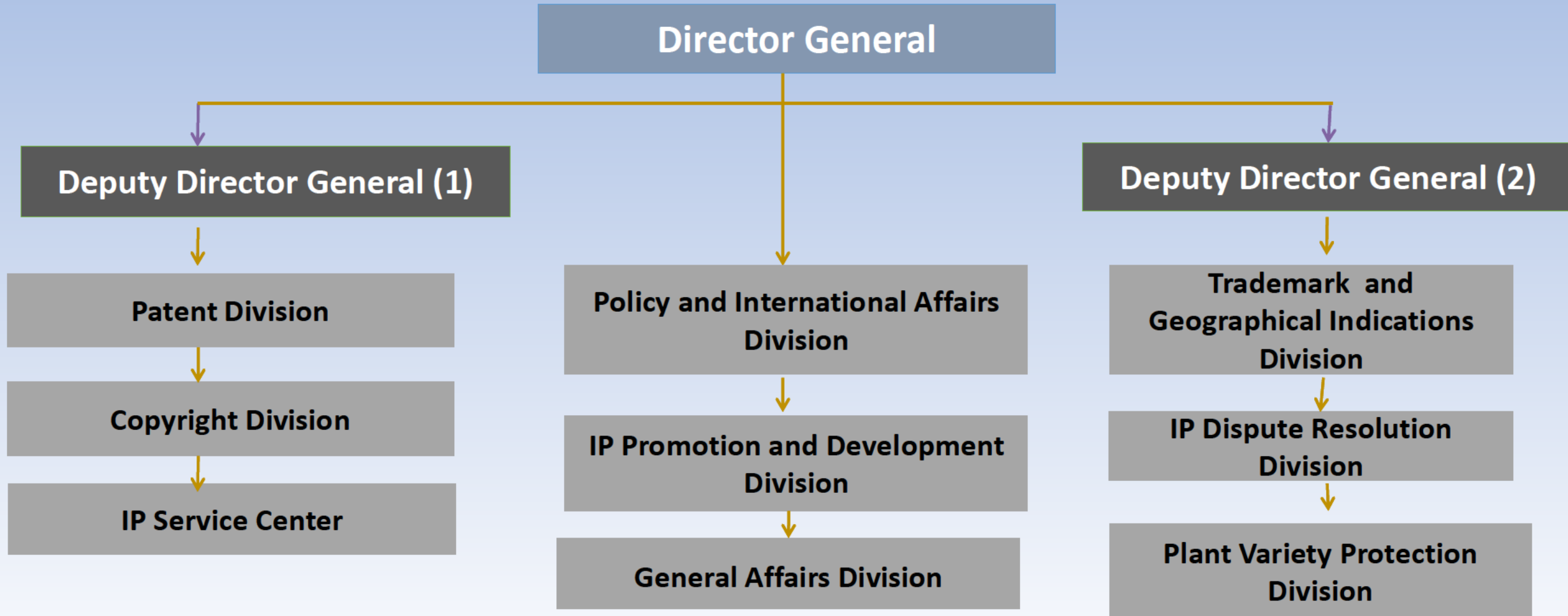
**Integrated circuit layout-design**

**Trade name and trade secret are not required to be register shall be protected under the IP Law.**





# Institutional Arrangement



# Administrative Enforcement Action against infringement and counterfeit products

# **Viable Option for IP Dispute Resolution.**

IP dispute resolution carries out in the following forms:

- Reconciliation
- Mediation
- Administrative Remedy;
- Remedy through the Economic Dispute Resolution Committee;
- Judicial action to the People's Court for judgment; and
- International dispute settlement.

# IP Administrative Organization.

- ❑ In the case of infringing and counterfeit goods, the right holder may contact Department of Intellectual Property is the administrative organization in order to make the initial decision, give legal advice and identification on whether a right holder's trademark has been infringed from other prior to take legal action against the infringers with other jurisdiction or enforcement authorities.
- ❑ If the right holder found the similar mark which might have possibility to infringe the right holders' trademark or prior to contact enforcement authorities. They may request DIP to make considers and identification of cases, the same procedure as trademark infringement and counterfeit trademark goods.

## IP Administrative Organization.

- ❑ Besides the police or court, other the administrative organization such trade authorities of internal trade Department have a significant role in dealing with counterfeit goods.
- ❑ At the border control measure, the right holders may inform the custom authorities of counterfeit trademark goods or pirated copyright goods crossing Lao border to suspend the customs clearance and suspected goods.

# Documents to be submitted for IP Administrative Remedies

- ❑ The documents requirement when a request for investigation and identification in the case of trademark infringement as following:
  - A copy of certificate of trademark registration;
  - The power of attorney in the case of filing complaint through the trademark representative;
  - The sample of genuine and fake goods or can be a clearance photo of comparison of genuine and fake one;
  - Other supplement information or evidence in supporting a claim for further legal proceedings against the IP infringer.

# IP Dispute Settlement

- ❑ The IP owner and the infringer can be arranged to settle and conclude their dispute via reconciliation or private mediation via legal professionals is more effective which the agreement resulting from the reconciliation shall adhere to contracting principles as provided for in the Law on Contract and Tort.
- ❑ A mediation between the IP owner and the infringer can be arranged to settle under the supervision of the DIP, The method and procedures of administrative remedies are defined in the specific regulation.
- ❑ Lao PDR has an Economic Dispute Resolution Center (EDRC), Which calls office of central and unit of economic dispute resolution in central and local level. which may provide IP dispute mediation resolution.

# Counterfeit goods in the online platform.

- In real practice in the IP infringement in online platform, if the right holders have the information and sufficient evidence, then in collaboration with enforcement authorities such as contact directly economic police and internet service provider (ISP) to investigate together with the preparation of warning letter and sending to website operator (E-lulu Shopper) to stop and delete the counterfeit goods information post on website operator for the administrative dispute resolution if the right holder requested.
- No specific provision and any official system to monitor the sale of counterfeit goods on e-commerce site.



## Fines, Sanctions and Burden of expenses.

- For first-time violators who may be ignorant of the law, or for infringements where the damages are small, education or warning measure may be provided.
- For second-time offenders in cases where the damages are still small and the violation unintentional, a small fine may be imposed. or violators which intentionally or who commits a second or later unintentionally violate the IP law which are not criminal offences shall be fined 1% of the damages value occurred;
- The intentionally violation for a second time or repeatedly shall be fined 5% of the damages value occurred for each violation. If more serious cases of IP infringement cases can be punished by imprisonment and fines depending on the nature and serious of the offence.

# THANK YOU FOR KIND ATTENTION

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