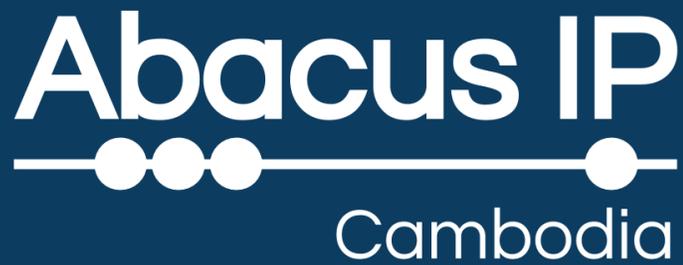


# Patent Law in Cambodia



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## Introduction

The Law on Patents, Utility Models and Industrial Designs, enacted in 2003 as part of Cambodia's accession to the World Trade Organization, provides inventors with a set of exclusive rights, in exchange for disclosure of their invention to the public. The Law is complemented by a Prakas (Declaration) on the Procedure for the Grant of Patents and Utility Model Certificates, dated June 29, 2006.

Patents are registered with the Department of Industrial Property of the Ministry of Industry and Handicraft. While hundreds of applications have been filed for over a decade and none had been granted, the Ministry of Industry and Handicraft (MIH) concluded a Memorandum of Understanding on the Co-Operation in Industrial Property with the Intellectual Property of Singapore Office (IPOS) on January 20, 2015. This resulted in the first patent being granted in 2015 through cooperation with the Intellectual Property Office of Singapore. Similarly, the MIH also signed a Joint Statement of Intent on Cooperation for Facilitating Patent Grant of Cambodia-related Patent Application with the Japan Patent Office (JPO) on May 04, 2016 and signed an Agreement on Patent Validation with the European Patent Organization (EPO) in 2017, which will enter into force once implementing legislation is enacted. In order to implement the Memorandum and the Joint Statement, the Ministry of Industry and Handicraft issued two new Prakas (Declarations) on July 25, 2016 on the procedures for accelerating, registering and granting the patent from both countries in Cambodia.

Recently, Cambodia became a member of the Patent Cooperation Treaty, per Instruction of Accession dated 24 August 2016 and deposited with WIPO on the September 8, 2016, which came into force on 8 December 2016. These laws and regulations are available at our website [www.abacus-ip.com](http://www.abacus-ip.com).

## Patentable Inventions

An invention is defined in the law as “an idea of an inventor which permits in practice the solution to a specific problem in the field of technology” and may be, or relate to, a product or a process.<sup>1</sup> Any invention can be the subject of a patent, except for:<sup>2</sup>

- discoveries, scientific theories and mathematical models;
- schemes, rules or methods for doing business, performing purely mental acts or playing games;
- methods for treatment of the human or animal body by surgery or therapy, as well as diagnostic methods practiced on the human or animal body; this provision does not apply to products for use in any of these methods;
- pharmaceutical products;
- plants and animals other than micro-organisms, and essentially biological processes for the production of plants or animals;

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<sup>1</sup> Patent Law, Article 3

<sup>2</sup> Patent Law, Article 4

- plant varieties.<sup>3</sup>

Computer software is patentable if it is a:<sup>4</sup>

- process inventions, which in whole or in part, consist of steps that are performed by computer and are directed by a computer; and
- product inventions consisting of elements of a computer-implemented invention, including in particular:
  - machine-readable computer program codes stored on a tangible medium such as a floppy disk, computer hard drive or computer memory; and
  - a general purpose computer whose novelty over the prior art arises primarily due to its combination with a specific computer program.

## Novelty

The first requirement for an invention to be patentable is that it be a *new* invention, meaning it is not anticipated by prior art.<sup>5</sup>

Prior art consists of everything disclosed to the public, anywhere in the world, by publication in tangible form or by oral disclosure, by use or in any other way, prior to the filing or, where appropriate, the priority date, of the application claiming the invention. Disclosure to the public of the invention shall not be taken into consideration:<sup>6</sup>

- if it occurred within twelve months preceding the filing date or, where applicable, the priority date of the application; and
- if it was by reason or in consequence of acts committed by the applicant or his predecessor in title or of an abuse committed by a third party with regard to the applicant or his predecessor in title.

## Inventive Step

Second, an invention must involve an “inventive step.”<sup>7</sup> An invention involves an inventive step if, having considered the prior art, it would not have been obvious to a person having ordinary skill in the art.

## Industrial Applicability

Third, an invention must be industrially applicable, meaning it can be made or used in any kind of industry.<sup>8</sup> However, if the commercial exploitation of the invention would be contrary to public order or morality, or would be harmful to human, animal, or plant life or health, or would seriously prejudice the environment, or is prohibited by law, then it cannot be patented.<sup>9</sup>

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<sup>3</sup> Plant varieties are protected under the Law on Seed Management and Plant Breeder’s Right (Royal Kram No NS/RKM/0508/015)

<sup>4</sup> Prakas, Rule 44

<sup>5</sup> Patent Law, Article 6

<sup>6</sup> Patent Law, Article 6

<sup>7</sup> Patent Law, Article 7

<sup>8</sup> Patent Law, Article 8

<sup>9</sup> Patent Law, Article 9

## Right to Patent & Naming of Inventor

Only the inventor or inventors have a right to a patent.<sup>10</sup> When two or more persons have independently arrived at the same invention, the person whose application is filed first, or if priority is claimed, the earliest priority date, has the right to the patent.<sup>11</sup> Unless agreed otherwise, the right to patents of inventions made pursuant to an employment contract belong to the employer.<sup>12</sup> The inventor's name will be stated on the patent, unless the inventor opts to remain anonymous.<sup>13</sup>

## Application Process

Patent applications can be filed with the Department of Industrial Property of the Ministry of Industry and Handicraft.

Applications may claim priority based on an earlier national, regional or international patent application, according to the Paris Convention<sup>17</sup> and Patent Corporation Treaty. In such case, the Department of Industrial Property will request a certified copy of the priority application, as well as any search or examination reports or foreign office actions.

The patent application form must be made in Khmer language and be accompanied by a description of the invention, one or more claims, one or more drawings when necessary to understand the invention, and an abstract, and be accompanied by payment of the official fee.<sup>18</sup> The descriptions must disclose the invention in a manner sufficiently clear and complete for it to be carried out by a person having ordinary skill in the art.<sup>19</sup> If the application claims a prior filing date under the Paris Convention, a certified copy of the priority application is required<sup>20</sup> and it must be submitted within three months from the request's date by the Registrar.<sup>21</sup> Where a certified copy of the priority documents is in a language other than Cambodian language, it must be translated into Cambodian language and be submitted to the Registrar within six months from the request.<sup>22</sup> In addition, an English translation for non-English language also be required by the Registrar for the purpose of searching and examination and it must be submitted to the Registrar within six months from the filing date.<sup>23</sup>

The Department of Industrial Property will require the original notarized power of attorney (POA) and the notarized statement of justifying the application right in case the Cambodian patent agent is appointed in representing them in filing and registering their patents in Cambodia and where the applicant is not an inventor to the patent. The original notarized power of attorney, a statement of justifying the applicant's right and a certified copy of the priority application must be submitted with the application or later. The Registrar will issue a letter requesting these documents within two weeks of filing.

An applicant for a Japanese patent that has been filed in Cambodia may request for acceleration of

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<sup>10</sup> Patent Law, Article 10 & 11

<sup>11</sup> Patent Law, Article 12

<sup>12</sup> Patent Law, Article 14

<sup>13</sup> Patent Law, Article 15

<sup>17</sup> Patent Law, Article 27

<sup>18</sup> Patent Law, Article 16

<sup>19</sup> Patent Law, Article 18

<sup>20</sup> Patent Law, Article 28

<sup>21</sup> Prakas on the Procedures for Registration of Industrial Design, Article 20 (5)

<sup>22</sup> Prakas on the Procedures for Registration of Industrial Design, Article 20(6)

<sup>23</sup> Prakas on the Procedures for Registration of Industrial Design, Article 11

their Cambodian patent application under the Cooperation for Facilitating Patent Grant (CPG). According to the Prakas on the Implementation of the CPG, the request for acceleration of patent decision based on the CPG must be submitted to the Department of Industrial Property of the Ministry of Industry and Handicraft along with a certified copy of the patent gazette in the corresponding JPO patent application issued by the JPO and its English translation, a translation of claims and specifications in English and Cambodia language and a claims correspondence table.<sup>24</sup>

Since January 2015, applicants may file for Cambodian patents through the Intellectual Property Office of Singapore (IPOS). IPOS and Cambodia's Ministry of Industry and Handicrafts concluded a Memorandum of Understanding permitting for the filing of Cambodian patents through the Singaporean authority, and vice versa. The Memorandum of Understanding is valid for 5 years from 20 January 2015 and it can be renewed upon the mutual consent of both parties.

In order to register, the applicant must have first been granted a patent in Singapore. The Singaporean patent must be in-force at the time of filing a request for registration in Cambodia. In addition, the patent must have a filing date on or after February 11, 2003.<sup>25</sup>

The request for registration of a Singaporean patent must be made to the Department of Industrial Property of the Ministry of Industry and Handicraft, and accompanied by a payment of the filing fee, a certified copy certificate of grant of the Singaporean patent, a certified copy of final specifications, a copy of abstract and a copy of original notarized POA if a local patent agent is appointed.<sup>26</sup> Although, a certified copy of the Certificate of Grant of Singapore patent is required to be submitted, the Registrar still examines this based on the Patent Law and its related declaration. Cambodian translations must be submitted to the Patent Office within six months from the date of filing a request for registration.<sup>27</sup> The registration fee and annual fee must be paid within three months from date of Registrar's notification.<sup>28</sup>

Patent rights received under this declaration may not be enforced against any prior rights which already existed before the date of filing a request for registration of Singapore patent in Cambodia. A person who has been using or exploiting that patent in Cambodia may continue to use or exploit it, even though the Singapore patent has granted by Cambodia Patent Office.<sup>29</sup>

Decisions of the Ministry of Industry and Handicraft regarding the granting of a patent may be appealed to the competent court within three months of the decision.

## Patent Duration and Annual Fees

A patent is valid for 20 years from its filing date, subject to payment of the following annual maintenance fees<sup>30</sup>:

Year	Official Fee (\$US)	Year	Official Fee (\$US)
1st	-	11th	350
2nd	20	12th	400

<sup>24</sup> Prakas on the Acceleration of Patent Grant under the CPG, Article 5

<sup>25</sup> Prakas on the Registration of Singapore Patent in Cambodia, Article 5

<sup>26</sup> Prakas on the Registration of Singapore Patent in Cambodia, Article 4

<sup>27</sup> Prakas on the Registration of Singapore Patent in Cambodia, Article 4

<sup>28</sup> Prakas on the Registration of Singapore Patent in Cambodia, Article 10(3)

<sup>29</sup> Prakas on the Registration of Singapore Patent in Cambodia, Article 11

<sup>30</sup> Joint Declaration (Prakas) on Public Service Fees, dated 08 July 2015

3rd	20	13th	450
4th	40	14th	500
5th	100	15th	550
6th	140	16th	610
7th	180	17th	670
8th	220	18th	740
9th	260	19th	810
10th	300	20th	890

## Unity of Invention, Amendment & Division

A patent must relate to only one invention, or a group of inventions so linked as to form a general inventive concept.<sup>31</sup> Up until the application is ready to be granted, the application may be amended, so long as it does not go beyond the original disclosures.<sup>32</sup> Similarly, the application may be divided into two or more applications.<sup>33</sup>

## Patent Rights

The core patent right is the right to prevent others from exploiting the patented invention.<sup>34</sup> "Exploitation" of a patented product means the making, importing, offering for sale, selling, stocking, using, or using of it. For patented processes, exploitation means using the process, or exploiting any product obtained directly by means of the product.<sup>35</sup>

The patent owner can institute court proceedings against any infringer, or anyone who performs acts which make infringement likely to occur.<sup>36</sup>

Certain limitations to patent rights exist, namely:<sup>37</sup>

- acts with respect to articles put on the market by the patent owner or with their consent
- articles on vehicles temporarily or accidentally entering Cambodia
- experimental purposes
- users of the invention, or those making effective and serious preparations for use, prior to the priority date.

Upon request of the patent owner, or by a licensee in certain circumstances, a court may grant an injunction to prevent infringement or imminent infringement, award damages, or any other remedy provided

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<sup>31</sup> Article 23

<sup>32</sup> Article 24

<sup>33</sup> Article 25

<sup>34</sup> Article 41

<sup>35</sup> Article 42

<sup>36</sup> Article 43

<sup>37</sup> Article 44

for by law.<sup>38</sup> Further, anyone who knowingly infringes a patent shall be criminally punished by a fine of 5-20 million Riels (approx. US\$1,250-5,000), and/or imprisonment from one to five years.<sup>39</sup> Repeat infringers are subject to double fines and imprisonment.<sup>40</sup>

## Government Exploitation & Non-Voluntary Licenses

Patent rights are not absolute, but subject to important limitations for government exploitation and non-voluntary licenses. The Government of Cambodia may decide, even without the agreement of the patent owner, that a government agency or a designated third-person may exploit the patent for the public interest in particular, national security, nutrition, health or development of vital economic sectors.<sup>41</sup> Further, if a court decides the patent owner's or licensee's use of the patent has been anti-competitive, they may permit government or third party-exploitation.<sup>42</sup> In either case, the patent owner has a right to a hearing and the payment of adequate remuneration.<sup>43</sup>

In addition to government and third-party exploitation, the law allows for the granting of non-voluntary licenses. Four years after the filing of the patent, or three years from its granting, whichever comes last, anyone may submit a request to the Minister for a non-voluntary license. This will be granted if it can be satisfactorily shown that the patented invention is not exploited, or is insufficiently exploited in Cambodia.<sup>44</sup> However, the patent owner may prevent the issuing of the non-voluntary license if they can show justifying circumstances.<sup>45</sup> As with government and third-party exploitation, the patent owner is entitled to compensation.<sup>46</sup>

## Invalidation

Any interested party may request the invalidation of a granted patent.<sup>47</sup> The request will be granted if it can be shown that the patent's subject matter is improper, it is not novel, does not involve an inventive step, is not industrially applicable, or if its exploitation is contrary to public order, morality, or prohibited by law.<sup>48</sup> Further grounds for invalidation include insufficient description, improper claims or insufficient drawings.<sup>49</sup>

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<sup>38</sup> Article 126

<sup>39</sup> Article 133

<sup>40</sup> Id.

<sup>41</sup> Article 47

<sup>42</sup> Id.

<sup>43</sup> Id.

<sup>44</sup> Article 56

<sup>45</sup> Id.

<sup>46</sup> Article 57

<sup>47</sup> Article 65

<sup>48</sup> Article 66

<sup>49</sup> Id.