

## Ministerial Regulations

No. 22 (B.E. 2542)

Issued under the Patent Act B.E. 2522

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By virtue of the power granted under Sections 4, 24, 26, 27, 30 and 65 of the Patent Act B.E. 2522 and Sections 28, 65 quarter, 65 quinquies and 65 decies of the Patent Act B.E. 2522 as amended by the Patent act (No.3) B.E. 2542 and Section 44 of the Patent Act (No.3) B.E. 2542, the Minister of Commerce hereby issues the Ministerial Regulations as follows:

Clause 1 The following shall be repealed:

- (1) Ministerial Regulations No.3 (B.E. 2523) issued under the Patent Act B.E. 2522;
- (2) Ministerial Regulations No.16 (B.E. 2535) issued under the Patent Act B.E. 2522.

Clause 2 In processing an application for a patent for an invention or a petty patent to submit an examination report to the Director-General under Section 28 or 65 quinquies, as the case may be, the competent officer shall examine the application for a patent or petty patent as follows:

- (1) the request form, the description, the claims, the drawings (if any) and the abstract comply with the Ministerial Regulations issued under section 17 or 65 decies and 17, as the case may be;
- (2) the invention is not unpatentable under Section 9 or 65 decies and 9, as the case may be;
- (3) the applicant has the right to apply for a patent under Sections 10, 11, 14 or section 15 paragraph 1 or 2 or the right to apply for a petty patent under Sections 65 decies and 10, 11, 14 or section 15 paragraph one or two, as the case may be;
- (4) the applicant has the right to be granted a patent or petty patent under Section 16 or 65 decies and 16, as the case may be;
- (5) the invention for which a patent or petty patent is applied is not the same invention which a patent or petty patent was applied in the country under Section 65 ter before the filing date, as the case may be;

(6) the invention for which a petty patent is applied is so linked as to form a single inventive concept.

Clause 3 In processing an application for a design patent to submit an examination report to the Director-General under Sections 65 and 28, the competent officer shall examine the application as follows:

- (1) the request form, the claim, the design representations, the description and other items (if any) comply with the Ministerial Regulations issued under section 59;
- (2) the design is not unpatentable under Section 58;
- (3) the applicant has the right to apply for a patent under Sections 65 and 10, 11, 14 or Section 15 paragraph one or two, as the case may be;
- (4) the applicant has the right to be granted a patent under Sections 65 and 16.

Clause 4 If it is found from the examination of the application for a patent or petty patent, as the case may be, under Clause 2 that the applications are not in compliance with the law or filed by more than one applicant, the competent officer shall proceed as follows:

- (1) if the same invention has been applied or jointly applied for both a patent and a petty patent, the applicant shall be notified that he is deemed to have applied for a petty patent in accordance with Section 77 quinquies;
- (2) if the same invention was made by two or more persons separately and independently and it has been applied for a patent by one applicant and applied for a petty patent by another, all applicants shall be notified that the applicant who is the first to file is to be entitled to a patent or petty patent, as the case may be;
- (3) if the same invention was made by two or more persons separately and independently and it has been applied for a patent by one applicant and applied for a petty patent by another on the same date, all applicants shall be notified to reach an agreement within ninety days following the receipt of the notification.

The notification under the first paragraph shall be in writing and sent by acknowledgement mail or any other procedure prescribed by the Director-General

Clause 5 Where it appears that the application for a patent or petty patent does not comply with clause 2 (1) or 3 (1) or the invention is partly unpatentable under Section 9 or Sections 65 decies and 9, the competent officer shall submit an examination report to the Director-General for requiring the applicant to amend the application within the prescribed period.

Clause 6 Where it appears that the invention for which a patent or a petty patent is applied as the case may be, is unpatentable under Section 9 or Section 65 decies and 9, or the design for which a patent is applied is unpatentable under section 58, or the application for a patent or petty patent does not comply with Clause 2 (3) or 3 (3), the competent officer shall submit an examination report to the Director-General for rejecting the application for a patent or petty patent.

Before rejecting the application under the first paragraph, the Director-General may instruct the applicant to answer any question or to amend the application for a patent or petty patent.

Clause 7 Where a request for amendment is made by the applicant pursuant to Clause 5 or 6 paragraph two or under the Ministerial Regulations issued under Section 20 or Sections 65 and 20 or Section 65 decies and 20, as the case may be, the competent officer shall examine such amendment whether it complies with the requirement or the Ministerial Regulations.

Clause 8 Where it appears that the application for a petty patent does not comply with Sections 65 decies and 18, the competent officer shall instruct the applicant to separate the application into a number of applications by amending the original application to relate to a single invention and filing separate applications for the other inventions.

The applications separated under the first paragraph shall comply with the requirements for a normal application for a petty patent and shall not enlarge the scope of the scope of the invention disclosed in the original application. In such a case, the applicant shall not be required to submit additional written evidence showing that he is entitled to apply for a petty patent.

Clause 9 Where the Director-General finds, on the basis of the examination report submitted by the competent officer, the application for a patent or petty patent does not comply with the provisions of the law and reject the application under Section 28 (1), Sections 65 and 28 (1), or Section 65 quinquies (1), as the case may be, the competent officer shall notify the applicant of such decision and publish it by placing the decision in an open area within the Department Intellectual Property, Ministry of Commerce for at least thirty days.

The publication of the decision referred to in the first paragraph shall indicate at least the following particulars:

- (1) the number of the application and date of application;
- (2) the name of the applicant and the agent (if any);
- (3) the name of the inventor or creator, and the title of the invention or design;
- (4) the reasons of the rejection.

The notification under the first paragraph shall be in writing and sent by acknowledgement mail or any other method prescribed by the Director-General.

Clause 10 In the case where the Director-General has, on the basis of the examination report submitted by the competent officer, order the publication of the application for a patent or the registration of an invention and the grant of a petty patent under Section 28 (2), Sections 65 and 28 (2) or Section 65 quinquies (2), as the case may be, when the applicant has paid the fees within the prescribed period, the competent officer shall publish the application or the registration of the invention and the grant of the petty patent in the Patent Applications Publication Gazette or the Registration of Inventions and Grants of Petty Patents Publication Gazette, as the case may be.

The publication under the first paragraph shall indicate at least the following particulars:

- (1) the number of the application and date of application;
- (2) the name of the applicant and the agent (if any);
- (3) the name of the inventor or creator, and the title of the invention or design;
- (4) the date of publication;
- (5) other particulars as the Director-General deems appropriate.

Clause 11 Where an application has been published in accordance with Section 28 (2) or Sections 65 and 28 (2) and the applicant has filed a request for examination pursuant to Section 29 or there is an opposition that the invention or design claimed in the application does not comply with the provisions of Section 5 or 56 or where a request for examination of the invention for which a petty patent is applied under Section 65 sexies, the competent officer shall examine the application as to substance as follows:

(1) whether the subject matter of the invention or design claimed in the application was disclosed or described in any document or printed matter forming part of the documentation collected for the purpose of examining patent applications;

(2) whether the subject matter of the invention claimed in the application was that was applied for a patent or petty patent in the country and in a foreign country and was published before the application was filed in the country

The Director-General may, where he deems appropriate, require the competent officer to examine whether the claimed invention satisfies the conditions set forth in Section 5, 56 or 65 bis other than those specified in (1) and 2.

Clause 12 After the publication of the application under Clause 10, the competent officer shall examine whether or not the application is seeking protection for several inventions or designs, which does not comply with the provisions of Section 18 or 60. In this case, the provisions of Clause 8 shall apply *mutatis mutandis*.

Clause 13 In the case where the applicant has applied for a patent for the claimed invention in a foreign country, the applicant, when he has received the examination report or any document showing the result of the examination, shall submit such report or document together with its translation in Thai within ninety days from the date of receipt of such report or document.

If the applicant has applied for patent in two foreign countries or more, he shall submit the examination report or document issued by the first country he filed his application or the country prescribed by the Director-General.

The examination report or document showing the result of the examination shall indicate the office or organization issuing such report or document, the name of the applicant, the filing date of the application, the symbol of the International Patent Classification which has been allocated to the application, the field of art in which the application has been examined and relevant documents showing the prior art and which should be considered, and shall also specify whether the claimed invention satisfies the requirements prescribed by the law of that country or not, whether the description complies with the law of that country or not, whether protection under the law of that country should be granted to the claims or not, and state the reasons of the decision.

The documents under the first and second paragraphs shall be filed with or sent by registered mail to the competent officer at any of the following places:

- (1) the Department of Intellectual Property, Ministry of Commerce;
- (2) any provincial commercial office or governmental office prescribed by the Director-General.

Where the examination report or document showing the result of the examination does not comply with paragraph 3 of this Clause, the Director-General may, of requested by the applicant, allow the applicant to submit such a report or document.

Clause 14 Where the applicant wants to convert his application from an application for a patent to an application for a petty patent or from an application for a petty patent to an application for a patent, as the case may be, the applicant shall submit an application for such conversion in the form as prescribed by the Director-General to the competent officer or send the application by registered mail to the competent officer at any of the following places:

- (1) the Department of Intellectual Property, Ministry of Commerce;
- (2) any provincial commercial office or governmental office prescribed by the Director-General.

The application for conversion under the first paragraph shall consist of the documents forming the application for a patent or petty patent prescribed by the Ministerial Regulations issued under Section 17 or Sections 65 decies and 17, as the case may be.

The applicant for conversion under the first paragraph shall not be entitled to refund an excess amount of the fees already paid.

Clause 15 The application for invention patents filed before the entry into force of these Ministerial Regulations upon which the Director-General has not made his order under Section 33 or 34 shall be processed in accordance with these Ministerial Regulations.

Clause 16 The applications for invention patents filed before the entry onto force of the Patent Act (No.3) B.E. 2542 proposed to be converted to the other type of application shall comply with Clause 10 of these Ministerial Regulations.

Given on September 24, 1999

(sign) Paitoon Kaewtong

(Mr.Paitoon Kaewtong)

Deputy Minister of Commerce

Acting for the Minister of Commerce