

Ministerial Regulations

No. 24 (B.E. 2542)

Issued under the Patent Act B.E. 2522

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By virtue of the power granted under Sections 4, 12, 13 and 65 of the Patent Act B.E. 2522 and Section 65 decies of the Patent Act B.E. 2522 as amended by the Patent Act (No.3) B.E. 2542, the Minister of Commerce issues the Ministerial Regulations as follows:

Clause 1 The following shall be repealed:

- (1) Ministerial Regulations No. 5 (B.E. 2524) issued under the Patent Act B.E. 2522;
- (2) Ministerial Regulations No. 17 (B.E. 2535) issued under the Patent Act B.E. 2522;

Clause 2 In these Regulations:

“employee” means a private employee, a government official or an employee of a government organization or enterprise under Section 12 or 13 as the case may be;

“employer” means a private employer, a government agency, a government organization or enterprise under Section 12 or 13 as the case may be;

Clause 3 A request for remuneration may be made only after the patent for an invention or a design or the petty patent has been granted and in such a case, it shall be made within one year after he learned of the grant of the patent or petty patent. In cases where the employee has a legitimate reason that he did not know that the patent or petty patent was granted, he may file the request any time before the expiry of the patent or petty patent.

In making a request under the first paragraph, the employee shall submit the request in the form prescribed by the Director-General in triplicate and shall give reasons as well as buttressing evidence, if any, and also specify the amount of remuneration that he thinks should be awarded to him 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.

Clause 4 Where an invention is made by two or more employees jointly, the request for remuneration may be made jointly or separately.

Clause 5 The competent officer shall, within thirty days following the receipt of the request, publish the request in an open area within the Department of Intellectual Property, Ministry of Commerce, for at least thirty days, and shall notify in writing and send a copy of the request to the employer and other employees who jointly invented or created with the employee who filed the request, if any.

Clause 6 If the employer thinks that the employee is not entitled to such remuneration or the amount of remuneration specified in the request is not appropriate or has any other argument, he shall notify in writing and file evidence in support his case, if any, with the competent officer within ninety days following the receipt of the notification from the competent officer under Clause 5.

Within thirty days following the receipt of the notification of the employer under the first paragraph, the competent officer shall notify in writing and also send a copy of the notification of the employer and the submitted evidence (if any) to the employee. If the employee disagrees with the employer, he shall submit the explanation and supporting evidence (if any) within ninety days following the receipt of the notification. When the employee has submitted his explanation within the said period, the competent officer shall record such in the request and submit the Director-General for consideration.

Clause 7 In cases where any act is not done within the period specified in Clause 5 or 6 due to a cause of necessity, the Director-General may extend the said period for no more than twice which shall not exceed thirty days for each extension, and shall specify the reasons for such extensions in his order.

Clause 8 In fixing the amount of remuneration under Section 12, paragraph 4 of the Patent Act B.E. 2522, the Director-General shall also take the following matters in account:

- (1) the nature of the employee's duties;
- (2) the diligence and skill which the employee has devoted to making his invention or design;

(3) the diligence and skill which any other person has devoted to making the invention or design jointly with the employee concerned, and the advice and other assistance contributed by any other employee who is not a joint-inventor or joint-creator;

(4) the assistance contributed by the employer to the making of the invention or the creation of the design by the provision of property, advice, facilities, preparatory work or management in acquiring resources or services for the experimenting, developing or working of the invention or design;

(5) the benefits derived or expected to be derived by the employee from authorizing others to exploit the invention or design, including the assignment of the patent to others;

(6) the total number of the employees who jointly made the invention or created the design.

Clause 9 In order to facilitate the fixing of the amount of remuneration, the Director-General may instruct the employee who filed the request or the employer to appear before him in order to answer any question, or to hand over to him any document or evidence.

Clause 10 The requests for remuneration filed before the entry into force shall be executed in accordance with these Ministerial Regulations.

Given on September 24, 1999

(sign) Paitoon Kaewtong

(Mr.Paitoon Kaewtong)

Deputy Minister of Commerce

Acting for the Minister of Commerce