

JAPAN INTELLECTUAL PROPERTY ASSOCIATION

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Mr. Thosapene Dansuputra
Director-General
Department of Intellectual Property
Ministry of Commerce
563 Nonthaburi Road, Bangkrasor Muang,
Nonthaburi 11000
Thailand

Dear Mr. Thosapene Dansuputra,

Re: JIPA Comments on the amendment bill of Thailand Design Act

We, the Japan Intellectual Property Association “JIPA”, are a private user organization established in Japan in 1938 for the purpose of promoting intellectual property protection, with about 940 major Japanese companies as members. When appropriate opportunities arise, we offer our opinions on the intellectual property system of other countries and make recommendations for more effective implementation of the systems.

(<http://www.jipa.or.jp/english/index.html>)

Having learned the amendment bill of Thailand Design Act on your website, we would like to offer our opinions as follows.

Your consideration on our opinions would be greatly appreciated.

Sincerely yours,

(Osamu IKEMURA)

Managing Director
Japan Intellectual Property Association

JIPA Comments on the Draft Revision of the Thai Design Act

Japan Intellectual Property Association

1. Reconsideration of Examination Steps

The revised examination steps recite "The examination steps of the conventional design patents which stipulate that the novelty is examined based on the domestic and foreign databases and then the design is published before the substantive examination have been reviewed. The new stipulation is that the novelty is examined based on the domestic database and then the design is published after the substantive examination. The Department of Intellectual Property publishes the applications after the substantive examination."

In the field of design, it cannot be necessarily deemed appropriate to examine the novelty based only on the design database in Thailand when Thai people protect beautiful and modern industrial designs. Until now, Thailand has examined the novelty of designs by using not only the domestic database but also foreign databases, and for this reason we have considered that suitable protection of new designs has been achieved.

Therefore, we respectfully request that the examination of novelty should be based on not only the domestic database but also foreign databases as before.

2. Protection Term of Industrial Designs

The revised Design Act recites "The protection term of industrial designs is extended from 10 years to an initial 5-year term and an additional 5-year term that can be requested twice, i.e., 15 years in total (5+5+5 = 15 years)."

Because the lifecycle of products has recently been prolonged, the current term of protection is not sufficient. We thus appreciate the above revision because it is also very beneficial for Japanese companies. However, we consider that the protection term of at most 15 years is insufficient.

Therefore, we respectfully request that the extension of the term can be requested 3 times to extend the protection term to 20 years.

3. Postponement of Publication

The revised Design Act recites "There are added articles concerning postponement of the publication (which defines a definite term of 30 months or less from the filing date of the application or the date of claiming the right of the first application)."

Because designs are easy to copy, when it takes a considerable time from publication of a design to commercialization of a product with the design, there is a possibility that the design may be copied by a third party because of the publication. Moreover, a period of 30 months (2 years and a half) from the date of claiming the right is too short as a term for preventing a new design from becoming known by the Government Gazette before announcement of a new product with the design.

Therefore, we respectfully request that the term of postponement of publication should be extended because we consider that the grace period of 36 months (3 years) as stipulated by the Japanese Design Law is required.

4. Introduction of Partial Design System

We understand that the Thai Design Act has no stipulation of a partial design system.

The Japanese Design Law also protects partial designs of articles in consideration of exercising rights to a third party who copies only a characteristic part, not the whole, of an article.

Therefore, we respectfully request that a new stipulation about partial designs should also be incorporated in the Thai Design Act.

5. Introduction of Trial System for Invalidity

In Thailand, it is possible to invalidate a design having unregistrability requirements (e.g., a misappropriated design) by filing a lawsuit with the court in the current practice. However, the problem is that the court procedure requires enormous cost and time. This is very disadvantageous to the legitimate beneficiaries.

Therefore, we respectfully request introduction of a trial system for invalidation in this revision.

6. Introduction of Accelerated Examination System

According to JETRO's 2014 Survey, the time period from design application to acquisition of the right is about four years, but it tends to take comparatively much time. Moreover, the term of design rights is short and the term during which the right can be utilized is short accordingly, and thus these have until now brought about a situation where the right holder is disadvantageous.

Therefore, we respectfully request introduction of an accelerated examination system that is a drastic solution to the above problem, allowing acceleration of acquisition of the right.