



# I POTENTIAL NEWSLETTER

ASEAN INTELLECTUAL PROPERTY NEWS UPDATE



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# NEW ASEAN COMMON GUIDELINES FOR THE SUBSTANTIVE EXAMINATION OF TRADEMARKS

On 28 April 2020, the second edition of the ASEAN Common Guidelines for the Substantive Examination of Trade Marks was published on the ASEAN IP Portal website and on the ARISE+ IPR website.

## #The ARISE+ IPR project

The ARISE+ IPR project, implemented by the EUIPO, has supported this multi-annual activity that brings closer together the practices of the EU and the IP Offices of Brunei Darussalam, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, Philippines, Singapore, Thailand, and Vietnam.

## #ASEAN Common Guidelines for the Substantive Examination of Trade Marks

The Common Guidelines were revised to incorporate relevant new standards that reflect best practices in trade mark registration criteria, including topics where IP Offices converge on their practices while incorporating updated laws and regulations of each ASEAN Member State. This new edition of the ASEAN Common Guidelines highlights the move towards the acceptability of non-traditional types of trade marks. In the past, the Common Guidelines only made references to marks that were 'visually perceptible.' In contrast, the updated version incorporates all marks that are 'perceptible,' including sound marks, smell marks, taste marks and tactile marks. This change reflects of the changing trade mark landscape and ASEAN's making the necessary adaptations to account for this.



## #New Criteria to the Common Guidelines

Additionally, works to develop certain topics further have taken place, particularly by incorporating new criteria and explanatory examples to the Guidelines. They include those relating to: when figurative mark containing purely descriptive/non-distinctive words passes the examination of the absolute ground because the figurative element renders sufficient distinctive character, the scope of protection which should be given to trademarks registered in black and white, and the impact of non-distinctive/weak components of marks in the examination of the likelihood of confusion. The ASEAN Common Guidelines for the Substantive Examination of Trade Marks are available in English and its publication is an effort of the ASEAN IP Offices to continue promoting transparency and increasing predictability for the benefit of users and examiners of IP Offices.

Visit us at Pintas Group if you are looking to register your intellectual property in ASEAN countries to protect your patent, trademark or the likes. We are your optimum selection to go for any intellectual property registration or any IP related services in any ASEAN countries.



# ENHANCED MEDIATION PROMOTION SCHEME – INTELLECTUAL PROPERTY OFFICE OF SINGAPORE (IPOS)

When parties are engaged in a dispute over their IP rights, the outcome of a case is determined by the facts of the dispute and the applicable law. However, mediation is an amicable way of resolving a dispute that allows parties to engage in a dialogue that is guided by their interests. Furthermore, mediation generally results in time and cost savings for parties, as parties have control and certainty over the process to discuss and formulate a win-win solution for both parties.

## Enhanced Mediation Promotion Scheme (“EMPS”)

To encourage parties to explore mediation, IPOS has launched the Enhanced Mediation Promotion Scheme (“EMPS”) which sets aside SGD 180,000 in funding for parties with ongoing disputes before IPOS that undergo mediation. EMPS is available from 1 April 2019 for up to 3 years to be disbursed among an estimated 15 cases, or until the amount of SGD 180,000 has been drawn down.

## Who can apply?

You have an existing dispute before IPOS, and you and your counter-party agree to submit it to mediation in Singapore.

You agree to:

- (a) Allow a “shadow” mediator to observe the mediation;
- (b) Disclose your lawyer/agent fees;
- (c) Give feedback on your mediation experience;
- (d) Agree to named publicity, excluding details of the settlement terms;
- (e) Co-pay at least 50% of your mediation-related lawyer/agent fees (and mediation-related disbursements charged by your lawyer/agent); and
- (f) You and your counter-party participate in the actual mediation session on or after 1 April 2019, in any event, no later than 31 March 2022 or until the available funding is drawn down, whichever is earlier.



## How to apply?

- (i) Submit an existing dispute before IPOS to mediation and inform IPOS of your intention to apply for funding under the EMPS, before mediation starts.
- (ii) If you are not sure whether you will claim EMPS funding at the time you submit your dispute to mediation, you are encouraged to first inform IPOS in writing that you may do so; and update us later when you have come to a decision.
- (iii) Submit the EMPS application form to IPOS within 1 month from the date of the payment receipt from the mediation service provider or your lawyer/agent, whichever is later.

If you would like to find out more about the EMPS, please do not hesitate to contact us here or you may download our Singapore IP Handbook here for free.



# VITAL CHANGES TO THE PATENT LAW & TRADEMARK LAW OF INDONESIA

Indonesia has made changes to its Law No. 11 Year 2020 on Jobs Creations or known as Omnibus Law as the President of the Republic of Indonesia, Joko Widodo has officially signed the amendment in November 2020. This amendment that aimed to encourage job creation in Indonesia has also affected the Patent Law No. 13 of 2016 ("the Patent Law") and Law No. 20 Year 2016 on Marks and Geographical Indications ("the Trademark Law").

## The main amendments to the Patent Law

| New Patent Law : Working requirements element  |   |  |
|--|---|--|
| 1. Product Patents   | 2. Process Patents  | 3. Method Patents  |
| Indonesia has recognized patent that involves product patents that includes making, importing or licensing a patented product. | Indonesia also recognized process patents that includes making, licensing or importing product resulting from a patented process. | Method patents involved making, importing or licensing products that resulting from the patented method, system and use. |

- A simple patent can be granted for any invention which is a novel development from an existing product or process.
- The simple patent application once granted shall be recorded and published via electronic or non-electronic media.

- Formula "a simple product, a simple process or a simple method" applies in developing the existing products or processes.
- Simple Patent Certificate will be issued by the Minister to the patent holder as proof of ownership.

### Simple Patent

- Publication of the simple patent application shall be done not later than 14 days from the date of filing .
- The Substantive Examination will be conducted after the publication period has ended.

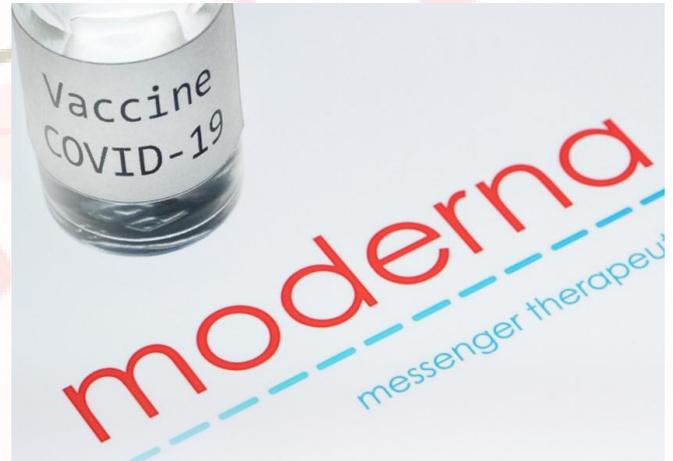
- The determining factor during the Substantive Examination is whether there is any opposition against such application.
- Minister shall then issue a decision to grant/reject the application not later than 6 months from the date of application.

## Changes to the Trademark Law of Indonesia

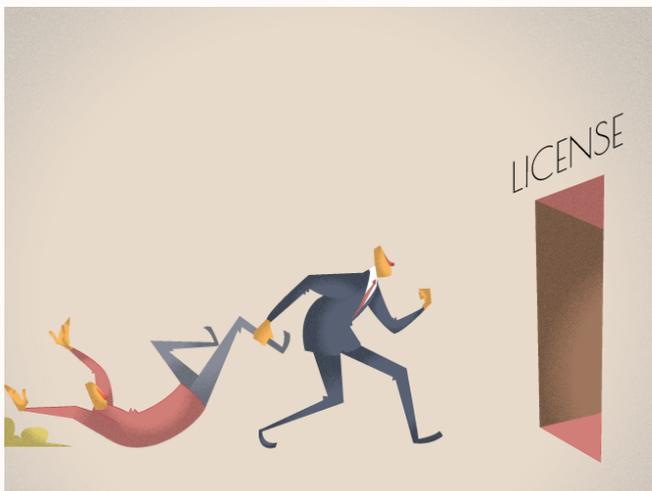
|   |  |  |  |   |   |
|---|--|--|--|---|---|
| Functional 3D mark is no longer recognized in Indonesia | A mark cannot be registered if it is contrary to the state ideology and state laws | A mark is not recognized if it is similar or the same to the related services/good | A mark is not recognized if it is similar or the same to the related services/good | A mark that contains misleading element, inaccurate details is not accepted | The Substantive Examination is shorten from 150 working days to 30 days subject to no opposition. *90 days if there is opposition |
|---|--|--|--|---|---|

# COUNTRIES WORLDWIDE LOOK TO ACQUIRE THE INTELLECTUAL PROPERTY RIGHTS OF COVID-19 VACCINE MAKERS

As the death toll from the coronavirus reaches nearly 2.1 million, countries around the world are racing to vaccinate their populations. Many countries have gone to the World Health Organization ("WHO") requesting compulsory licensing of Covid-19 vaccine patents due to the soaring demand and limited supply of the vaccine. The severity of the coronavirus crisis has led many to argue that products for the prevention and treatment of Covid-19 should be global public goods. This "compulsory licensing" approach suspends the monopoly effect of a patent holder to produce and supply the product.



Last October, Moderna, a pioneer in the development of messenger RNA (mRNA) vaccines and therapeutics, announced that it would not enforce patent rights related to its coronavirus vaccine during the pandemic. Moderna has also announced that it will allow open access to patents for the "pandemic period," and is willing to out-license the same intellectual property once the pandemic is over. This exemplifies an effort among public and private actors to launch collaborative global efforts to develop and manufacture therapeutics, vaccines, and diagnostics with the aim of guaranteeing equitable access.



In May, the WHO formally launched a voluntary pool to collect patent rights, regulatory test data, and other information that could be shared for developing drugs, vaccines, and diagnostics to combat Covid-19. A similar proposal, by Elias Mossialos, a health policy professor at the London School of Economics, was submitted by Greece last spring, which suggested the member states of the European Union jointly buy patent rights for vaccines against Covid-19 to help ensure that if they are effective, they are quickly distributed to those in need across the bloc.

The proposal to increase vaccine production through value-based purchases IP rights is gaining ground. "The compulsory licensing approach assumes that countries have the legal and regulatory capacity necessary to issue these. While there is a moral imperative to make Covid-19 technologies widely available, any approach to achieve this goal should also consider both long-term sustainability of innovation and equity in healthcare systems," Mossialos said.



# IP WEBINARS IN 2021



## You missed out our webinar ?

Scan the QR Code to view for the **IP Best Practices Handbook**, you are also most welcome to revisit our official Pintas website : <https://pintas-ip.com/case-study-video/>

## IP Best Practices Handbook



7 Trademark SUPREME Rules



7 Patent SUPREME Rules



IP Amazon Case Study



亚马逊：电子商务之七大专利

## Upcoming Events



## Intangible Assets

More powerful than you think

**facebook** 23<sup>rd</sup> Feb, 2021  
**LIVE** 2:30pm – 3:30pm

Join us to discover 3 simple steps to increase your paid-up capital using your trademarks and patents

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