

I POTENTIAL

ASEAN INTELLECTUAL PROPERTY NEWS UPDATE



HAPPY MID AUTUMN FESTIVAL



IN THIS EDITION

- ASPEC - Cooperation Program Among Participating ASEAN Countries to Continues Safeguard Patents.
- Malaysia Government Intellectual Property (IP) Grant for Overseas Filing
- The Key Changes to Singapore New Copyright Law
- Singapore Intellectual Property Development Incentive: Update Guidelines

Happy Mid-Autumn Festival

Greetings from Pintas IP Group

Pintas IP Group wishes you a joyous celebration and prosperous days ahead. Also, we are monitoring closely new directions from IP Offices in ASEAN countries.

In the interim, we are giving our best endeavors in ensuring operational continuity for your Asean IP needs through our customer service and e-services platforms, Pintas Digital Platform (eCommerce), and IP Hall Case Management System (management and monitoring module) accessible 24 hours every day.

Once again we thank you for your continued support in this uncertain time, our thoughts go out to those who have been affected by this difficult time and we pray for your good health and well-being.

ASPEC - COOPERATION PROGRAM AMONG PARTICIPATING ASEAN COUNTRIES TO CONTINUE SAFEGUARD PATENTS

What is ASPEC

ASEAN Patent Examination Cooperation (ASPEC) Programme was first introduced back in June 2009. This programme aims to share and utilize search and examination results between the participating IP offices to allow applicants in participating countries to obtain corresponding patents faster and more efficiently. There are currently nine participating ASEAN member states namely Brunei Darussalam, Cambodia, Lao PDR, Indonesia, Malaysia, the Philippines, Thailand, Singapore and Viet Nam.

ASPEC also aims to reduce duplication on the search and examination work done, therefore this will eventually saves time and effort and serves as a reference in making reports altogether. However, it is not mandatory for the IP offices to follow the search and examination results that they received under ASPEC - IP Offices may consider or proceed with and conclude its search and examination results as well as decide whether to grant the patent according to their national laws.



New Features Introduced as in August 2019

Starting on August 27, 2019, ASPEC has introduced 2 new features namely ASPEC Acceleration for Industry 4.0 Infrastructure and Manufacturing (ASPEC AIM) and Patent Cooperation Treaty ASPEC (PCT-ASPEC).

ASPEC AIM

Benefits to applicant:

Turnaround time of 6 months to receive the first office action if an ASPEC request is made for industry 4.0 patent applications.

Duration:

Initial pilot period of 2 years starting from 27 August 2019 with a further extension of 2 years till 26 August 2023.

Capacity:

Up to 50 eligible applications per years.

PCT-ASPEC

Benefits to applicant:

Additional choice of relying on a Patent Cooperation Treaty (PCT) reports issued from an ASEAN International Searching Authority/ International Preliminary Examining Authority.

Duration:

Initial pilot period of 3 years starting from 27 August 2019 to 26 August 2022.

Capacity:

Up to 100 applications per year.

Besides that, with effect from 15 June 2021, an applicant can also use written opinions established by another participating ASEAN member. The written opinion refers to a non-final assessment of the novelty, inventive step, and industrial applicability of the claimed invention that is issued by participating ASEAN members.

Requirements for Requesting ASPEC, ASPEC AIM & PCT-ASPEC

To request for ASPEC or ASPEC AIM or PCT-ASPEC, a patent application in a participating IP office where the ASPEC Request Form is filed ("second IP Office") must be a corresponding patent application of the other participating IP Office ("first IP Office") and it must be supported with the search and examination documents from the first IP Office.

There are 3 ways to know whether a patent application in the first IP Office is a corresponding application in order to qualify for the request above.

The 3 ways are shown below:-

FIRST

If it is linked by a Paris Convention priority claim to the patent application in the second IP Office and vice versa, or

SECOND

The patent application in both the first IP Office and second IP Office have the same priority claim from another member of Paris Convention or World Trade Organisation, or

THIRD

The patent applications in both the first IP Office and second IP Office are national phase entry applications from the same Patent Cooperation Treaty application.

Procedures for Requesting ASPEC, ASPEC AIM & PCT-ASPEC

Now that we have qualified to request for ASPEC, ASPEC AIM or PCT-ASPEC, we have to look at the procedures to request so. This can be seen in tables below:-

To request for ASPEC & ASPEC AIM:-

Applicant is required to file completed ASPEC Request Form in the second IP Office

The submission by the applicant of the search and examination results issued by an ASEAN member for an unpublished application to another ASEAN member is consent for the other ASEAN member to use the result

The ASPEC request form shall be accompanied by these;-

1. a copy of written opinion of the first IP office.
2. a copy of the claims referred to the documents no1.

The applicant can submit more than 1 written opinion from participating ASEAN member if the written opinions support the scope of the patent application

To request for PCT-ASPEC:-

A cover letter indicating the request for PCT-ASPEC with the second IP Office is required.

Duly completed ASPEC request form shall be submitted with these documents:-

1. A copy of the written opinion established by an ASEAN International Searching Authority/ International Preliminary Examining Authority.
2. A copy of the claims referred to no.1 above.

Extra information that must be inserted:-

1. PCT application no.
2. Desired second IP office and application no. in the second IP Office.
3. Date of request.
4. Applicant.

This program serves to facilitate the prosecution and expedite allowance of corresponding patent application since there are increasing numbers of applicants that for sure are interested to protect patents in these ASEAN countries. Not to mention that this program saves a lot of time and costs, applicants can ensure that they have the easy access in relation to the patent protection in these countries.

Sources:
<https://www.aseanip.org/Portals/0/ASPEC/ASPEC%20Document%20Submission%20Guideline%20-%20Release%20August%202021.pdf>

Malaysia Government Intellectual Property (IP) Grant for Overseas Filing

Are you planning to expand your business to the export markets? If that is the case, have you ensured that your Intellectual Property (IP) is protected in the export markets? If you have registered or plan to register your IP in the international market, you should utilise the Market Development Grant (MDG).

The Malaysia External Trade Development Corporation (Matrade) has introduced new initiatives under the Market Development Grant (MDG) for exporters amid the Covid-19 pandemic. You can now apply to claim for reimbursement of the expenses used in IP registration in the international market.

***Do take note that this is only available to IP owners based in Malaysia**



FREQUENTLY ASKED QUESTIONS (FAQ) ON THE MARKET DEVELOPMENT GRANT (MDG)

1. What is Market Development Grant?

The Market Development Grant (MDG) was introduced in 2002. It is a support initiative in the form of a reimbursable grant.

2. What is the objective of MDG?

The purpose of MDG is to assist Malaysian Small and Medium Enterprises (SMEs), Professional Service Providers, Trade & Industry Associations, Chambers of Commerce, Professional Bodies, and Co-operatives in increasing global sales by undertaking eligible export promotion activities. They aim to help exporters in their efforts to promote Malaysian-made products or services globally.

3. How much can you claim from the grant?

The lifetime limit of MDG is RM300,000 and it is specifically formulated for Malaysian SME Companies, Professional Service Providers, Trade & Industry Associations, Chambers of Commerce, Professional Bodies, and Co-operatives. However, do take note that there is a different maximum grant amount per application, depending on the activity that you are claiming from.

[Note: MDG reimbursements are subject to the availability of the government funds.]

4. Who is eligible to claim for MDG?

Small and medium enterprises (SMEs)

- Incorporated under the Companies Act 1965 or Companies Act 2016.
- With at least 60% equity owned by Malaysians.
- Manufactures products that are made in Malaysia or provide services for export that originated from Malaysia
- Meet the following defining criteria:

Type of Business	*Annual Sales or	*Number of Full Time Employees
Manufacturing: (including agro-based products)	Not exceeding RM50 million or	Not exceeding 200
Trading:	Not exceeding RM20 million or	Not exceeding 75
Services: (excluding real estate)	Not exceeding RM20 million or	Not exceeding 75

* Annual Sales is based on the latest Audited Financial Statement

* Number of Full Time Employees is according to the latest EPF Statement

5. Who is not eligible to claim for MDG?

- The following businesses will not be deemed as SMEs and also do not qualify for Government assistance:

1. Public-listed companies (PLC) in the mainboard such as Bursa Malaysia or main bourses in other countries.

2. Subsidiaries of the following entities:

-Public-listed companies (PLC) in the mainboard.

-Large firms, Multinational Corporations (MNCs), Government-Linked Companies (GLCs) or have any government equity (federal or state) in its shareholding, Syarikat Menteri Kewangan Diperbadankan (MKDs) and State-Owned Enterprises.

- Companies who are inactive in business (dormant) or less than one (1) year in operation.
- Companies that are fully subsidised or sponsored by any third party, for example, Ministries or Government Agencies or Trade and Industry Associations or Chambers of Commerce or Professional bodies, and others.



8. What does Pintas IP Group offer?

If you wish to explore the overseas market, you are advised to register your Intellectual Property in that particular country that you wish to expand to as well to avoid your IP being misused or imitated. This would be a great chance for you to get your Trademark or Patent registered in other countries as the fees would be 100% reimbursed by the MDG as long as it did not exceed the grant amount provided in the table above.

We can help you to register your Intellectual Property for the international market and provide assistance in applying for the grant. We have more than 20 years of experience in the IP industry which is backed by an extensive international network. Through a local direct presence in Singapore, Malaysia, Brunei, Myanmar, and joint venture offices in Vietnam, Indonesia, Thailand, Philippines, Cambodia, and Laos, we are able to provide integrated and comprehensive IP solutions in multiple countries.

We are providing consultation at zero cost so you may reach out to us for free advice and we will let you know how should you proceed with your registration.

9. What activities and expenses are eligible for grant funding?

All applications must be submitted online through MATRADE's website with the necessary claim and supporting documents.

Get expert help to register your IP in the international market.

Now that you have learnt more on the grant, grab the opportunity now to protect your brands or inventions in the export markets. With a registered IP, you can stop unauthorized people from using your trademark or invention. You can even take legal action against them when your trademark is infringed. Furthermore, you get to enjoy exclusive rights and sole ownership over your IP as it belongs to you. Since a registered IP becomes your asset, you can then sell or license it to gain more. Seek the services of a reputable firm like **Pintas** to help you through the process of IP registration.



6. What requirements must I meet to be considered for MDG?

If you are eligible to apply for the grant, you must be registered as a member of MATRADE. You may visit the page for registration:

<https://www.matrade.gov.my/en/malaysian-exporters/online-services/register-as-matrade-member>

The registration is free and details of your company must be updated from time to time.

7. What activities and expenses are eligible for grant funding?

You are able to claim all expenses that are related to the registration of intellectual property (IP) for the international market which are undertaken in the year 2021. The maximum grant amount per application would be RM30,000.

If you have registered your IP from 1st January 2021 - 14th July 2021, the application for the grant must be submitted before or by 12th August 2021.

On the other hand, if you plan to register your IP from 15th July 2021 - 31st December 2021, the application for the grant must be submitted within 30 calendar days from the date of activity started.

Contact Us for More

The Key Changes to Singapore New Copyright Law

The Copyright Bill ("the Bill") which seeks to repeal and replace the current Copyright Act was tabled in Parliament for first reading on 6th July 2021. The Bill is expected to be enacted into law in November 2021.

The Bill will update and enhance the copyright system to take into account technological advancements which have greatly affected how copyright works are created, distributed, accessed and utilised.

Let's look into the major changes that are introduced through the Bill.



Right to be identified

Any user who uses a work or performance in a way that causes it to be seen in the public (e.g. by sharing it online or publishing it) must identify its creator or performer in a clear and reasonably prominent manner that the creator or performer wishes to be identified.

The current position under the Copyright Act 1987 do not grant the creators or performers the right to be attributed to their works, they merely have the right to prevent false identification where their works or performances have been falsely attributed as the creation of someone else.

Default ownership in certain types commissioned works

Under the Bill, the copyright ownership for commissioned works such as photographs, portraits, engravings, sound recordings, and films belongs to the creators by default, unless it is stated otherwise in the commissioning contract.

Prohibiting individuals from benefitting off devices or services relating to audio-visual content from unauthorised sources

This new provision aims to encourage consumption of copyright works from legitimate sources. Copyright owners will be able to bring legal action against anyone who knowingly engages in commercial dealings with devices or services which have limited commercially significant purpose or usage besides facilitating access to copyright infringing works.

New equitable remuneration rights for sound recordings

A new right will be granted to sound recording companies to collect licence fees for the broadcast or public performance of commercially published sound recordings and such fees may be administered and collected by collective management organisations (CMOs). Businesses will have to acquire a licence for the public performance of the sound recordings to play the recorded music in a physical venue.

However this right does not arise in situations where:

- the public performance of the sound recording constitutes fair use
- the sound recording is played through a broadcast (playing music through the radio)
- in the course of an educational institution's activities, the sound recording is performed in by students or staff of the institution to an audience limited to those directly connected with that institution.



Strengthening the general “fair use” exception

The current “fair dealing” exception shall be reworded to a more general term “fair use”. A requirement under the current law to demonstrate in every situation, the possibility of obtaining the work within a reasonable time at an ordinary commercial price will be removed. However, this factor can still be taken into account where it is relevant.

New exception for educational uses by non-profit institutions

This new exception allows non-profit educational institutions to use resources or materials from the internet for educational purposes. The material must be accessible to the public free of charge, cited and be given sufficient acknowledgement of the internet source.

The user should not know that the material is a copyright infringing work, he shall stop using such material and take reasonable steps to prevent any further usage if he is informed that the material is a copyright infringing work.

New exception for uses of works for computational data analysis

A new exception to copyright infringement where it permits the use of copyright works for the purpose of computational data analysis only (e.g. text and data mining and training machine learning). The user must have lawful access to the works and the work used must not be an infringing copy.

Expiry date for protection of unpublished works

The current law gives perpetual copyright protection to unpublished works. Under the Bill, all works, whether published or unpublished, will have limited duration of copyright protection.

The duration are as follows:

- unpublished authorial works will be protected for 70 years from the death of the author
- films and anonymous or pseudonymous works will be protected for 70 years after the end of the year in which the work is made

Implementing a new class licensing scheme for collective management organisations

The CMOs will be administered and regulated by the Intellectual Property Office of Singapore (IPOS) to ensure there is compliance by CMOs with minimum standards on transparency, good governance, accountability and efficiency. CMOs will be subject to class licence conditions and financial penalties may be imposed to them if the conditions are breached. Written directions and cessation orders may also be issued by IPOS.

The Bill has introduced these changes to provide more rights, recognition and remedies to the creators of works. It further creates new exceptions to ensure the copyright works remain reasonably accessible to the public for the benefit of society at large. These changes ensure Singapore’s copyright regime continues to provide an environment that benefits both creators and users.

Sources:

<https://www.ipos.gov.sg/docs/default-source/resources-library/copyright/copyright-bill-factsheet.pdf>

<https://www.cms-lawnow.com/ealerts/2021/07/amendments-to-copyright-law-in-singapore>

<https://www.lexology.com/library/detail.aspx?g=12e55e79-f011-4ddf-8d92-2f6d2a58b973>

Singapore Intellectual Property Development Incentive : Updated Guidelines

Early this year, the [Income Tax \(Concessionary Rate of Tax for Intellectual Property Income\) Regulations 2021](#) was published by Singapore's Ministry of Finance which took effect as of 22nd January 2021. The regulations provide further guidance of the implementation and application of the Intellectual Property Development Incentive (IDI). The initial guidelines on the concessionary tax rate and the incentive period was provided in the main legislation, section 43ZI of the Income Tax Act (ITA) published in 2018.



The IDI was introduced to encourage the use and commercialization of Intellectual Property rights (IPR) arising from research and development (R&D) activities and grants a concessionary tax rate of 5% or 10% on a percentage of qualifying intellectual property (IP) income determined by the modified nexus approach recommended by the Organisation for Economic Co-operation and Development (OECD).

When the IDI was first introduced in 2018, income derived from IPRs were excluded from the scope of two existing incentives, the Pioneer Service Companies Incentive (PC-S) and the Development and Expansion Incentive (DEI) by virtue of certain pre-existing provisions.

The 2021 regulations

Qualifying IP income refers to royalties or other income receivable by the approved IDI company as consideration for the commercial use of an elected qualifying IPR. Such qualifying IPRs are:

- Patents
- Applications for Patents
- Copyrights subsisting in software
- Family of qualifying IPRs

Family of qualifying IPRs

This refers to a situation where either the expenditure or the income of two or more IPRs cannot be reasonably identified or separated from each other and are therefore grouped into a "family". This also applies where two IPRs are part of a chain of three or more qualifying IPRs and each of which is interlinked with one another creating a "chain rule". The grouping of the family of IPRs is important when calculating the nexus ratio.

Elections into the IDI are irrevocable, however, an election for IPRs to be grouped in the same family may be amended to add or remove members as new IPRs join the family or where old IPRs are no longer valid. The final composition of the family as at the end of the basis period will be used to calculate the nexus ratio.

Once elected, the IPRs cannot be removed from the family unless the IDI company ceases to have the IPRs or if the IPRs no longer interlinked with any of the IPRs in the family. Should the family of qualifying IPRs cease entirely prior to the completion of the full basis period, the nexus ratio will be adjusted and based on the final composition prior to cessation.

Nexus ratio

The percentage of qualifying IP income from an elected qualifying IPR is determined in accordance with the formula:

$$\frac{C \times 130\%}{C + D}$$

- C are the qualifying expenditures such as R&D carried out directly by the IDI company, qualifying outsourced R&D, and payments under cost-sharing agreements (CSAs).
- D are the non-qualifying expenditures such as acquisition costs, licensing, amalgamation, buy-in payments for CSAs, and non-qualifying outsourced R&D

Deemed income

As IPR protection in a patent or copyright subsisting in software typically has a limited lifespan, issues may arise where there is a cessation of that protection. Particularly, the IDI may no longer cover income for such IPRs where:

- It is no longer part of a family of qualifying IPRs as it can be identified separately
- A patent application was withdrawn or abandoned
- A patent under application was disposed of by the IDI company, ceasing their rights to the pending patent prior to receiving approval
- The application was rejected

Where the income can separately be identified within the family of qualifying IPRs and attributed to a patent application, deemed income may come into force and chargeable to tax at the existing corporate tax rate.

Transitional nexus ratio

As the nexus ratio requires R&D expenditure to be tracked and traced to each IPRs or groups of IPRs, there is a requirement that records from the approval date of the IDI be kept, however, the requirement also includes any earlier periods for which the company has expenditure records tracked to the elected qualifying IPR or family of elected qualifying IPRs.

A transition period may be used for the basis period where an IDI company does not have at least 3 full years of actual tracked data in relation to an IPR or a family of IPRs as at the end of the basis period. For R&D projects that started less than 3 years and the IDI company does not have actual tracked data for the entire period, the transitional nexus ratio will be applied.



Conclusion

Singapore's IP IDI is administered by the Singapore Economic Development Board (SEDB) and is designed to encourage more R&D activities which in turn will help with the growth of the economy. The incentive is one of many developments reflecting Singapore's position in the shifting global tax landscape towards greater substance. As IP is an important income generating asset for multinationals, the global tax development on IP regimes is just as important. The 2021 Regulations provide further guidance on the implementation and application of the IDI which became applicable from the 1st of July 2018. IDI companies should ensure that appropriate supporting documents are kept in order to establish and substantiate the qualifying IPR or families of IPRs, relevant income, expenditure incurred, and the R&D activities.

Sources:
[https://www.edb.gov.sg/content/dam/edb-en/how-we-help/incentive-and-schemes/IDI%20circular%20\(Jan2020\).pdf](https://www.edb.gov.sg/content/dam/edb-en/how-we-help/incentive-and-schemes/IDI%20circular%20(Jan2020).pdf)
<https://sso.agc.gov.sg/SL/ITA1947-S36-2021>
<https://www.oecd.org/ctp/beps-action-5-agreement-on-modified-nexus-approach-for-ip-regimes.pdf>

UPCOMING EVENT 2021



3 Things Businesses Must Explore To Make Tax-Efficient Use Of Your IP Assets

Date: 30/09/2021 (Thursday)
Time: 11:00 AM - 12:00 PM



Must-Do-Steps To Create Your IP Assets From Your Idea

Date: 21/10/2021 (Thursday)
Time: 11:00 AM - 12:00 PM



You have missed out our webinar ?

Scan the QR Code to view for the **IP Case Studies** and **IP Best Practices**, you are also most welcome to revisit our official Pintas website :

<https://pintas-ip.com/case-study-video/>

IP Case Studies



IP Amazon Case Study



IP Dyson Case Study



IP Apple Case Study

IP Best Practices



7 Trademark SUPREME Rules



7 Patent SUPREME Rules



亚马逊：电子商务之七大专利

Singapore

Pintas-IPHouse Pte Ltd
151 Chin Swee Road, #12-14, Manhattan House,
Singapore 169876.

Tel: +65-6250 2070
Fax: +65-6737 1805
Mobile: +65- 9747 2579
Email: pintas.sg@pintas-ip.com

China

**Pintas Inc
(Customer Service Office)**
Room 1811, 18th Floor, Far East Tower, No. 1101,
Pudong Road (s) Pudong, Shanghai, 2002120,
China

Mobile: +008-613 0221 76477
Email: pintas.china@pintas-ip.com

Malaysia

Pintas Consultation Group

Kuala Lumpur
Suite 2B-21-1, Level 21, Block 2B,
Plaza Sentral, Jalan Stesen Sentral 5,
KL Sentral, 50470 Kuala Lumpur, Malaysia

Mobile: +6012-797 5077
Email: mpintas.my@pintas-ip.com

Selangor

No. 19, Jalan SS1/36, 47300 Petaling Jaya,
Selangor, Malaysia Tel: +603- 7876 5050

Fax: +603- 7876 2678
Mobile: +6012- 797 5077
Email: marketing@pintas-ip.com

United States of America

Pintas LLC (Customer Service Office)
P.O. Box 190943, Boise,
Idaho 83719-0943 United States of America

Mobile: +1 571 225 5624
Email: pintas.us@pintas-ip.com



Contact Us

Brunei

Pintas Company
P.O. Box 18, Anggerek Desa Complex,
BB3780 Brunei Darussalam

Tel: +673- 873 8478
Fax: +673- 245 2112
Email: pintas.brunei@pintas-ip.com

Myanmar

Pintas-Bizlaw Consult (Myanmar) Co., Ltd
No: 527 (A-2) Zay Ya 18th street, 10th
Ward, South Oak Ka Lar Pa Township,
Yangon.

Mobile: +959- 428 505 888
Email: international@pintas-ip.com



[Facebook: Pintas IP Group](#)



[WhatsApp: +60 12797 5077](#)



[Instagram: Pintas IP Group](#)



[LinkedIn: Pintas IP Group](#)



[Website: Pintas IP Group](#)

Contact Us