

# **Issues and Perspectives on Trademark System in Cambodia and ASEAN Region: From Trademark Agent's Point of View**

National Workshop on Effective Utilization of the Madrid System for Trademark Agents and Specialists  
Organized by Ministry of Commerce (DIPR), JPO and WIPO

# OUTLINE

- A. Introduction to ASEAN IP System
- B. Trends in Trademark Registration, Protection and Enforcement in ASEAN
- C. Issues and Perspectives for Cambodia



## A. Introduction to ASEAN IP System

# I. ASEAN in General

- Four important facts for ASEAN:
  - A total land area of 4.44 million square meters;
  - A population of around 600 million;
  - A combined GDP (2013) of about USD2.4 trillion (ADB);
  - Varying levels of political, social, cultural, economic and technological development

## II. ASEAN Intellectual Property Framework

- The Association of South East Asian Nations (ASEAN) was established on 08 August 1967 under the ASEAN Declaration (the Bangkok Declaration);
- ASEAN Focus on Regional Economic Development (Vision 2020)
  - ASEAN Free Trade Agreement (AFTA) in 1992;
  - Framework Agreement for ASEAN Investment Area (AIA) in 1998- the most attractive investment area;
- ASEAN Economic Community (Vision 2015)
  - ASEAN Economic Community Blueprint (2007)
  - Roadmap for an ASEAN Economic Community (2009-2015)- One Vision, One Identity and One Community

## II. ASEAN Intellectual Property Framework

- In the early 1990s, *ad hoc* Working Group on Intellectual Property Cooperation;
- ASEAN Framework Agreement on Intellectual Property Cooperation (1995);
- Program of Action on ASEAN Intellectual Property Cooperation (1996-1998):
  - ASEAN Working Group on Intellectual Property Cooperation (AWGIPC);
  - ASEAN Trademark Experts Group and ASEAN Patent Experts Group;
- Hanoi Plan of Action (1999-2004), adopted in 2008
  - Protection, facilitation, and cooperation.

## II. ASEAN Intellectual Property Framework

- ASEAN IPR Action Plan 2004-2010 and Work Plan for Cooperation on Copyrights:
  - To help accelerate the pace and scope of IP asset creation and commercialization inside and outside ASEAN, and the formation of cross-border linkages in science and technology (S&T) fields and research and design (R&D) activities;
  - To develop and harmonize an enabling IP registration, protection and enforcement framework of policies and institutions in the region;
  - To promote greater public awareness, and the building up of human resources and institutions relating to IP and IPRs in ASEAN;
  - To further empower national IP offices in the collaborative provision of Business Development Services (BDS) in the support of the above objectives.

### III. ASEAN IPR Action Plan 2011-2015

- Ultimate Objective: Transforming ASEAN into an “Innovative and Competitive Region”;
- The Action Plan identifies five strategic goals that will contribute to the collective transformation of ASEAN into a competitive region with the use of IP;
- The Action Plan sets out 28 actions to achieve the five strategic goals.



### III. ASEAN IPR Action Plan 2011-2015

- *Strategic Goal 1: To Develop a Balanced IP System*
  - A balanced IP system that takes into account the varying levels of development of Member States and differences in institutional capacity of national IP Offices to enable them to deliver timely, quality, and accessible IP services to promote the region as being conducive to the needs of users and generators of IP.

### III. ASEAN IPR Action Plan 2011-2015

- *Strategic Goal 2: To Enhance IP Infrastructure*
  - Developed national or regional legal and policy infrastructures that address evolving demands of the IP landscape and AMSs participate in global IP systems at the appropriate time.

### III. ASEAN IPR Action Plan 2011-2015

- *Strategic Goal 3: To Promote IP Creation, Awareness and Utilization*
  - The interests of the region are advanced through systematic promotion for IP creation, awareness, and utilization to ensure that IP becomes a tool for innovation and development; support for the transfer of technology to promote access to knowledge; and with considerations for the preservation and protection of indigenous products and services and the works of their creative peoples in the region.

### III. ASEAN IPR Action Plan 2011-2015

- *Strategic Goal 4: To Strengthen Regional Participation in the International IP Community*
  - Active regional participation in the international IP community and with closer relationships with dialogue partners and institutions to develop the capacity of Member States and to address the needs of stakeholders in the region.

### III. ASEAN IPR Action Plan 2011-2015

- *Strategic Goal 5: To Intensify Intra-ASEAN IP Cooperation*
  - Intensified cooperation among AMSs and increased level of collaboration among them to enhance human and institutional capacity of IP Offices in the region.

## IV. What Have Been Achieved

- ASEAN Patent Search and Examination Cooperation (ASPEC), fully operational from 2012;
- ASEAN IP Portal, recently launched in 2013 (<http://www.aseanip.org/ipportal/index.php>);
- Consolidated List Of ASEAN Ethnic Goods and Services;
- ASEAN Common Form for Trademark
- ASEAN TMview & ASEAN TMclass
- ASEAN DesignView
- Cooperation between ASEAN and Dialogue Partners
  - ASEAN-Japan
  - ASEAN-China
  - ASEAN-EU (ECAP Project I, II & III)
  - ASEAN-United States
  - ASEAN-WIPO



**ASEAN**  
Intellectual Property Portal



## V. What Will Be Achieved (1)

### ASEAN IPR Action Plan 2016-2025

- Accession to Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks by all ASEAN Member States (AMSs) by 2015;
- Reduction of average turnaround time for the registration of trademarks without objection/opposition to 6 months by 2015;
- Accession to Hague Agreement Concerning the International Registration of Industrial Designs by at least 7 AMSs by 2015;
- Accession to Patent Cooperation Treaty by all AMSs by 2015;

## V. What Will Be Achieved (2)

- ASEAN Leaders at their 27th Summit in Kuala Lumpur on 22 November 2015 signed a Declaration proclaiming ASEAN as a Community and endorsed:
  - the ASEAN Community Vision 2025,
  - the ASEAN Political-Security Community Blueprint 2025,
  - the ASEAN Economic Community Blueprint 2025 and
  - the ASEAN Socio-Cultural Community Blueprint 2025.
- In order to achieve a goal of the *ASEAN 2025: Forging Ahead Together*, the following strategic measures in respect of IP have been adopted:
  - Strengthen IP offices and build IP Infrastructure, in order to ensure the development of a more robust ASEAN IP system;
  - Develop regional IP platforms and infrastructure;
  - Expand the ASEAN IP Ecosystem; and
  - Enhance regional mechanisms to promote asset creation and commercialisation, including the development of supporting schemes for MSMEs and creative sectors.





## **B. Trends in Trademark Registration, Protection and Enforcement in ASEAN**

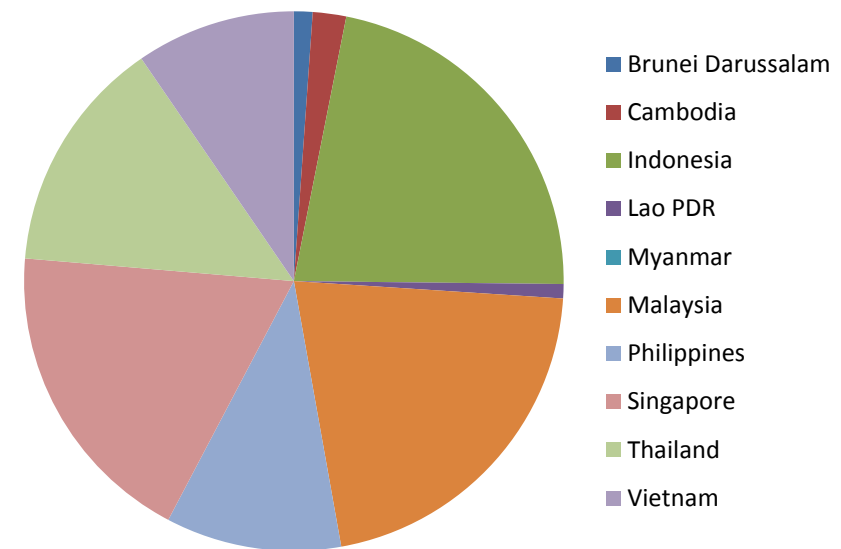
# I. Trademark Registration in ASEAN Member States

IP OFFICE	NUMBER OF TRADEMARKS	LATEST UPDATE	UPDATE FREQUENCY	COLLECTION
Brunei Darussalam	37763	2016-01-18	Weekly	Registrations
Cambodia	67700	2016-01-18	Weekly	Applications and registrations
Indonesia	746137	2015-12-08	Periodically	Registrations
Lao PDR	28949	2014-01-31	Periodically	Applications and registrations
Myanmar	0	-	n.a.	
Malaysia	715711	2016-01-13	Periodically	Applications and registrations
Philippines	355934	2016-01-15	Daily	Applications and registrations filed nationally, International registrations designating PH
Singapore	630361	2016-01-10	Weekly	Applications and registrations filed nationally, International registrations designating SG
Thailand	476819	2015-11-13	Periodically	Registrations
Vietnam	323547	2016-01-18	Periodically	Registrations
<b>Total</b>	<b>3382921</b>			2016-01-19 06:22:13 +0100

Sources: ASEAN TMview Website: <http://www.asean-tmview.org/asean-tmview/about/en/> (January 2016)

# I. Trademark Registration in ASEAN Member States

IP OFFICE	NUMBER OF TRADEMARKS	PERCENTAGE
Brunei Darussalam	37763	1.12%
Cambodia	67700	2.00%
Indonesia	746137	22.06%
Lao PDR	28949	0.86%
Myanmar	0	0.00%
Malaysia	715711	21.16%
Philippines	355934	10.52%
Singapore	630361	18.63%
Thailand	476819	14.09%
Vietnam	323547	9.56%
<b>Total</b>	<b>3382921</b>	<b>100.00%</b>



## II. Trademark Enforcement

### ASEAN IPR Action Plan 2010-2015

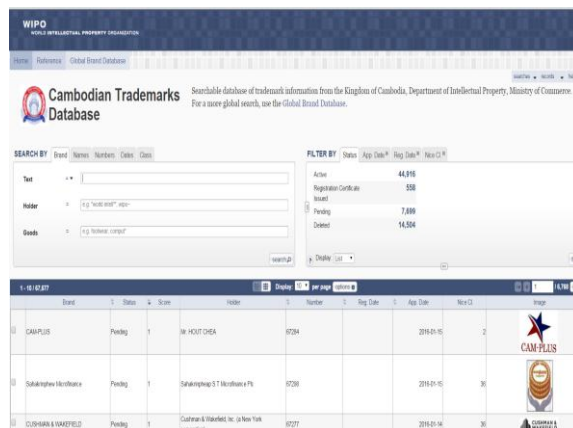
- There is only one initiative, out of 28, covered enforcement (“Development and implementation of a Regional Action Plan on IPR Enforcement”) which made IP enforcement a minor part of the Action Plan.
- Unlike TRIPS, the Action Plan did not promote criminal remedies over other types of remedies.
- Remaining Challenges:
  - Goods in transit
  - Counterfeit products
  - Customs coordination



## **C. Issues and Perspectives for Cambodia**

# I. Recent Development of Trademark System in Cambodia

- Trademark Agent Certification System
- Online search and filing (e-filing)
- Update and modification of certain forms
- Madrid International Trademark Registration (Madrid Protocol)



## II. Opportunities and Challenges

- ASEAN and AEC: Free flow of goods and services => more trademark registration in Cambodia by foreign investors;
- ASEAN and AEC: Free flow of goods and services => more trademark registration in countries by Cambodian investors;
- Trademark Registration and Protection
  - Through each trademark office of the ASEAN Member States
  - Through Madrid International Trademark Registration System
- Trademark Prosecution
- Trademark Enforcement
  - Enforcement of trademark rights must go through relevant enforcement authorities of each ASEAN Member State
  - Different trademark law and legal system (civil, common or mixed)

### III. Suggestions for Trademark Agent

- Follow up the recent development of the AEC, in particular on the IPR issues;
- Follow up the ASEAN IPR Action Plan 2016-2025;
- Update yourself on recent development of trademark laws and regulations in each of the ASEAN Member States;
- Gain more knowledge in trademark systems, laws and regulations of other ASEAN Member States;
- Build up regional and international network with other ASEAN IP professionals help companies become regionalized and globalized; and
- Get accredited as a qualified trademark agent, if any, in other ASEAN Member States.



# Questions & Answers

# SPEAKER PROFILE



## **PHIN Sovath, LL.D.**

Sovath's practice focuses on intellectual property, corporate and dispute resolution. Sovath has particular expertise and extensive experience practicing in intellectual property and provides advice and support for the protection, commercialization, and enforcement of intellectual property rights to a wide range of right holders in various sectors. He has recently served as a National Legal Consultant for international organizations in assisting the Ministry of Health of Cambodia in drafting a law concerning public health and intellectual property. Sovath served as a National Legal Adviser for the Asian Development Bank's projects assisting the Ministry of Commerce of Cambodia in drafting a competition law and the Ministry of Health of Cambodia in drafting food safety regulations, and for Food and Agriculture Organization of United Nations' project assisting the Ministry of Commerce of Cambodia in drafting a food law.

He is a qualified Trademark Agent in Cambodia, registered with the Ministry of Commerce and has been listed as an Intellectual Property Expert for ASEAN IPR SME Helpdesk, a project co-funded by the European Commission's Directorate-General for Enterprise and Industry under the Competitiveness and Innovation Framework Programme (CIP). He has recently been elected as a member of a governing board of Intellectual Property Association of Cambodia (IPAC). He has also taught various corporate and business law related subjects, including intellectual property law in and outside Cambodia, and has researched and published articles on Cambodian intellectual property law.

Sovath holds a Bachelor of Business Administration from National University of Management, Cambodia, and a Doctor of Laws (Comparative Law) from Nagoya University Graduate School of Law, Japan.

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