

Guide to Other Forms of IP in Cambodia

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This guide includes a brief overview of two nascent forms of intellectual property in Cambodia, as well as a discussion of future prospects.

Integrated Circuit Layout Designs

Integrated circuits, more commonly referred to as semiconductor or microchips, are afforded a special form of IP in Cambodia under the Prakas (Declaration) on the Registration of Layout Design of Integrated Circuits of March 16, 2011. Layout designs can be registered with the Department of Industrial Property of the Ministry of Industry and Handicraft.

Under the Declaration, an integrated circuit is defined as “a product, in its final form or an intermediate form, in which the elements, at least one of which is an active element, and some or all of the interconnections are integrally formed in or on a piece

of material, and which is intended to perform an electronic function.”¹ A layout design is defined as a “three dimensional disposition of the elements, at least one of which is an active element, and of some or all of the interconnections of an integrated circuit, or such a three dimensional disposition prepared for an integrated circuit intended for manufacture.”²

To be registerable, a layout design must not have been commercially exploited previously or subject to commercial exploitation for more than two years anywhere in the world.³ The design must be original, meaning resulting from the creator’s own effort, and not commonplace at the time of creation.⁴

The application form must be accompanied with⁵:

- Title of the integrated circuit,
- Commercial exploitation information,
- Claim of priority, if applicable
- Annexes including any photos/drawings and the description of the layout-design of integrated circuits,

¹ Prakas (Declaration) on the Registration of Layout Design of Integrated Circuits, Art. 3(2)

² Prakas (Declaration) on the Registration of Layout Design of Integrated Circuits, Art. 3(1)

³ Prakas (Declaration) on the Registration of Layout Design of Integrated Circuits, Art. 5

⁴ Prakas (Declaration) on the Registration of Layout Design of Integrated Circuits, Art. 7

⁵ Prakas (Declaration) on the Registration of Layout Design of Integrated Circuits, Art. 12

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- Power of attorney, if applicant represented by an agent
- Information regarding any previous international registration and evidence setting out such registration
- Receipt of payment for the official fee.

If the application meets the requirements as provided in the Declaration, the Registrar will publish necessary information in the industrial property bulletin prior to the registration the integrated circuit layout designs.⁶ Any interested person may file an opposition within 30 days of publication.⁷

After final registration, the layout design may be subject to invalidation, upon request of any interested person, on the grounds that:⁸

- The layout-design of the integrated circuit has been commercially exploited before in any part of the world and the exploitation exceeds two years, or is not original;
- The owner is not the protected person under the Declaration.

The owner of an IC registration may legally exclude others from:⁹

- Reproducing in its entirety or any part thereof, except

⁶ Prakas (Declaration) on the Registration of Layout Design of Integrated Circuits, Art. 15(1)

⁷ Prakas (Declaration) on the Registration of Layout Design of Integrated Circuits, Art. 15(2)

⁸ Prakas (Declaration) on the Registration of Layout Design of Integrated Circuits, Art. 16

⁹ Prakas (Declaration) on the Registration of Layout Design of Integrated Circuits, Art. 9

the act of reproducing any part that does not comply with the requirement of originality, and

- Importing, selling or otherwise distributing for commercial purposes a protected layout-design or any material in which a protected layout-design is incorporated except by authorization from the owner.

The term of protection is ten years from either the date of filing, if the design had not been commercially exploited anywhere in the world, or otherwise the date of initial commercial exploitation.¹⁰

To date, the Registrar has yet to receive any applications for registration of a layout design. It is foreseen that a full law will be enacted in the future to replace the current Declaration.

Plant Breeder's Right

The Law on Seed Management and Plant Breeder's Right, adopted on April 8, 2008, creates an intellectual property right in new plant varieties, under certain circumstances. While the law has been in place for almost a decade, no implementing regulations have been enacted and the system remains largely untested, with no applications yet to be filed.

The variety may be protected if it is new, distinct, uniform, and stable.¹¹ The novelty criteria requires that, as of the filing date, the variety has not been sold or otherwise marketed in Cambodia

¹⁰ Prakas (Declaration) on the Registration of Layout Design of Integrated Circuits, Art. 11

¹¹ Law on Seed Management and Plant Breeder's Right, Art. 6

for more than one year, or more than six years in the case of trees or vines, or more than four years for all other varieties outside of Cambodia.¹² Distinctness requires the variety to be clearly distinguishable from any other variety whose existence is a matter of common knowledge at the time of filing or from the priority date.¹³ Uniformity requires that the variety be sufficiently uniform in its relevant characteristics, regardless of whether it is reproduced sexually or asexually.¹⁴ Finally, a variety is deemed stable if its relevant characteristics remain unchanged at the end of the cycle of propagation and in each generation.¹⁵

The applicant must have bred, discovered and developed the plant variety, and be either a Cambodian national, a foreigner domiciled in Cambodia, habitually resident in a party to the International Union for the Protection of New Varieties of Plants (UPOV), or of a country that has concluded a reciprocal MOU with Cambodia.¹⁶ A plant variety may be registered with the Ministry of Industry and Handicraft, which will refer the application to the Ministry of Agriculture, Forestry and Fishery for technical testing.¹⁷ The law states that the application form be accompanied by other documents and information as required by a Decision of the Ministry of Industry and Handicraft, which has yet to be issued. If the technical tests of the Ministry of Agriculture, Forestry and Fishery are positive, and the denomination is acceptable, the Registrar must grant the certificate and publish a notice in the Official Bulletin.¹⁸ The

¹² Law on Seed Management and Plant Breeder's Right, Art. 7

¹³ Law on Seed Management and Plant Breeder's Right, Art. 8

¹⁴ Law on Seed Management and Plant Breeder's Right, Art. 9

¹⁵ Law on Seed Management and Plant Breeder's Right, Art. 10

¹⁶ Law on Seed Management and Plant Breeder's Right, Art. 13

¹⁷ Law on Seed Management and Plant Breeder's Right, Art. 11

¹⁸ Law on Seed Management and Plant Breeder's Right, Art. 30

period of opposition is three months from the date of publication.¹⁹

An application may claim a priority date based on a foreign application filed within the last twelve months in any country that is a member of the International Union for the Protection of New Varieties of Plants.²⁰

In addition to the four technical criteria (novelty, distinctness, uniformity and stability), the applicant must denominate, or specify a name, for the variety in accordance with the provisions of law.²¹ These denominations must have been designated or registered in a member of UPOV.²² Those exploiting a protected variety in Cambodia must use the registered denomination, even after expiration of the plant breeder's right, except where a prior right prevents such use.²³ The denomination may also be the subject of a trade name, trademark or other similar indication.²⁴

Anyone who produces or reproduces, conditions for the purpose of propagation, offers for sale, sells or markets, imports or exports, or stocks a protected variety shall be found to be infringing.²⁵ The scope of protection covers all varieties a) which are essentially derived from the protected variety, b) are not clearly distinguishable from it, and c) whose production requires the repeated use of the protected variety.²⁶ The property right is subject to several important limitations, namely for experimental, private, and non-commercial purposes, as well as for the purpose

¹⁹ Law on Seed Management and Plant Breeder's Right, Art. 32

²⁰ Law on Seed Management and Plant Breeder's Right, Art. 24

²¹ Law on Seed Management and Plant Breeder's Right, Art. 26(a)

²² Law on Seed Management and Plant Breeder's Right, Art. 26

²³ Law on Seed Management and Plant Breeder's Right, Art. 27

²⁴ Id.

²⁵ Law on Seed Management and Plant Breeder's Right, Art. 15

²⁶ Id.

of breeding other varieties, with certain exceptions.²⁷ Further, anyone may request the Ministry of Industry and Handicraft and the Ministry of Agriculture, Forestry and Fishery to grant a compulsory license based on the public interest, subject to adequate remuneration of the right owner.²⁸

The term of protection is in general 20 years from the date of granting, except for varieties with special characteristics, such as trees and vines, where the term is 25 years.²⁹ The right owner may be required to provide the Registrar with a sample of the propagating material, as well as other available information concerning the variety, in order to maintain their right.³⁰ An annual maintenance fee must be paid to keep the registration in force.³¹

An aggrieved right owner may file a complaint to the competent court seeking damages, provisional measures to prevent infringement, imposition of fines, seizure and destruction of infringing items, and/or compensation.³² The law provides for criminal penalties only in the case of a defendant knowingly infringing, which is punishable by a fine of between five to twenty million Riels (USD 1,250 to 5,000), imprisonment of one to five years, or both.³³ These penalties are doubled in case of repeat infringement.³⁴

²⁷ Law on Seed Management and Plant Breeder's Right, Art. 16

²⁸ Law on Seed Management and Plant Breeder's Right, Art. 35

²⁹ Law on Seed Management and Plant Breeder's Right, Art. 19

³⁰ Law on Seed Management and Plant Breeder's Right, Art. 18

³¹ Law on Seed Management and Plant Breeder's Right, Art. 37

³² Law on Seed Management and Plant Breeder's Right, Art. 70

³³ Law on Seed Management and Plant Breeder's Right, Art. 72

³⁴ Id.

Future Developments

While the intellectual property landscape in Cambodia has made significant strides in recent years, with the enactment of important laws and implementing regulations, as well as accession to treaties such as the Madrid Protocol, Patent Cooperation Treaty and Hague Convention, there remain important gaps to be filled. Drafts of a number of other IP laws have been formulated, including on encrypted satellite signals, undisclosed information and trade secrets, compulsory licensing for public health, as well as antitrust law. In several cases, the drafts have been pending at different stages of the legislative process and it is difficult to predict if and when they will be enacted.

Pheng Thea

Pheng Thea is the co-founder and principal of Abacus IP, a full-service intellectual property agency in the Kingdom of Cambodia. A seasoned IP professional, Mr. Pheng is licensed by the Cambodian Ministry of Commerce's Department of Intellectual Property and certified by the World Intellectual Property Organization.

Prior to founding Abacus IP, Mr. Pheng lead the IP prosecution practice at a leading Cambodian law firm. His practice involved the registration and maintenance of hundreds of trademarks, patents, industrial designs and other forms of IP on behalf of innovators and businesses from around the globe.

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David Haskel

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Prior to founding Abacus IP, David served as managing partner of a leading Cambodia law firm in Phnom Penh, representing clients in a wide range of commercial and IP matters. He has further legal experience with law firms in Silicon Valley, San Francisco and Berlin. Before entering the legal profession, David worked as a research associate with a non-partisan think tank in San Francisco.

David holds a Juris Doctor from the University of California, Berkeley, with a specialization in law and technology, as well as a Bachelor of Arts in political economy from the same institution. Having also studied at Sciences Po in Paris and Tsinghua University in Beijing, he speaks English, French, German and Mandarin.