

# **Doyle's Practice Guide to Thailand Business Law**

## **道乐泰国商业投资法律实用指南**

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### **Chapter 13**

### **第十三章**

#### **What are the Benefits Associated with Registering Patents in Thailand?**

#### **在泰国注册专利有哪些益处？**

One of the most difficult issues for foreign investors doing business in developing countries such as Thailand is how best to protect their proprietary technology from infringement.  
对于外国投资者来说，在像泰国这样的发展中国家开展业务时，最困难的问题之一就是如何最大限度地保护他们的专利不受侵犯。

This issue can be particularly important, as in many cases the company's technology to be protected will be among its most valuable assets and the basis of its competitive advantage in the market.

对于技术就是生命、就是竞争基石的公司来说，这个问题尤为重要。

Patents are the primary (but not the only) method by which parties identify and protect their proprietary ownership of an invention.

专利是当事人识别和保护其发明所有权的主要（并非唯一）的方法。

A somewhat simplistic definition of a patent is a temporary, exclusive right granted to an inventor (individual or business) by the government to prevent others from manufacturing, selling or using the invention.

专利的一种较为简单的定义是，政府授予发明人（个人或企业）的一种临时的、排他的权利，用于阻止他人制造、销售或使用该项发明。

Note that the definition of "invention" here is quite broad and encompasses all patentable technology, including mechanical inventions, processes, formulas and designs.

请注意，这里“发明”的定义相当广泛，其包含了所有可申请专利的技术，包括机械发明、工艺、配方和设计。

The next chapter will focus on the legal issues associated with registering patents in Thailand. The purpose of this chapter is to explain:

下一章将重点讨论在泰国注册专利的有关法律问题。而本章的目的是解释：

1. the general objectives of patent law; and  
专利法的立法目的；和
2. the benefits associated with registering patents in Thailand.

在泰国申请专利的益处。

## **Objectives of Patent Law**

### 专利法的立法目的

One of the primary objectives of patent law is to promote innovation in the marketplace. It works to accomplish this by granting the developers of patentable inventions an incentive in the form of an exclusive right to use, produce, and sell the invention for a period of time.

专利法的主要立法目的之一是促进市场创新。给发明者在一段时间内使用、生产和销售发明的排他性权利的形式来鼓励创新、促进技术进步。

Patent law is so important because without such protection, unauthorized parties would be free to wait for others to invest the time, energy and money necessary to develop new technology and then simply copy it. Therefore, patent protection helps to facilitate a return on investment.

专利法是十分重要的，如果没有了它的保护，等发明者投入必要的时间、精力和金钱来开发新技术，侵权人就可以免费地简单地复制它。因此，专利法有助于保护投资，保护投资回报。

**EXAMPLE:** Suppose a company expends the time, money and effort necessary to develop an innovative and potentially life-saving surgical device. The company eventually applies for, and obtains, a patent for the product. That company would be granted an exclusive right to produce, use and sell that invention for a set period of time.

**例如：**假设一家公司投入时间、资金和精力开发一种创新的、潜在的生命拯救外科设备。该公司最终申请并获得该产品的专利。该公司将被授予在设定的时间内独占生产、使用和销售该发明的权利。

During the protection period a third party with no rights to the invention begins to produce, use and sell the device. The patent holder may then call on a court and/or the police to order the infringer to cease production, use, and/or sale of the device and impose fines and/or imprisonment. 在保护期内，未经授权的第三方开始生产、使用和销售该设备。专利持有人可以向法院和/或警方申请，要求其命令侵权方停止生产、使用和/或销售该设备，并可对其处以罚款和/或监禁。

Another objective of patent law is to present greater certainty in the market by providing a system by which to determine who holds the exclusive rights to a particular invention.

专利法的另一个目标是通过提供一种系统，确定谁拥有某一特定发明的独占权，从而在市场中提供更大的确定性。

**EXAMPLE:** Suppose Company A and Company B are competitors in Thailand and are both racing to develop the same patentable technology. Company A files a patent for the technology before Company B, and the patent is eventually granted. As Thai law generally states that the first party to file a patent application (which is eventually approved) has exclusive rights to the invention, it would be clear that Company A has the exclusive rights to the technology rather than Company B.

例如：假设 A 公司和 B 公司是泰国的竞争对手，双方都在争先开发相同的可申请专利的技术。A 公司在 B 公司之前提交了该技术的专利申请，并最终获得了专利。由于泰国法律通常规定，先提交专利申请并最终获批的当事方拥有该发明的独占权，因此很明显 A 公司拥有该技术的独占权，而不是 B 公司。

## Benefits of Registration

### 注册专利的益处

There are many benefits to registering patents in Thailand. The first four discussed below are associated with protecting patents against would-be infringing third parties in Thailand. The last three focus on how to enhance the value of a business by registering patents.

在泰国注册专利有很多的益处。下面讨论的前 4 项与在泰国保护专利免受潜在侵权第三方的侵害有关。而最后 3 项的重点是与如何通过注册专利来提高企业的价值有关。

#### 1. Protection Periods

##### 保护期

There are three types of patents in Thailand, each with differing protection periods. They are as follows.

在泰国有 3 种专利，每种专利都有其不同的保护期。它们如下：

Patent Type 专利类型	Examples of Inventions Protected 受保护发明的例子	Protection Period 保护期
Standard Patent 标准专利 发 专	New manufactured article, machine, composition of matter, process for making or doing something and product improvement 新制造的物品、机器、物质的组成、制造或做某事的过程和产品的改进	20 years (non-renewable) 20 年不可续
Design Patent 设计专利 观设计专	New external shape or surface of a manufactured article 制成品的新的外部形状或者表面	10 years (non-renewable) 10 年不可续
Petty Patent 小专利 实 专	New item which would otherwise qualify for standard patent except that it has no strong technical innovative step 除没有强有力的技术创新步骤外，本应符合标准专利的新项目	10 years maximum (non-renewable) 最长 10 年（不可续期） 6 years with 2 renewal periods of 2 years 6 年，2 次续期，每 次 2 年

These three types of patents will be discussed in greater detail in Chapter 14.  
这 3 种类型的专利将在第 14 章中详细讨论。

## 2. Scope of Protection 保护范围

Once a patent application has been filed and subsequently published (see Chapter 14) the technology contained in the application becomes a part of the “state of the art”. This means that future inventions based on the same technology or innovation would no longer be patentable.

一旦专利申请被提交并随后公布（详见第 14 章），申请中包含的技术就会成为“现有技术”的一部分。而这就意味着，在这之后的基于相同的技术或创新的发明将不再具有申请专利的权利。

**EXAMPLE:** An individual files a patent application in Thailand for a new and innovative type of can opener and the application is filed, published and then eventually approved.

例如：某个人在泰国提交了一项关于一种新型创新开罐器的专利申请，该申请经过提交、发布，最终获得批准。

At the time of publication, this invention would become a part of the state of the art which means that any subsequent patent applications based upon the exact same invention would not be considered new and, therefore, not patentable.

在公开时，本发明将成为现有技术的一部分，这意味着，在这之后的基于完全相同的发明的专利申请将不被视为新的（技术），因此其也不具有申请专利的权利。

## 3. Increased Penalties 加大处罚力度

In order to claim exclusive ownership of an invention in Thailand the owner (or someone authorized by the owner) must obtain a patent in Thailand. As the chart below shows, Thai law does not afford protection to invention owners who have not filed for, and obtained, a patent in Thailand.

为了在泰国主张对一项发明的排他性所有权，所有者（或由所有者授权的人）必须在泰国获取专利。如下图所示，泰国法律对没有在泰国申请和获取专利的发明所有者不提供保护。

	<u>Not registered in Thailand</u> 未在泰国注册	<u>Registered in Thailand</u> 在泰国注册
Fines applicable (import, manufacture, sale or use) 适用的罚款（进口、制造、销售或使用）	None 无	- Up to 400,000 baht 最高 400,000 泰铢
Imprisonment applicable (import, production or sale) 适用的监禁时长（进口、生产或销售）	None 无	- Up to 2 years 最长 2 年

**EXAMPLE:** Suppose a Japanese car company develops a completely new automobile transmission system for a line of cars to be sold in Thailand. A local, unaffiliated parts company in Thailand then starts to produce and sell the transmission system using the same technology.

**例如：**假设一家日本汽车公司开发了一种全新的汽车传动系统，用于在泰国销售的汽车系列。随后，一家泰国本地的非关联零部件公司开始生产并销售使用相同技术的传动系统。

If the Japanese company has **not** registered a patent for the transmission system with the Department of Intellectual Property (DIP) in Thailand, **no** penalties would be applicable to the local, unaffiliated company.

如果日本公司没有在泰国知识产权局（DIP）注册该传动系统的专利，那么对于本地非关联公司而言，不会适用任何处罚。

However, if the Japanese company has already registered its patent with the Thailand DIP, the maximum fine applicable to an infringing party for production and sale would be 800,000 baht (400,000 baht fine x 2 infractions) and/or 4 years maximum imprisonment (2 years imprisonment x 2 infractions). Moreover, the presiding Thai court can order the infringer to stop the production and sale of the transmission system.

然而，如果日本公司已经在泰国 DIP 注册了其专利，针对侵权方的最大罚款将是 80 万泰铢（40 万泰铢罚款 × 2 项侵权行为），并且/或者最多四年监禁（2 年监禁 × 2 项侵权行为）。此外，泰国法院可以命令侵权方停止生产和销售该传动系统。

Note that even though terms of imprisonment are technically applicable to patent infringers under Thai law, in actual practice Thai courts in the past have been generally reluctant to impose a sentence of imprisonment on infringers in these situations.

请注意，尽管根据泰国的法律规定，监禁条款一般可以适用于专利侵权人，但实际操作中泰国法院通常不愿在这些情况下对侵权者判处监禁。

#### 4. Priority

##### 优先权

The concept of “granting priority” means that the owner of an invention is granted patent protection as of the date the patent in Thailand was *applied for* (but not yet approved) as long as the patent application is eventually approved.

“授予优先权”的概念是指：只要专利申请最终获得批准，专利所有权人自泰国专利申请之日（尚未获得批准）起即获得专利保护。

**EXAMPLE:** A US company operating in Thailand develops a new technology to use agricultural by-products to produce a biodegradable plastic. The company files a patent application for the technology in Year One and the application is eventually granted approval in Year Five. In this case, because the application was eventually granted approval, the US company would receive patent protection for the technology as of the time the original application was filed in Thailand (Year One) instead of when the application was finally approved (Year Five).

**例如：**一家在美国的公司在泰国运营，开发了一项使用农业副产品生产可生物降解塑料的新技术。该公司在第一年提交了该技术的专利申请，最终在第五年获得批准。在这种情况下，由于申请最终获得了批准，这家美国公司将从在泰国提交原始申请的时间（第一年）开始获得该技术的专利保护，而不是从申请最终获得批准的时间（第五年）开始。

The concept of granting priority also extends to patents first filed overseas then subsequently filed in Thailand.

授予优先权的概念也适用于首先在海外申请，然后再到泰国申请的专利。

Under Thai law, if an application for a Standard Patent or Petty Patent is filed in one country and then subsequently filed in Thailand within 12 months of the initial filing, the owner can claim priority and receive protection in Thailand as of the date of the initial filing in the other country (as long as the country of the first filing grants similar rights to Thailand parties). For Design Patent applications the priority period is six months.

根据泰国的法律，若一项标准专利（发明专利）或小型专利（实用新型专利）的申请在一个国家提交，然后在首次申请后的 12 个月内在泰国提交，专利所有者可以在泰国主张优先权，并自在另一个国家提出首次申请之日起在泰国获得保护（只要首次申请的国家授予泰国当事人类似的权利）。针对外观设计专利申请，优先权期限为六个月。

**EXAMPLE:** A German manufacturing company files a Standard Patent application in Germany on January 1<sup>st</sup> for a new manufacturing process. The patent had not previously been registered anywhere in the world. On December 1<sup>st</sup> of the same year, the company files the patent application in Thailand. Both applications are eventually approved. Generally, because both Germany and Thailand are members of the WTO and the Thailand application was filed within one year of the initial German application, the owner can claim protection of the patent in Thailand as of January 1<sup>st</sup> (filing date in Germany) rather than as of December 1<sup>st</sup> (date of filing in Thailand).

**例如：**一家德国制造公司于 1 月 1 日在德国为一项新的制造工艺提交了标准专利申请。该专利此前未在世界任何地方注册。同年 12 月 1 日，该公司在泰国提交了专利申请。两项申请最终均获批准。通常情况下，由于德国和泰国都是世贸组织成员国，且泰国的申请是在德国初次申请的一年内提交的，专利权人在泰国可以主张自 1 月 1 日（德国的申请日期）起获得专利保护，而非自 12 月 1 日（泰国的申请日期）起获得保护。

Note that in order for the German applicant to receive the benefit of priority in Thailand it must indicate the priority date in the blank provided in the Thailand application and file a separate request for priority claim with the DIP (see Chapter 14).

请注意，为使德国申请人在泰国享有优先权利益，其必须在泰国专利申请表中提供的空白处注明优先权日期，并向泰国知识产权局（DIP）单独提交优先权主张请求（参见第 14 章）。

## **5. Providing Evidence of Ownership**

### **提供所有权证明**

Patent registration in one country may be used as supporting evidence of ownership of the patent in other countries when disputes arise.

当出现争议时，在一个国家注册的专利也可以作为在其他国家拥有该专利的支持证据。

**EXAMPLE:** In Month One a Canadian company obtains a patent in Canada for an innovative toothpaste tube design. In Month Five the company applies to register the same patent in Thailand only to find that an imposter with no legitimate claim to the design has already applied to register the same patent in Thailand. If the Canadian company wishes to petition the Thailand Intellectual Property Court to cancel the imposter's application in Thailand, it may use the company's patent application in Canada as evidence of the Canadian company's better right to the technology.

**例如：**某加拿大公司在第一个月获得了其创新牙膏管设计的加拿大专利。在第五个月，该公司申请在泰国注册同一专利，却发现一名毫无合法权利的冒名者已在泰国申请注册了同一专利。如果该加拿大公司希望向泰国知识产权法院申请撤销冒名者在泰国的申请，可以将其在加拿大的专利申请作为证明公司对该技术享有更优权利的证据。

## **6. Enhanced Share Value**

### **提高股份价值**

A company's share value increasingly depends upon the proprietary technology it develops or otherwise accumulates. In fact, some companies that barely have a business plan raise vast sums of money through initial public offerings (IPO) or private placement due solely to the technology that they have obtained rights to.

一家公司的股份价值越来越依赖于开发或者积累的专利技术。实际上，一些几乎没有商业计划的公司能通过首次公开募股（简称：IPO）或者私募筹集了大量资金，仅仅是因为他们对技术享有权利。

**EXAMPLE:** A company specializing in nano-technology develops a new metallic substance which is as strong and durable as steel, but it weighs only a hundredth as much. This company files a series of patent applications laying claim to this new technology and then, shortly after, the company prepares for its IPO. Because the company has already filed the patent applications for the technology and thus, has laid claim to its exclusive ownership, the amount of interest in the IPO, and the amount raised may be much higher than if the patent applications had not been filed.

**例如：**一家专注于纳米技术的公司开发了一种新型金属物质，这种物质和钢一样坚固耐用，但重量仅为钢的百分之一。该公司随后提交了一系列专利申请以主张对此新技术的独占所有权。不久之后，公司开始筹备首次公开募股。由于公司已提交专利申请并主张对技术的独占权，其IPO的市场兴趣和募资金额可能会比未提交专利申请时高得多。

**EXAMPLE:** A privately-held alternative fuels research and development (R&D) company develops a new fuel source derived from cactus plants. Even though the formulas and production process for the new fuel has already been fully developed, the company has not yet filed patent applications for this technology due to cost considerations. The company has few other valuable assets.

**例如：**一家私营的替代燃料研发公司开发了一种以仙人掌植物为原料的新型燃料。尽管该新型燃料的配方和生产工艺已经完全开发完成，但由于成本的考虑，公司尚未为该技术提交专利申请。此外，该公司几乎没有其他有价值的资产。

A US multinational company then approaches the R&D company and initiates negotiations for the US company to buy all of the R&D company's shares. During the negotiations, the US company sends valuation experts to determine the value of the R&D company's assets, including the new cactus fuel they have developed.

随后，一家美国跨国公司联系了该研发公司，并开始谈判以购买该公司所有的股份。在谈判过程中，这家美国公司派遣估值专家对该研发公司的资产价值进行评估，包括他们开发的仙人掌燃料。

As the company has yet to assert its exclusive ownership to the fuel formula (by filing patent applications) it does not yet have clearly defined rights to the technology.

由于该研发公司尚未通过提交专利申请来主张燃料配方的独占所有权，其技术权利尚未明确界定。

This fact places the management of the R&D company in a much weaker position to negotiate the highest possible share price. If the R&D company had already filed the patent applications before the value negotiations commenced, then they would have been in a much stronger position to reap the maximum benefit from the sale.

这一事实使研发公司在谈判中无法处于有利地位以争取最高的股价。如果该公司在估值谈判开始前已经提交了专利申请，他们本可以在谈判中占据更有利的地位，从而获得出售的最大利益。

## 7. Patent Licensing

### 专利许可

As mentioned above, registering the patent gives the owner clearly defined legal rights. This degree of certainty of ownership is quite important when licensing the use of the patent to third parties.

如上所述，专利注册为专利权人提供了明确的法律权利。这种明确的所有权在向第三方许可专利使用时非常重要。

In patent licensing agreements, one party (referred to as the licensee) acquires particular rights to use technology from another party that owns or otherwise has rights to, the technology (referred to as the licensor). Appendix A contains a sample patent licensing agreement presented in Thai and English.

在专利许可协议中，一方（称为被许可方）从另一方（称为许可方）获得对技术的特定使用权，而许可方拥有或以其他方式拥有该技术的权利。附录 A 提供了一个泰语和英语的专利许可协议示例。

In such situations it is not legally required but is generally advisable that the technology which is to be licensed first be registered in the country(ies) where the license will be used.

在这种情况下，尽管法律上没有要求，但通常建议首先在专利将被使用的国家注册该技术。

**EXAMPLE:** A UK company develops an innovative design for a new type of refrigerator. Instead of investing to establish the facilities necessary to produce and distribute the refrigerator itself worldwide, the company plans to license the production and the sale of the refrigerator to companies in four different countries in exchange for a royalty fee. The company has filed a patent application for the design in the UK, but not in the four countries.

**例如：**一家英国公司开发了一种新型冰箱的创新设计。该公司计划将冰箱的生产和销售许可给四个不同国家的公司以收取特许权使用费，而不是投资建立生产和分销冰箱的设施。该公司已在英国提交了该设计的专利申请，但尚未在四个国家申请专利。

In order to maximize the opportunity to license the production and sale of the refrigerator the UK company should first file patent applications in each of the countries where it intends to seek licensees.

为了最大化冰箱生产和销售的许可机会，这家英国公司应首先在其计划寻找被许可方的每个国家提交专利申请。

By filing patent applications in each of those countries, the company will be able to show prospective licensees that it has clearly defined rights with respect to the design in those countries. If it does not file patent applications, the company's rights to the design will be less clearly



defined, thereby making it potentially more difficult for the company to market the license to prospective licensees.

通过这些国家提交专利申请，公司可以向潜在被许可方表明其在这些国家对该设计拥有明确的权利。如果不提交专利申请，公司对该设计的权利将不够明确，从而可能更难向潜在被许可方推广许可。

Another situation in which filing patent applications for new technology is quite important is when a technology owner outside of Thailand wishes to license the use of the technology to a Thai party. 另一种专利申请对新技术非常重要的情况是，当泰国外的技术所有者希望将该技术的使用许可给泰国的一方时。

Here, if the technology owner has filed patent applications for the technology in Thailand he may authorize the licensee to pursue claims against infringers of the patent in Thailand on the owner's behalf.

在这种情况下，如果技术所有者已在泰国为该技术提交专利申请，他可以授权被许可方代表所有者对泰国的专利侵权者提起诉讼。

**EXAMPLE:** A German pharmaceutical company develops a new drug, which cures a certain type of cancer, and enters into a licensing and distribution agreement with a Thailand company for that company to sell the drug in Thailand. The German company had previously filed the patent with the DIP in Thailand. The Thai company has also registered the licensing agreement with the DIP.

**例如：**一家德国制药公司开发了一种治疗某种癌症的新药，并与一家泰国公司签订了许可和分销协议，由该泰国公司在泰国销售该药物。德国公司此前已在泰国的知识产权局（DIP）提交了专利申请。泰国公司也在 DIP 注册了该许可协议。

A competing pharmaceutical company begins to produce and sell a drug in Thailand with exactly the same formula and composition as the German company's drug.

一家竞争对手制药公司开始在泰国生产和销售一种与德国公司药物配方和成分完全相同的药物。

In this situation, because the patent has been registered in Thailand and the licensing agreement has also been registered with the DIP, the Thai company would have the authority to pursue claims against infringers in Thailand on behalf of the German owner.

在这种情况下，由于专利已在泰国注册且许可协议也已在 DIP 注册，该泰国公司将有权代表德国所有者对泰国的侵权者提起诉讼。

If the patent and the licensing agreement had not been registered here, the local licensee would not have such right and the German company would instead have to pursue the claim itself.

如果专利和许可协议未在此注册，当地被许可方将无权提起诉讼，而德国公司则必须自己提起诉讼。

Note that in order for the licensee in Thailand to pursue a claim in Thailand against a third party on behalf of the owner, the licensee must register the licensing agreement with the DIP, granting the licensee the right to use and protect the patent. This registration can normally be accomplished within a day.

请注意，为使泰国的被许可方能够代表所有者在泰国对第三方提起诉讼，被许可方必须在 DIP 注册许可协议，从而获得使用和保护专利的权利。此注册通常可以在一天内完成。

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