

## CHANGES TO PATENTS REGIME

### Stricter system for patents from 2020

Since the introduction of an independent patent regime with its own patent examination system on 23 February 1995, patent law in Singapore has undergone several stages of transformation in a bid toward Singapore's goal of becoming an intellectual property hub in Asia.

This update summarizes the current patent systems in Singapore, and highlights upcoming changes including the move to a stricter system for patents from 2020.

### Current patent system in Singapore

Patent applications with lodgement dates<sup>1</sup> up to 13 February 2014 fall under a "self-assessment" system where a patent application can proceed to grant even if there were objections raised in the examination report. The aim of the "self-assessment" system was to encourage a greater level of innovation.

In order to enhance the patent regime in Singapore, on 14 February 2014, there was a shift from the "self-assessment" system to a positive grant system, which is the patent system currently in place. In other words, it is now compulsory that all patent applications with lodgement dates<sup>1</sup> on or after 14 February 2014 must meet the patentability criteria of novelty, inventive step and industrial applicability. This was not the case previously under the "self-assessment" approach.

In the positive grant system, only fully positive patent applications can proceed to grant. Generally, a patent application can be examined by a local search and examination process, or a local examination process based on a foreign search report, or a supplementary examination process. The supplementary examination relies on a foreign grant or final examination results from approved corresponding applications<sup>2</sup> ("the Foreign Route") where the examiner will examine whether the foreign grant or final results of foreign examination meets Singapore requirements, and does not consider substantive issues of novelty and inventive step. No official fee is payable for the supplementary examination. An applicant will receive an examination report at the end of the examination process.

Where an applicant receives an examination report that contains objections, an examination review, which functions as a type of appeal procedure, may be requested. The examination review will then be followed with an examination review report. The patent application may proceed to grant if the examination review report shows no objections. However, if the examination review report still contains objections, the patent application will not proceed to grant.

<sup>1</sup> Lodgement date refers to the date of filing a national patent application, or the date of national phase entry into Singapore, or the initiation date of a divisional patent application.

<sup>2</sup> Approved corresponding applications/related national phase applications are Australia, Japan, Canada (in respect of applications filed in English only), New Zealand, United Kingdom, United States of America, European Patent Office (in respect of EPO applications filed in English only), the receiving office of a PCT application, Republic of Korea.

# PATENT UPDATE

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An advantage of the current system, especially for innovators in the information communications technology sector and the pharmaceutical-biotechnology sector, amongst others, is the shorter time span in obtaining a patent grant. For example, applicants can obtain a fast patent grant even within 12 months if their applications are conforming.

## ***Upcoming Changes***

### ***Stricter Examination Procedure***

To promote innovation and further the country's economic growth, a Bill has been recently passed (on 28 February 2017) that requires patent applications filed in Singapore to go through a more stringent examination procedure (stricter system) with effect from 1 January 2020.

In this more stringent examination procedure, all patent applications filed on or after 1 January 2020<sup>3</sup> will have to go through an examination by the Intellectual Property Office of Singapore (IPOS). In other words, the Foreign Route as described hereinabove will be abolished, that is the supplementary examination process will no longer be available, for patent applications filed on or after 1 January 2020<sup>3</sup>. While the Foreign Route is discontinued, the search process can still be conducted by either the IPOS or a foreign patent office.

The objective of the stricter system is to improve the quality of patents granted in Singapore by having all patent applications being fully examined by the local examiners against Singapore's standards of patentability.

Applicants are advised to file their patent applications in Singapore prior to 1 January 2020 if they wish to avail themselves of the Foreign Route.

### ***Introduction of Grace Period Provision***

Another key change grants inventors a grace period of 12 months prior to their patent applications to disclose their inventions publicly. This is to allow inventors to attract investors, or publish scientific papers, without waiting for a patent grant.

There are apparent advantages to the grace period provision in Singapore. However, it should be borne in mind that such grace period provision for disclosure by the inventor(s) may not be available in most other jurisdictions, for example, Europe. As such, while said disclosure may be disregarded under the Singapore Patents Law, provided a patent application is filed in Singapore relating to subject matter of said disclosure within 12 months of said disclosure, such a disclosure would be prejudicial to patent applications filed in jurisdictions where no such grace period provision is available under their respective laws.

<sup>3</sup> Patent applications filed on or after 1 January 2020 refers to national patent applications having a date of filing on or after 1 January 2020, or international patent applications entering national phase having a date of filing on or after 1 January 2020, or divisional patent applications having an initiation date on or after 1 January 2020.



Therefore, it would be advisable to seek legal advice prior to making such disclosure.

We do not have full detail as to when the grace period provision in Singapore will come into effect. We will keep you apprised once the IPOS has made a decision in this regard.

### ***Recommendations***

With the move toward the stricter system for patent from 2020, it may be perceived that the costs of patenting in Singapore are on its rise. As a result, one may wonder whether it would be still attractive for applicants to file in Singapore.

Nevertheless, there are certainly advantages in obtaining a Singapore patent with Singapore's good record of intellectual property protection and enforcement. The improving quality of a Singapore patent will also be welcoming, attributing to strategic benefits to filing in Singapore with respect to prosecution in other countries.

With Singapore's bilateral Patent Prosecution Highway (PPH) agreements and Global PPH participation, search and examination reports obtained from the IPOS may prove to be helpful and valuable for prosecution in other countries. Furthermore, obtaining a Singapore patent would also enable applicants to fast track their related patent applications in ASEAN using the ASEAN Patent Examination Cooperation (ASPEC) framework.

There is no doubt in that Singapore has taken and will be taking great strides forward to becoming an intellectual property hub in Asia. Indeed, all eyes will be on the changing Singapore patent landscape in the near future.

