

Course: Intellectual Property Law-Cambodia

Lecture 5: Patents, Utility Models, and Industrial Designs (Part 1)

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ច្បាប់ ស្តីពី ប្រកាសនីយបត្រតក្កកម្ម
វិញ្ញាបនបត្រម៉ូដែលមានអត្ថប្រយោជន៍
និងគំនូរឧស្សាហកម្ម

Law on Patents,
Utility Model Certificates
and Industrial Designs

Intellectual Property Law

Promulgated by the head of state on January 22, 2003

Entry into force through out the country on February 12, 2003

136 Articles split into 9 Chapters

Chapter 1: General Provisions

Chapter 2: Patents (Articles 3-68)

Chapter 3: Utility Model Certificates (Articles 69-76)

Chapter 4: International Applications under the Patent Cooperation Treaty

Chapter 5: Industrial Designs (Articles 89-113)

Chapter 6: Common Provisions (Articles 114-131)

Chapter 7: Offenses

Chapter 8: Transitional Provision

Chapter 9: Final Provision

The role of the patent system

- To encourage technological innovation
- To promote competition and investment
- To provide information on the latest technical developments
- To promote technology transfer

Article 1.-

This Law provides protection for the patented invention and certificated utility model certificates and for registered industrial designs in the Kingdom of Cambodia in accordance with this Law and the Patent Cooperation Treaty.

Article 2.-

The objective of the Law is:

1. to encourage innovation, scientific and technological research and development;
2. to stimulate and promote increased internal and external commerce and investment;
3. to promote the transfer of technology to the Kingdom of Cambodia in order to facilitate industrial activity and the development of the economy; and
4. to provide protection for industrial property rights and to combat the infringement thereof, as well as illegal business practices.

What is a patent?

Article 3.-

For the purposes of this Law, “**patent**” means **the title វិញ្ញាបនបត្រ** granted to protect an invention.

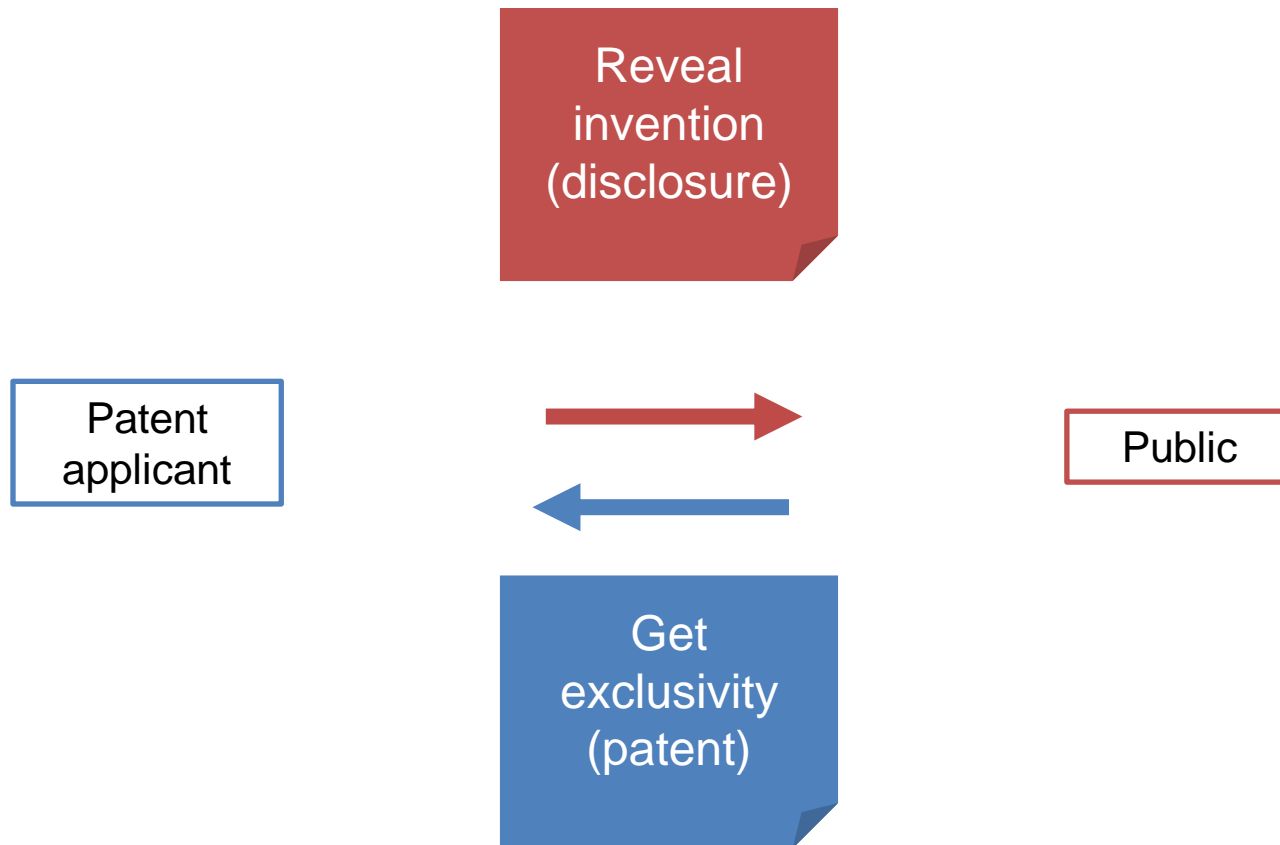
For the purposes of this Law, “**invention**” គំនិតកម្ម means an idea of an inventor which *permits in practice the solution to a specific problem* in the field of **technology**. An invention may be, or may relate to, a **product** ផលិតផល or a **process** ដំណើរការផលិតកម្ម.

Article 45.-

Subject to Article 46, a patent shall **expire twenty (20) years** after **the filing date of the application for the patent**.

What is a patent?

Patents as a social contract



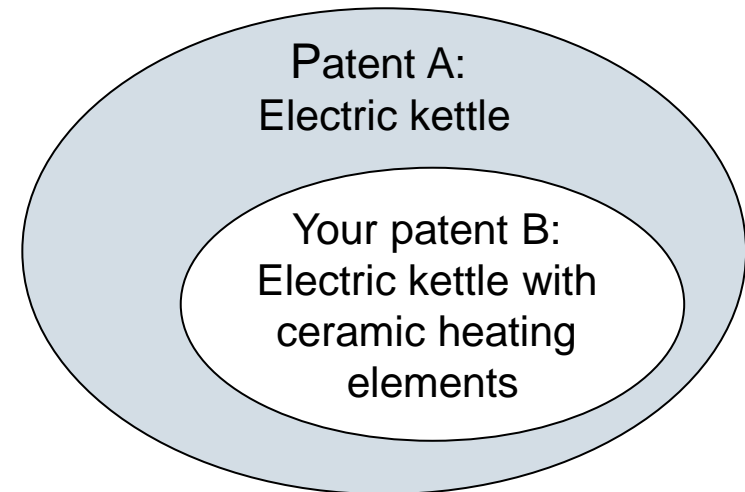
What is a patent?

- Does a patent give you the right to exploit an invention?

- NO!

- A patent is a **negative** right.
It gives you the right **to prevent others from exploiting the invention.**
It is not an enabling right.
- Patents owned by others may overlap or encompass your own patent.
=> **Seek a licence before commercialising**

For example:



<https://www.youtube.com/watch?v=mue4l3Ytz9k>

<https://www.youtube.com/watch?v=bGZH0x5O96U>

Rights conferred by patents

- Right to prevent others from making, using, offering for sale, selling or importing infringing products in the country where the patent was granted

Exception: non-commercial purposes (private use, academic research)

- Right to assign, sell or license these rights
- These rights belong to the patent holder

Article 42.-

For the purposes of this Law “**exploitation**” of a patented invention means any of the following acts:

1. when the patent has been granted in respect of **a product**:

(a) making, importing, offering for sale, selling and using **the product**;

(b) stocking such **product** for the purposes of offering for sale, selling or using;

2. when the patent has been granted in respect of **a process**:

(a) using **the process**;

(b) doing any of the acts referred to in items (a) and (b) of the subparagraph (1) of this Article in respect of a product obtained directly **by means of the process**.

Article 43.-

The owner of the patent shall have the right, subject to Article 44 and Articles 47 to 55 of this Law, to institute court proceedings against any person who infringes the patent by performing, without his agreement, any of the acts referred to in Article 42 of this Law or who performs acts which make it likely that infringement will occur.

Article 16.-

The application for a patent shall be filed with the Ministry in charge of industry and shall contain **a request, a description, one or more claims, one or more drawings (where required), and an abstract**. It shall be subject to the payment of the prescribed application fee, as referred to in Article 130 of this Law.

Article 17.-

The request shall contain a petition to the effect that a patent be granted, **the name** of and **other prescribed data** concerning the **applicant**, the **inventor** and the **agent**, if any, and the **title of the invention**.

Where the applicant is not the inventor, the request shall be accompanied **by a statement justifying the applicant's right to the patent**.

Article 18.-

The description shall disclose the invention in a manner sufficiently clear and complete for the invention to be carried out by a person having ordinary skill in the art. The description shall, in particular, indicate the best mode known to the applicant for carrying out the invention, at the filing date or, where priority is claimed, at the priority date of the application.

Article 19.-

The claims shall define the matter **for which protection is sought**. The description and the drawings may be used to interpret the claims.

Claims shall be clear and concise. They shall be fully supported by the description.

Article 20.-

Drawings shall be required for the understanding of the invention.

Article 21.-

The abstract shall merely serve the purpose of technical information; in particular, it shall not be taken into account for the purpose of interpreting the scope of the protection.

Article 22.-

The applicant may, up to the time when the application is in order for grant, **withdraw the application at any time during its pendency.**

What can and can't be patented

Patents protect technical inventions which solve technical problems:

- Chemical substances, pharmaceuticals
- Products, devices, systems
- Processes, methods, uses

In most countries, patents are not granted for mere business methods or rules of games, or for methods of treatment, diagnostics and surgery of the human or animal body, or for inventions that are contrary to *public* order or morality, or for plant and animal varieties.

What can and can't be patented

Article 3.-

For the purposes of this Law, “patent” means **the title វិញ្ញាបនបត្រ** granted to protect an invention.

For the purposes of this Law, “invention” **គំនិត** means an idea of an inventor which permits in practice the solution to a specific problem in the field of technology. An invention may be, or may relate to, **a product ផលិតផល** or **a process ដំណើរការផលិតកម្ម**.

What can and can't be patented

Article 4.-

The following inventions, shall be **excluded** from patent protection:

1. discoveries, scientific theories and mathematical methods;
2. schemes, rules or methods for doing business, performing purely mental acts or playing games;
3. methods for treatment of the human or animal body by surgery or therapy, as well as diagnostic methods practiced on the human or animal body. **This provision shall not apply to products for use in any of those methods;**
4. pharmaceutical products as provided in Article 136 of this Law;
5. plants and animals other than **micro-organisms**, and essentially biological processes for the production of plants or animals;
6. Plants varieties.

Article 136.- (Original)

The pharmaceutical products mentioned in the Article 4 of this Law shall be excluded from patent protection until January 01, 2016, according to the Declaration on Agreement on Trade-Related Aspects of Intellectual Property Rights and Public Health of the Ministerial Conference of World Trade Organization dated November 14, 2001 in Doha of Qatar.

មាត្រា ១៣៦.-

ផលិតផលឱសថ ដូចមានចែងក្នុងមាត្រា ៤ នៃច្បាប់នេះ មិនត្រូវការពារដោយប្រកាសនីយបត្រតក្កកម្ម រហូតដល់ថ្ងៃទី ០១ ខែ មករា ឆ្នាំ ២០១៦ យោងតាមសេចក្តីប្រកាសព័ត៌មានស្តីពីកិច្ចព្រមព្រៀងពាណិជ្ជកម្មពាក់ព័ន្ធកម្មសិទ្ធិបញ្ញា និងសុខភាពសាធារណៈនៃសន្និសីទថ្នាក់រដ្ឋមន្ត្រីរបស់អង្គការពាណិជ្ជកម្ម ពិភពលោកចុះថ្ងៃ ទី ១៤ ខែ វិច្ឆិកា ឆ្នាំ ២០០១ នៅទីក្រុងដូហាប្រទេសកាតា ។

Amended in 2017

Article 136._ New

The pharmaceutical products mentioned in the Article 4 of is Law shall be excluded from patent protection until expiration of a grace period determined by the decision of the council of the agreement on trade-related aspects of intellectual property rights of the World Trade Organization about the extended grace period in accordance with agreement on trade-related aspects of intellectual property rights for members of the least developed countries in particular obligations for pharmaceutical products.

មាត្រា ១៣៦._ថ្មី

ផលិតផលឱសថ ដូចមានចែងក្នុងមាត្រា ៤ នៃច្បាប់នេះ មិនត្រូវបានការពារដោយប្រកាសនីយបត្រតក្កកម្មរហូតដល់ផុតរយៈពេលអនុគ្រោះ ដែលត្រូវបានកំណត់ដោយសេចក្តីសម្រេចរបស់ក្រុមប្រឹក្សានៃកិច្ចព្រមព្រៀងពាណិជ្ជកម្មពាក់ព័ន្ធនឹងកម្មសិទ្ធិបញ្ញារបស់អង្គការពាណិជ្ជកម្មពិភពលោក អំពីការពន្យាររយៈពេល អនុគ្រោះ អនុលោមតាមកិច្ចព្រមព្រៀងពាណិជ្ជកម្មពាក់ព័ន្ធនឹងកម្មសិទ្ធិបញ្ញាសម្រាប់សមាជិកដែលជាប្រទេសអភិវឌ្ឍន៍តិចតួច ក្នុងកាតព្វកិច្ចជាក់លាក់ចំពោះផលិតផលឱសថ ។

Patentability

Article 5.-

An invention is patentable if it :

- 1. is new; ថ្មី
- 2. involves an inventive step; and មានជំហានរកយើងឃើញថ្មី
- 3. is industrially applicable. អាចយកទៅអនុវត្តបានក្នុងវិស័យឧស្សាហកម្ម

When is an invention "new"?

Article 6.-

ការរកឃើញពិសេស

An invention is **new** if it is not anticipated by **prior art**.

Prior art shall consist of **everything disclosed to the public, anywhere in the world, by publication in tangible form or by oral disclosure, by use or in any other way, prior to the filing or, where appropriate, the priority date, of the application claiming the invention.**

For the purposes of the 2nd paragraph of this Article, disclosure to the public of the invention shall not be taken into consideration:

- a. if it occurred **within twelve (12) months** preceding the filing date or, where applicable, the priority date of the application; and
- b. if it was by reason or in consequence **of acts committed by the applicant or his predecessor in title or of an abuse committed by a third party with regard to the applicant or his predecessor in title.**

Article 27.-

The application may contain a declaration claiming **the priority**, as provided for in the **Paris Convention**, of one or more earlier national, regional or international applications filed by the applicant or his predecessor in title in or for any State party to the said Convention or any Member of the World Trade Organization.

Article 28.-

Where the application contains a declaration under Article 27 of this Law, the application shall furnish the Registrar, within the prescribed time limit, **a copy of the earlier application** certified as correct by the Office with which it was filed.

When is an invention "new"?

ការរកឃើញពីមុន
prior art

- When it is not part of the state of the art
- State of the art = everything made available to the public before the date of filing

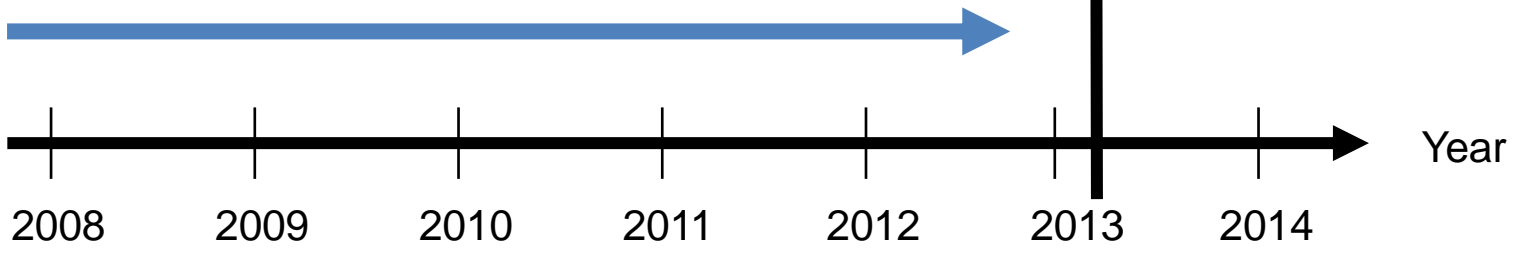
Keep your invention confidential until you have filed your application!



Patent application

State of the art

Date of filing



Do's and don'ts for safeguarding novelty

Don'ts

- Do not publish any articles, press releases, conference presentations/ posters/ proceedings, lectures or blog posts, etc. before you file
- Do not sell any products incorporating the invention before you file

Do's

- Sign a non-disclosure agreement (NDA)
- Seek professional advice at an early stage
- File before anyone else does!

When is an invention "inventive"?

Article 7.- (Not for UM)

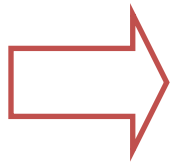
An invention shall be considered as involving an inventive step if, having regard to the prior art relevant to the application claiming the invention and as defined in the 2nd paragraph of Article 6 of this Law, it would not have been obvious to a person having ordinary skill in the art.

Article 8.-

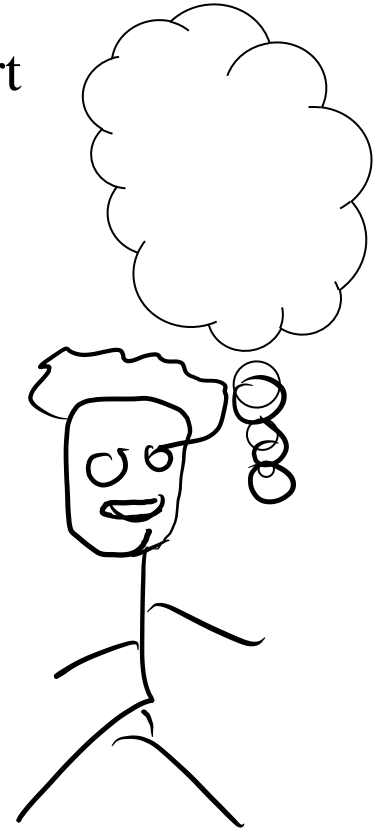
An invention shall be considered industrially applicable if it can be made or used in any kind of industry

When is an invention "inventive"?

- When it is not obvious to the person skilled in the art in view of the state of the art
- The person skilled in the art
 - is a skilled practitioner in the relevant technical field
 - has access to the entire state of the art
 - is aware of general technical knowledge
 - is capable of routine work



**He knows EVERYTHING,
but has ZERO imagination!**



Assessing novelty

Claim: A pouring vessel comprising
 (a) a compartment for liquids (1),
 (b) a handle (2),
 (c) a lid, and
 (d) two spouts (5) extending from the compartment (1),
 (e) whereby the tops of the two spouts are arranged at the same height.

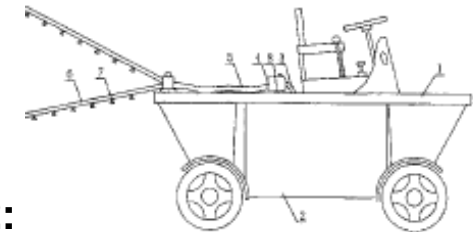


Fig. 1.

Stage 1: Prior art

The prior art search revealed the following documents:

Document D1:
 A teapot with one spout.



Document D2:
 High efficiency distributor for fertilizer. Each rod has several nozzles for spraying liquid.

Document D3:
 A filter handle with two spouts to be used with a coffee-maker.



Document D4:
 An oil and vinegar bottle which reveals a second bottle inside. The two spouts are cleverly arranged to ensure the second bottle never drips while the first one is in use.



Assessing inventive step (I)

Stage 1

- Determine the closest prior art and common features:
 - (a) a compartment for liquids
 - (b) a handle
 - (c) a lid
 - (d) one spout



Stage 2: Problem

- Differences over D1:
 - two spouts instead of one
 - particular arrangement of the spouts
- Drawback of prior art:
 - time-consuming
- Advantage/effect of the invention:
 - the time needed to fill multiple cups is reduced
- Objective problem to solve:
 - how to modify the teapot of D1 to reduce the time needed to fill multiple cups



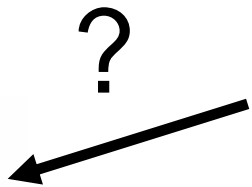
Assessing inventive step (II)

Stage 3: Solution

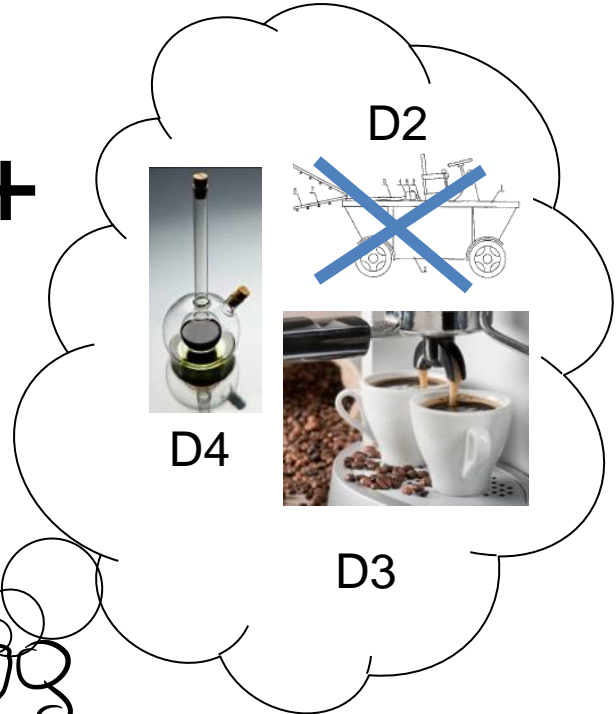
Is the claimed solution obvious in view of the prior art?



Fig. 1.



+



Objective problem for the skilled person: How to modify the teapot of D1 in order to reduce the time needed to fill multiple cups



Article 9.-

The inventions, the commercial exploitation in the Kingdom of Cambodia of which would be

- contrary to public order or morality,
- or would not be protected human, animal or plant life or health,
- or would cause serious prejudice to the environment, or prohibited by law,

are excluded from patentability.

Article 10.-

The right to a patent shall belong to the inventor.

Article 12.-

If and to the extent to which two or more persons **have made the same invention independently of each other**, the person **whose application has the earliest filing date** or, if priority is claimed, **the earliest validly claimed priority date shall have the right to the patent**, as long as the said application is not withdrawn, abandoned or rejected.

Article 13.-

The right to a patent may be assigned, or may be transferred by **succession**.

Article 14.-

An invention is made **in execution of an employment contract**, the right to the patent shall belong, in the absence of contractual provisions to the contrary, **to the employer**.

Article 23.-

The application shall relate to one invention only or to a group of inventions so linked as to form a single general inventive concept.

Article 24.-

The applicant may, up to the time when the application is in order for grant, amend the application, provided that the amendment shall not go beyond the disclosure in the initial application.

Article 26.-

The fact that a patent has been granted on an application that did not comply with the requirement of unity of invention under Article 23 of this Law shall not be a ground for the invalidation of the patent.

References

EPO, and EUIPO. *Intellectual Property Teaching Kit: IP Advanced Part I: Patents, Utility Models and Designs*. EPO Munich: EPO, 2014.

Law on Patents, Utility Model Certificates and Industrial Designs, 2003. (Cambodia).