

Legal Framework for the Application, Examination, Grant, Cancellation and Appeals in relation to Patents in Thailand

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Director of Legal Office
Department of Intellectual Property





7 Intellectual Property Laws

Thailand's IP laws

Status

- Patent Act B.E. 2522 (1979)
amended (No. 2) B.E. 2535 (1992), (No.3) B.E.2542 (1999)

amending

- Trademark Act B.E. 2534 (1991)
amended (No. 2) B.E. 2543 (2000), (No. 3) B.E. 2559 (2016)

- Copyright Act B.E. 2537 (1994)
amended (No. 2, 3) B.E. 2558 (2015), (No.4) B.E. 2561 (2018)

amending

- Protection of Layout-Designs of Integrated Circuits Act B.E. 2543 (2000)

- Trade Secret Act B.E. 2545 (2002)
amended (No. 2) B.E. 2558 (2015)

- Geographical Indication Protection Act B.E. 2546 (2003)

- Optical Disc Production Act B.E. 2548 (2005)

Will be
revoked

International Treaties



WIPO
Berne Convention : Since July 1931
WIPO Convention : Since December 1989
Paris Convention : Since May 2008
Patent Cooperation Treaty : Since September 2009 (Member No. 142 nd , DIP PCT Office was opened on December 2009)
Madrid Protocol : Since August 2017 (Member No. 99 th , DIP Madrid Office was opened on November 2017)
Marrakesh Treaty (Member No. 51 st Since April 2019)
WTO
TRIPS Agreement : Since January 1995
Next Step
WIPO Copyright Treaty (WCT)
WIPO Performances and Phonograms Treaty (WPPT)
Hague Agreement

Overview of The Patent Act

Development of the Patent Act



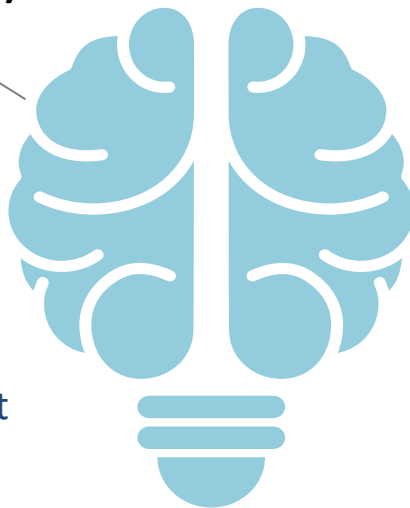
The Patent Act B.E. 2522 (1979)

1. Patent Act (No. 2) B.E. 2535 (1992)

- Enforced from 30 SEP 2535 (1992)
- To comply with WTO obligations

2. Patent Act (No.3) B.E.2542 (1999)

- Enforced from 27 SEP 2542 (1999)
- To add the protection of Petty Patent



The Draft Patent Act (No..) B.E.

1. The draft regarding patent / petty patent

- 29 JAN 2019 the Cabinet approved principles of the draft
- Status : Has been sent to the Council of State for consideration

2. The draft regarding design patent and the accession to the Hague Agreement

- Status : published the draft on the DIP website and www.lawamendment.go.th for public hearing on 18th September – 18th October 2019.

The Patent Act B.E. 2522 (1979)



According to the Thai Patent Act B.E. 2522, there are 3 types of Protection

1. Invention Patent

- *Novelty + Inventive step + industrial applicability*
- *Duration: 20 yrs*

2. Design Patent

- *Novelty + industrial applicability*
- *Duration: 10 yrs*

3. Petty Patent

- *Novelty + industrial applicability*
- *Duration: 6 yrs initial + 2 yrs + 2 yrs (maximum of 10 yrs)*

The following inventions are not protected under Patent Act:

- (1) naturally occurring microorganisms and their components, animals, plants or extracts from animals or plants;
- (2) scientific or mathematical rules or theories;
- (3) computer programs;
- (4) methods of diagnosis, treatment or cure of human and animal diseases;
- (5) inventions contrary to public order, morality, health or welfare.

Patent vs Design Patent

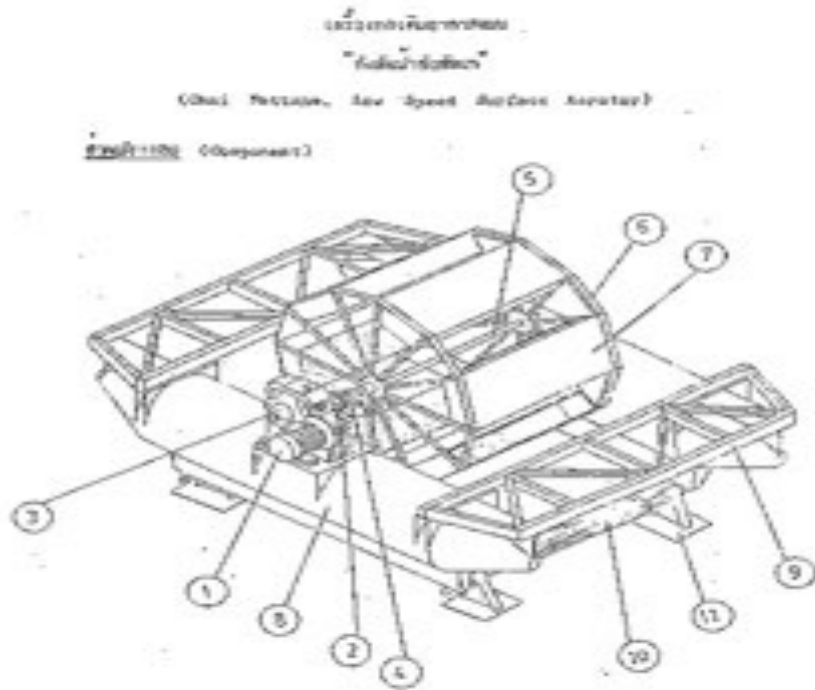
"invention" means any innovation or invention which creates a new product or process, or any improvement of a known product or process



"design" means any form or composition of lines or colors which gives a special appearance to a product and can serve as a pattern for a product of industry or handicraft



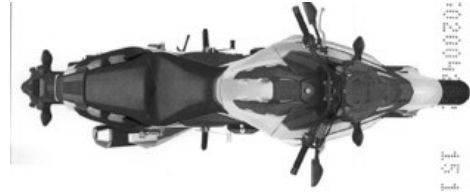
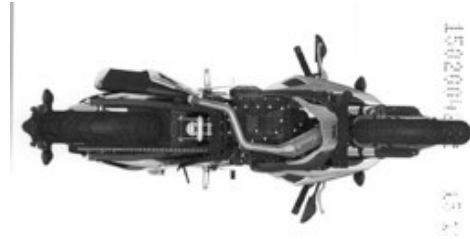
Example of Product Patent



“Chaipattana Aerator”

Patent No.3127, Granted: Feb 1993

Example of Design Patent



Honda Motor Co., Ltd.

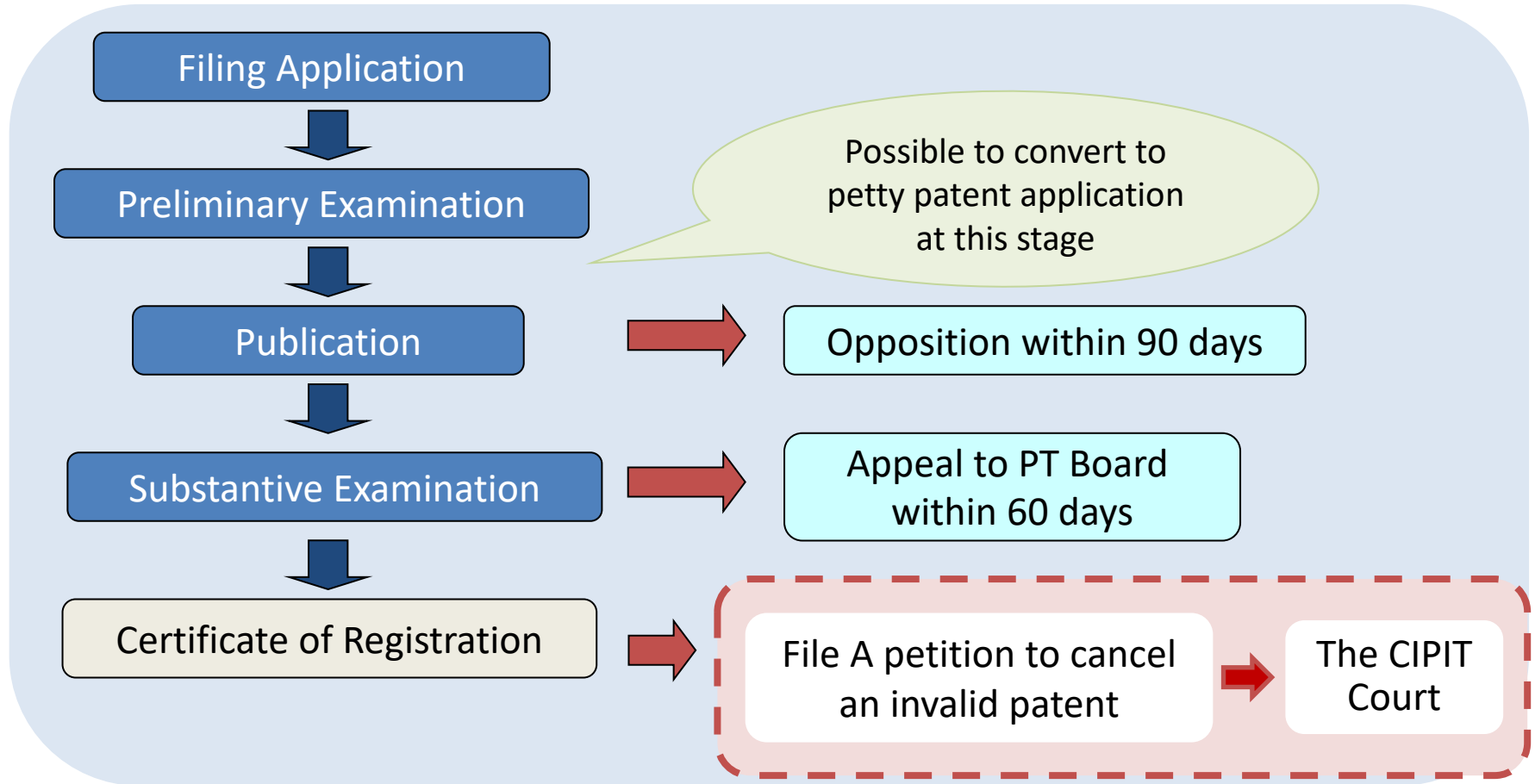
Application No. 1502004252

Registration No. 60306 Issued on 26 Jan 2018

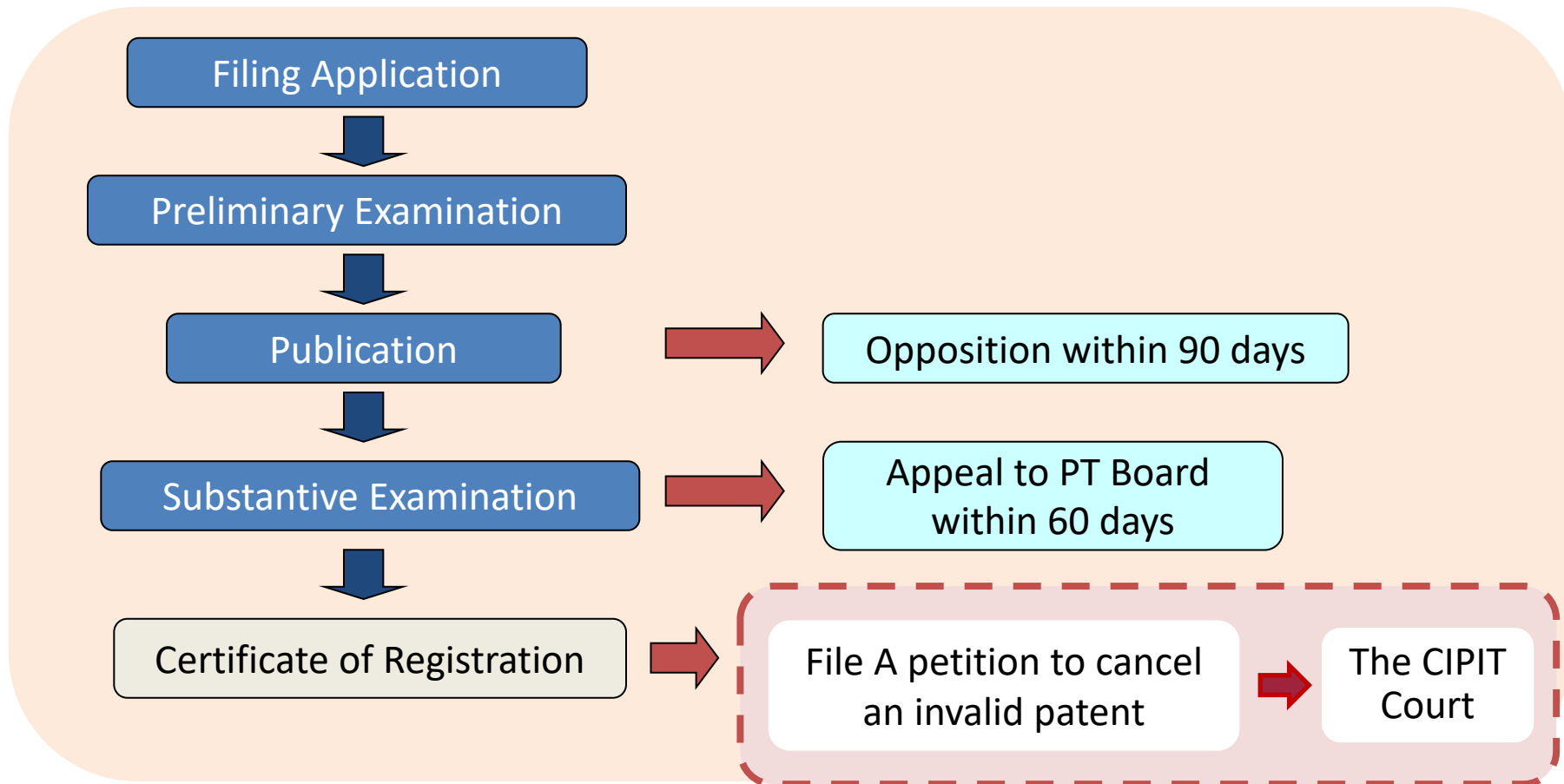
Registration Process

11

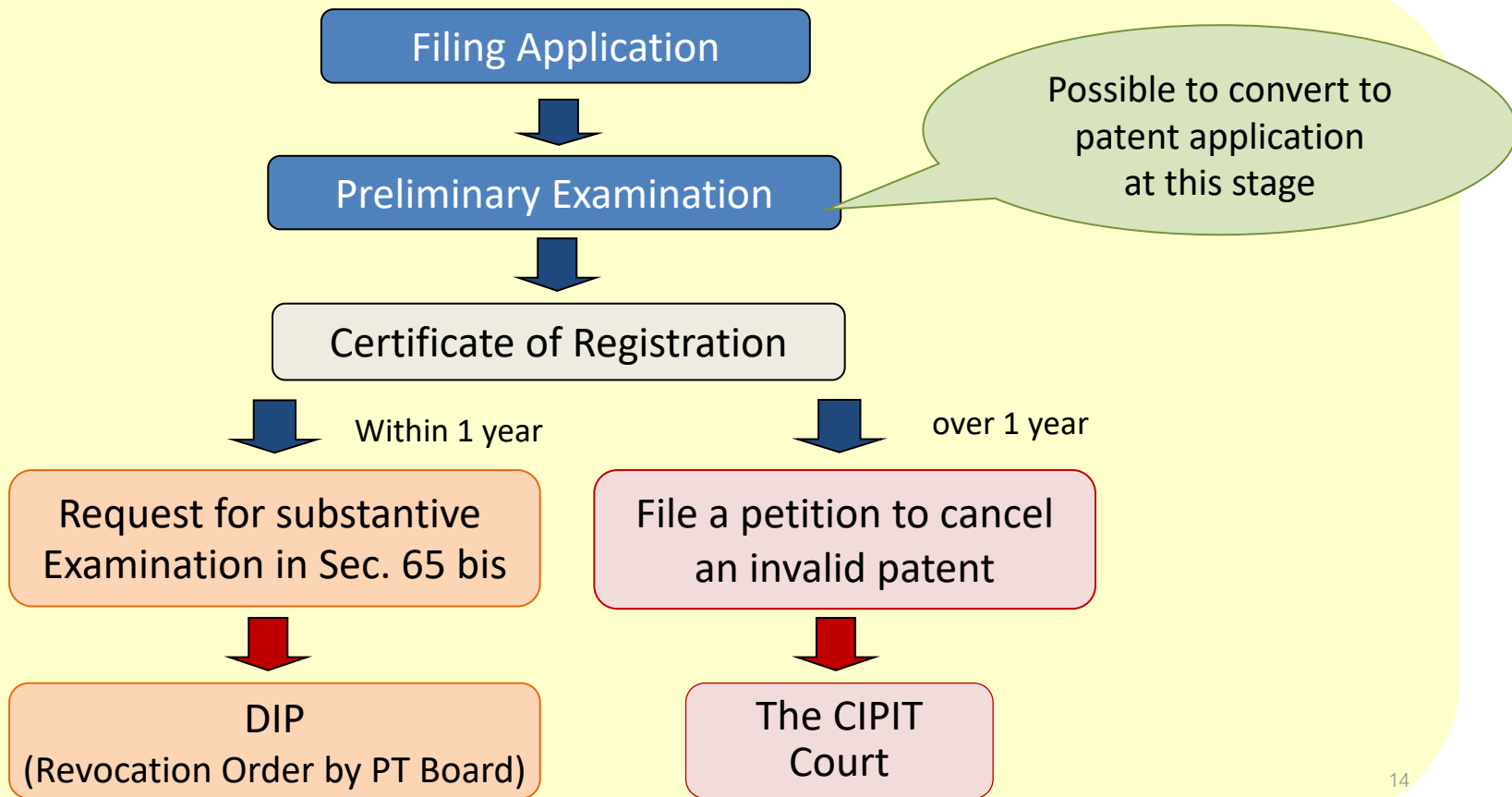
Patent Application



Design Patent Application

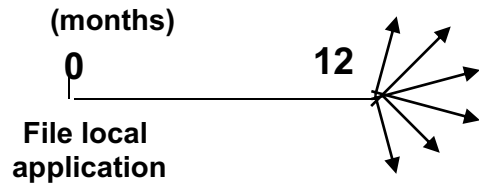


Petty Patent Application



Comparison of Paris and PCT Route

Paris

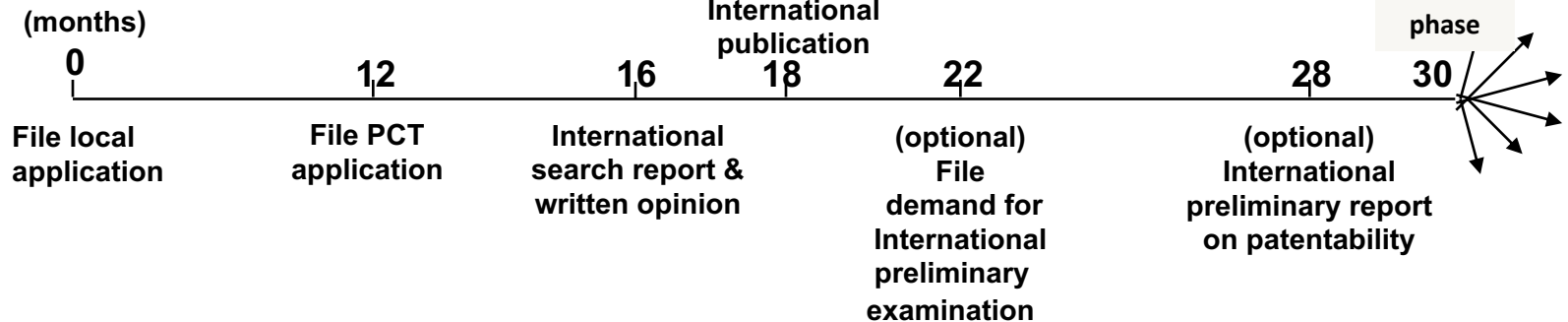


File applications abroad

file separate patent applications within 12 months from the first filing date

requirements for entry into the national phase within 30 months from the first filing date

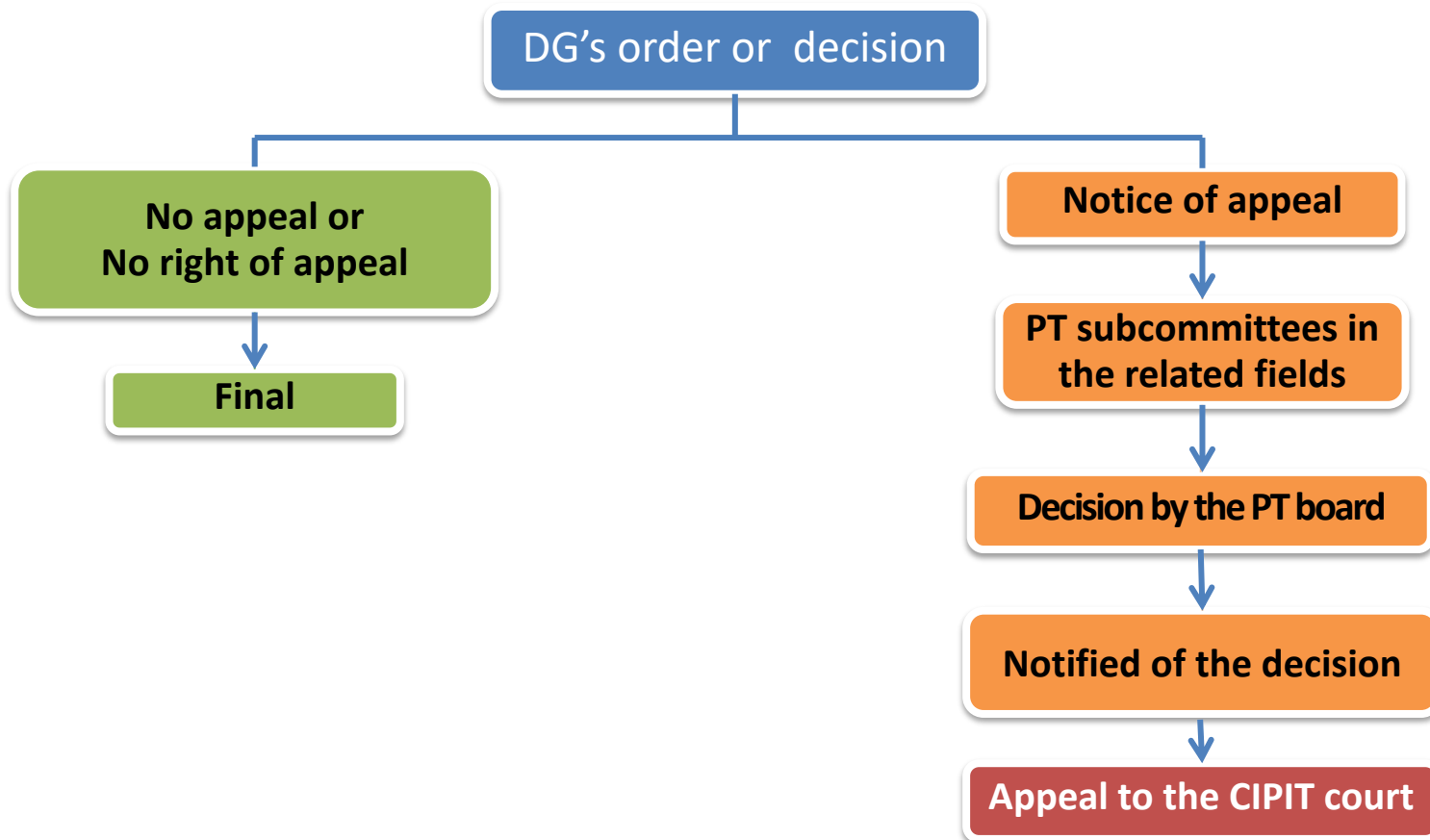
PCT



The Appeal Process

16

The Patent Appeal Process



BOARD OF PATENTS

- The Board of patents shall be composed of

Chairman



Permanent Secretary of the Ministry of Commerce

Qualified Members

(not more than twelve
&
at least six members shall be
from the private sectors)



science, engineering, industry,
industrial design, agriculture,
pharmacy, economics and law

- Approved by the Cabinet (2-year term)



BOARD OF PATENTS

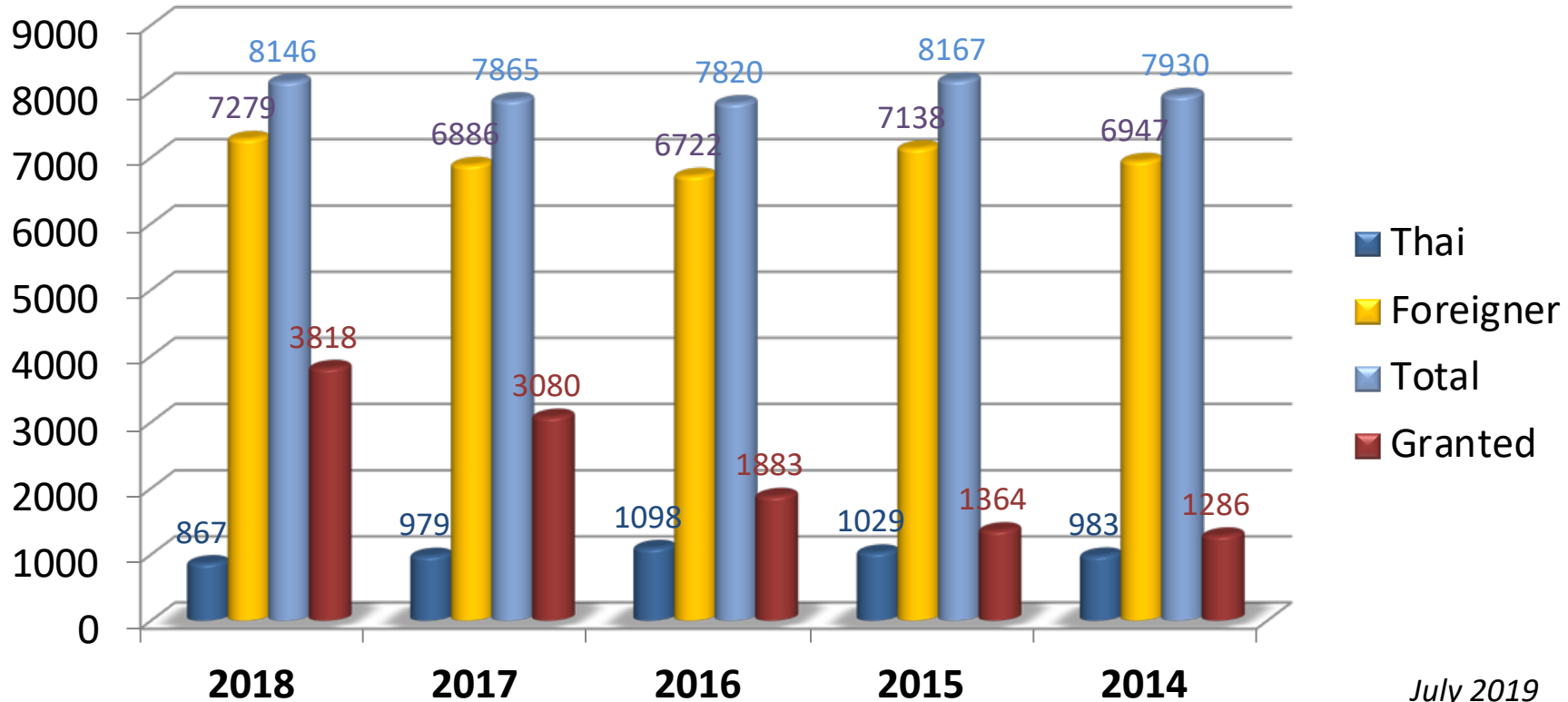
The Board shall have the following authorities and duties:

- (1) to give advice or consultation to the Minister in issuing the Royal Decrees and Ministerial Regulations under this Act;
- (2) to decide any appeal made against any order or decision of the Director-General on patents or petty patents;
- (3) to act on other matters as stipulated in this Act;
- (4) to consider any other matter on patents or petty patents as assigned by the Minister.

DIP Statistics

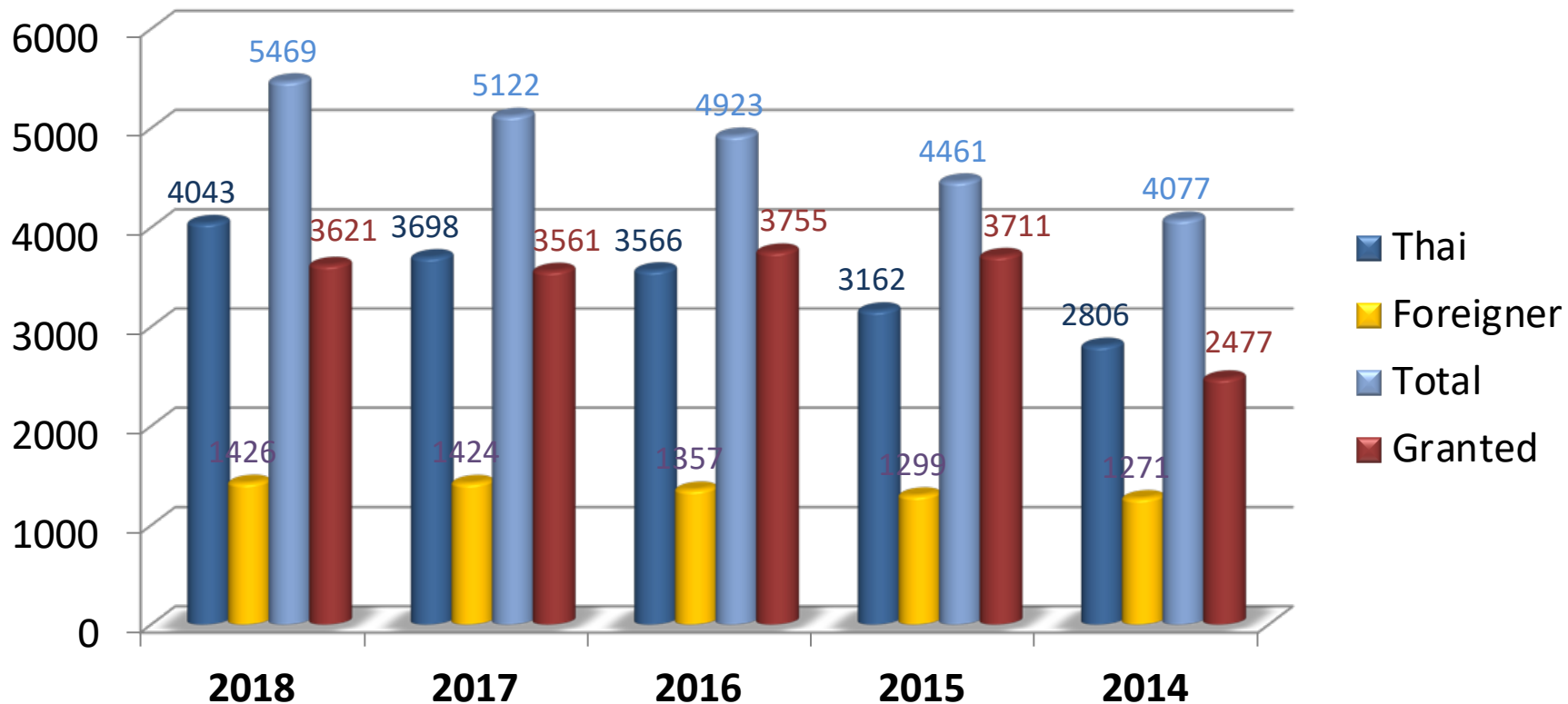
20

Statistics of Patent Application

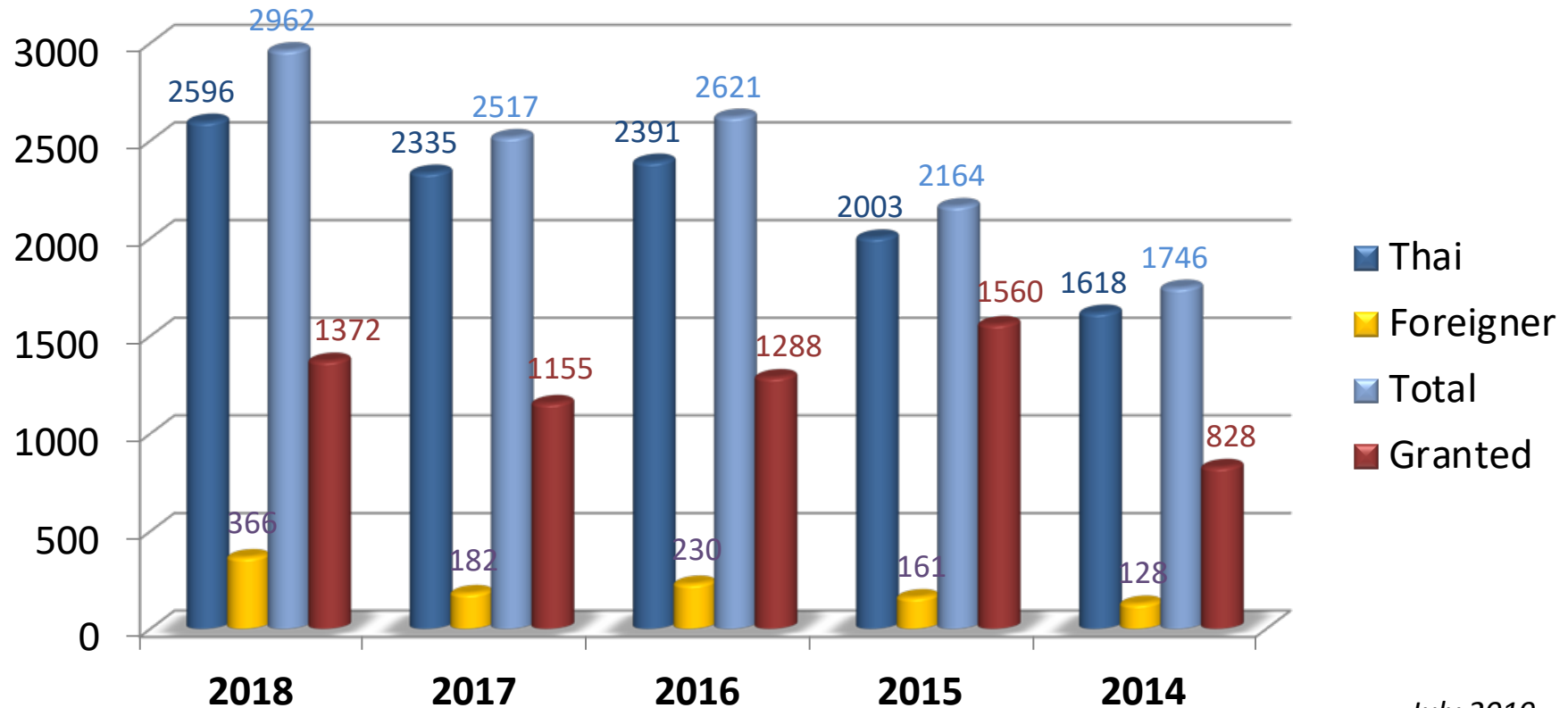


July 2019

Statistics of Design Patent Application



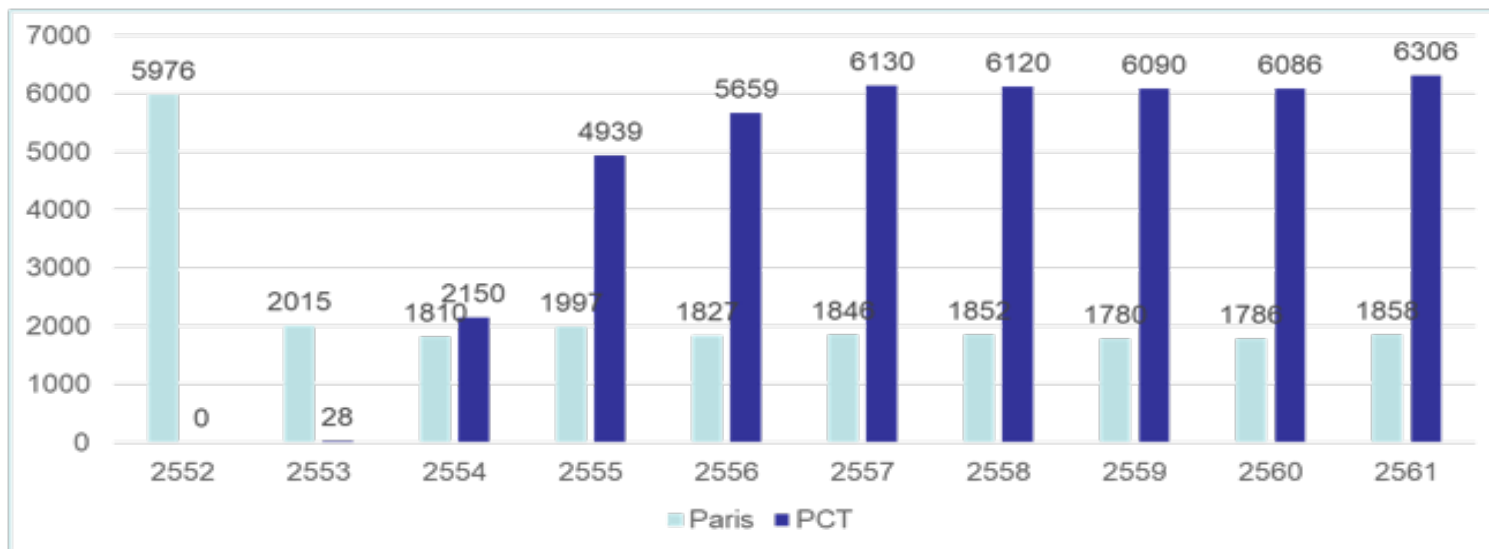
Statistics of Petty Patent Application



PCT National Phase (Inbound) 2009 - 2018



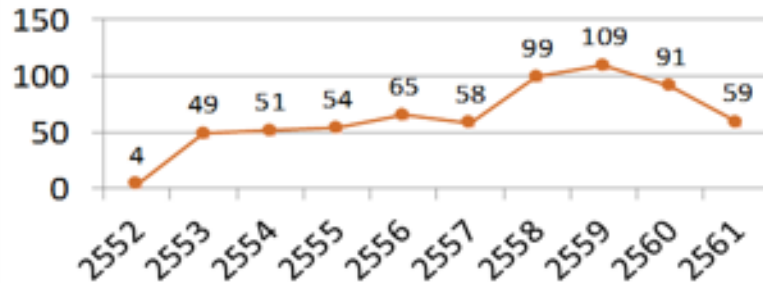
Trend of Patent Protection in Thailand



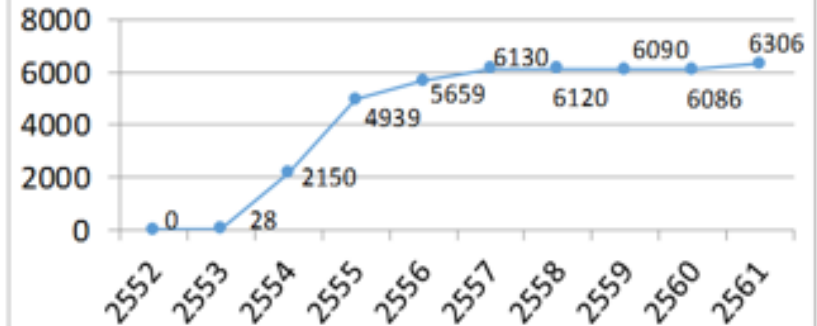
Statistics of Patent Application via Paris and PCT

Statistics of PCT Application (2009 - 2018)

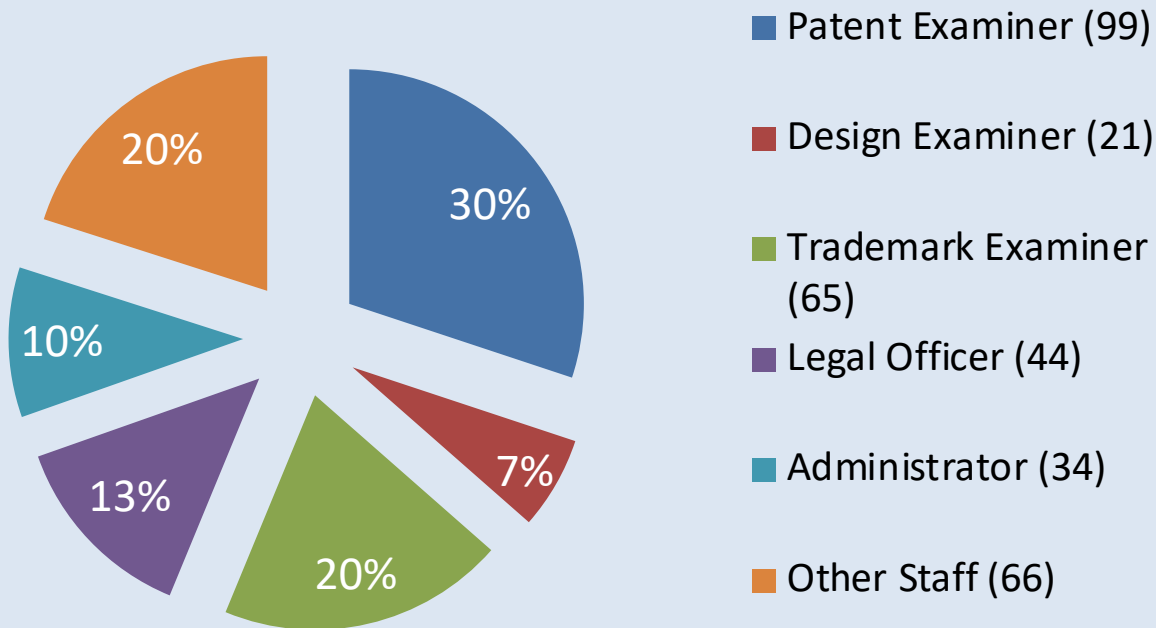
International Phase (PCT Outbound)



National Phase (PCT Inbound)



Government Officials 329 persons



July 2019

Number of Patent / Design Examiners



Experienced
examiners

24

+

New recruited
examiners

75

Total
Patent
Examiners
99

Experienced
examiners

11

+

New recruited
examiners

10

Total
Design
Examiners
21

Status as of Aug 2018

Legislative Development

28

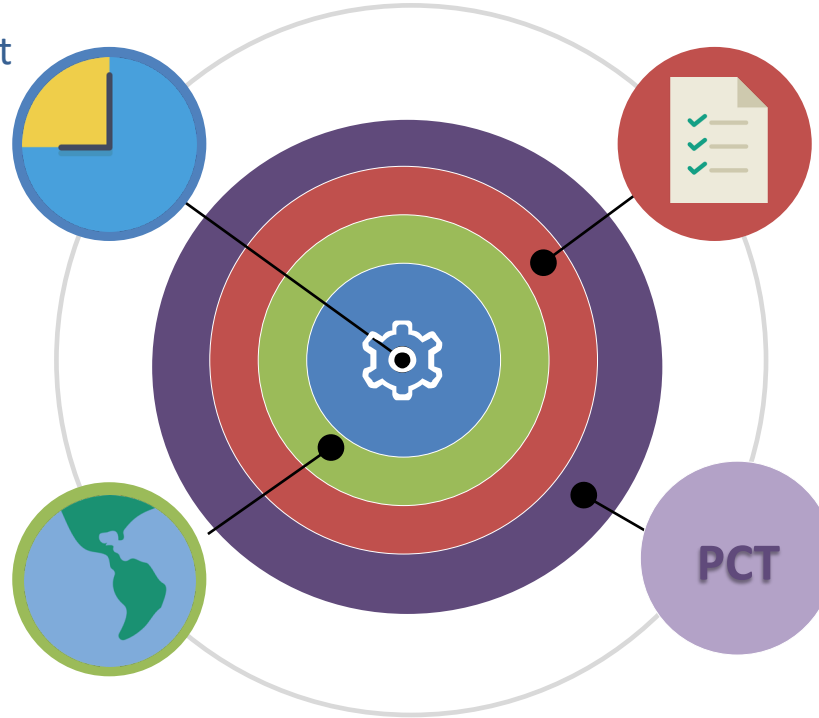
The Draft Amendment Act regarding Patent / Petty patent



Objectives of the Patent Act Amendment

to streamline registration and administration procedures for patent and petty patent

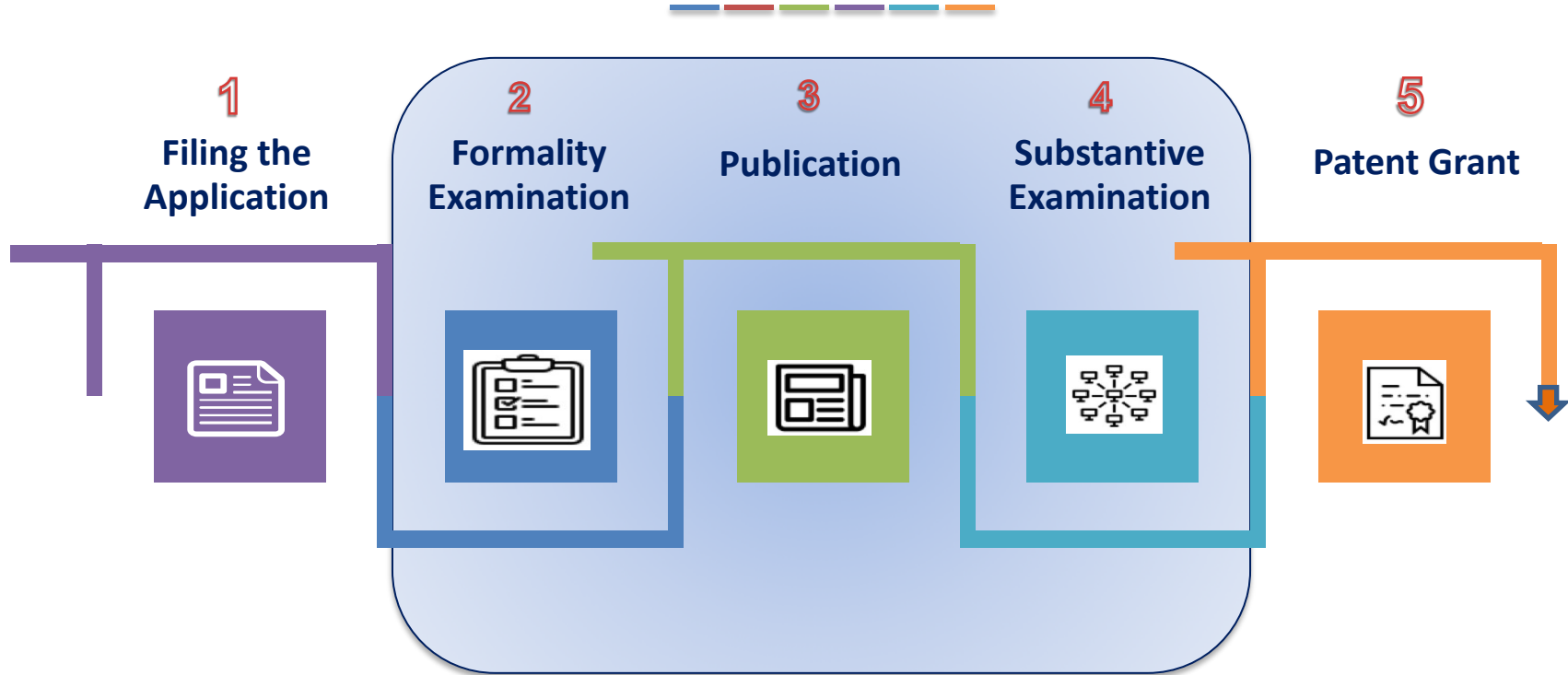
to amend the compulsory licensing chapter according to the Article 31 bis of the TRIPS Agreement to allow exportation of pharmaceutical product to countries with no capacity and waive double remuneration if the remuneration is already paid by exporting country



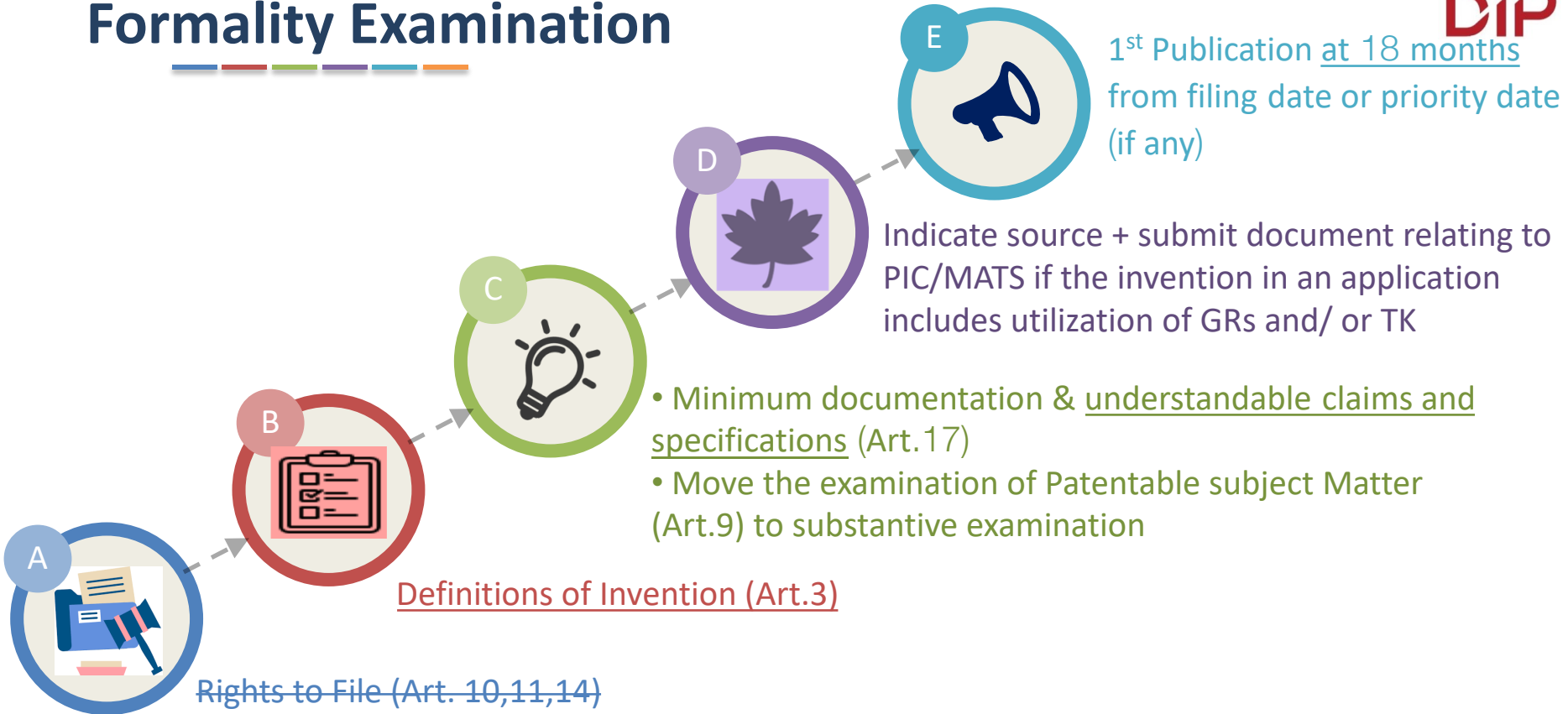
to include international principles of disclosure requirement, prior informed consent, and mutual agreed terms principles related to genetic resources and traditional knowledge

to include PCT Chapter in the Patent Act

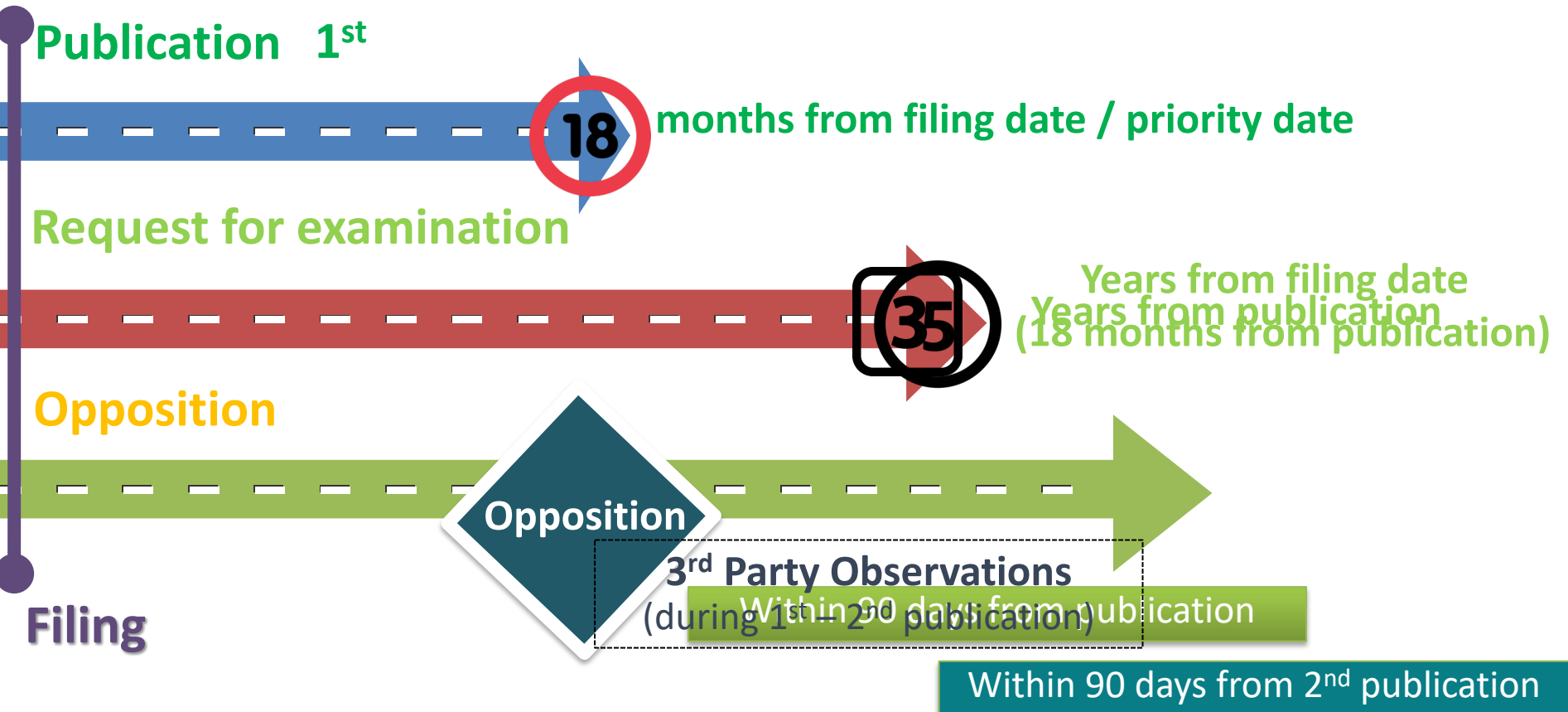
Areas of the Draft Amendment in order to streamline patent registration and administration procedures



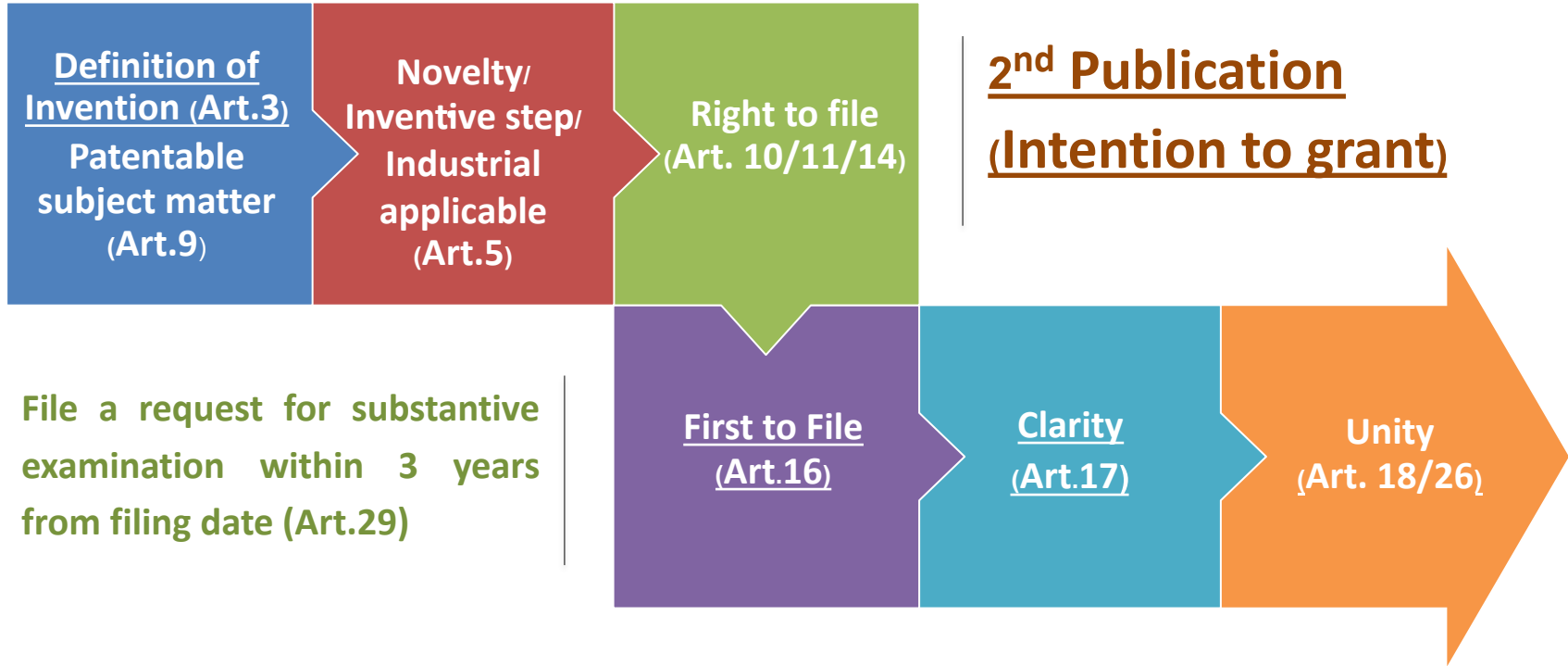
Formality Examination

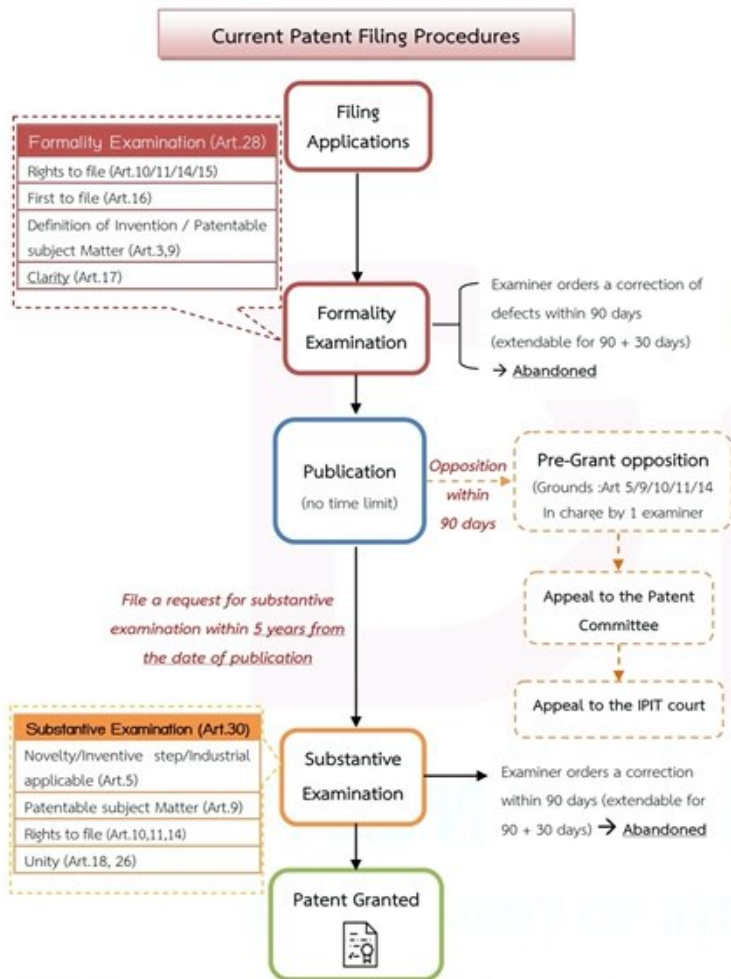


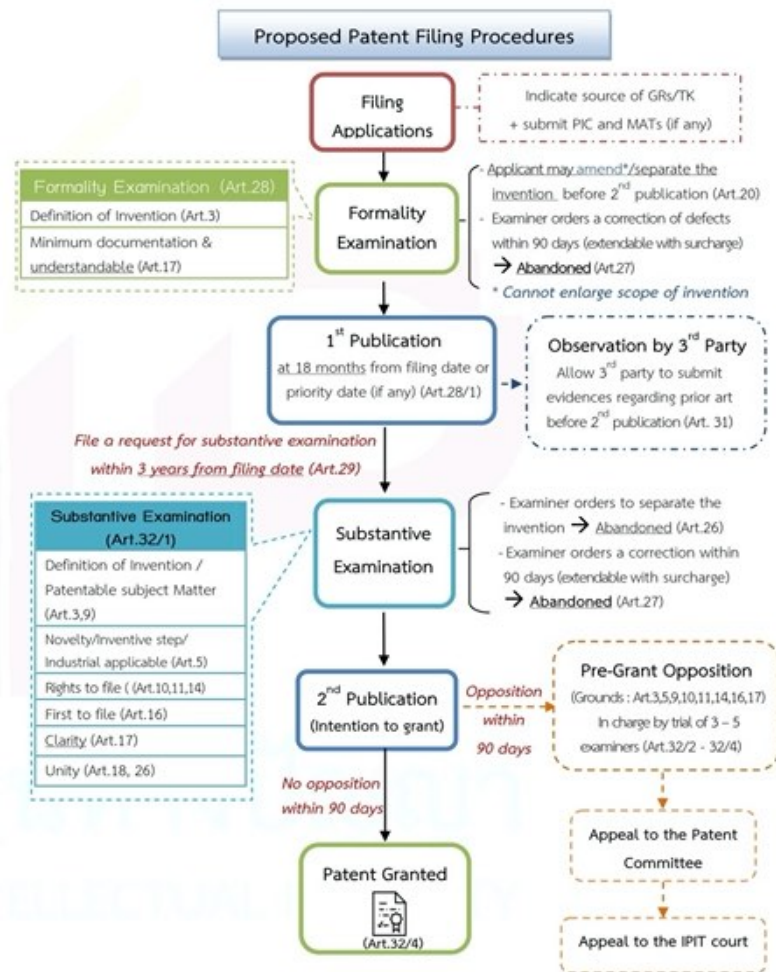
Shorten pending period in the examination procedure



Substantive Examination







Genetic Resources, Traditional Knowledge and Traditional Cultural Expressions

Genetic Resources

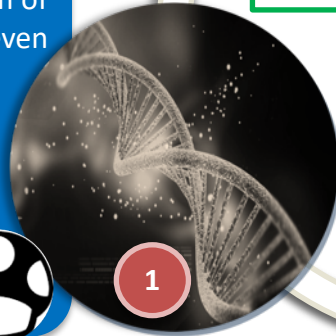
genetic material or derivatives of actual or potential value.

Genetic Material

any material of plant, animal, microbial or other origin containing functional units of heredity.

Derivatives

a naturally occurring biochemical compound resulting from the genetic expression or metabolism of biological or genetic resources, even if it does not contain functional units of heredity



**GENETIC RESOURCE
(GRs)**



**Traditional Knowledge
(TK)**



**Traditional Cultural
Expressions (TCEs)**

“Traditional knowledge”

Knowledge, practices, representations, expressions, knowledge, skills – as well as the instruments, objects, artefacts and cultural spaces associated therewith – that communities, groups and, in some cases, individuals recognize as part of their cultural heritage. This intangible cultural heritage, transmitted from generation to generation, is constantly recreated by communities and groups in response to their environment, their interaction with nature and their history, and provides them with a sense of identity and continuity, thus promoting respect for cultural diversity and human creativity

Defensive Protection of GRs/TK in the Draft Amendment



Other Important Amendments

Amend prior art conditions to meet international standard such as including disclosure in documents outside the country

Use recording of the licensing procedure instead of registering with the DIP

Allow correction of the granted patent with minor irregularities

Amend petty patent registration procedure to enhance efficiency

Allow any person to request for substantive examination after the grant of the petty patent

Amend fees schedule; increases filing fees, reduces fees for SMEs / startup / e-filing, discontinues publication fee



The Draft Amendment Act regarding Design Patent and the accession to the Hague Agreement



Objectives of the Patent Act Amendment



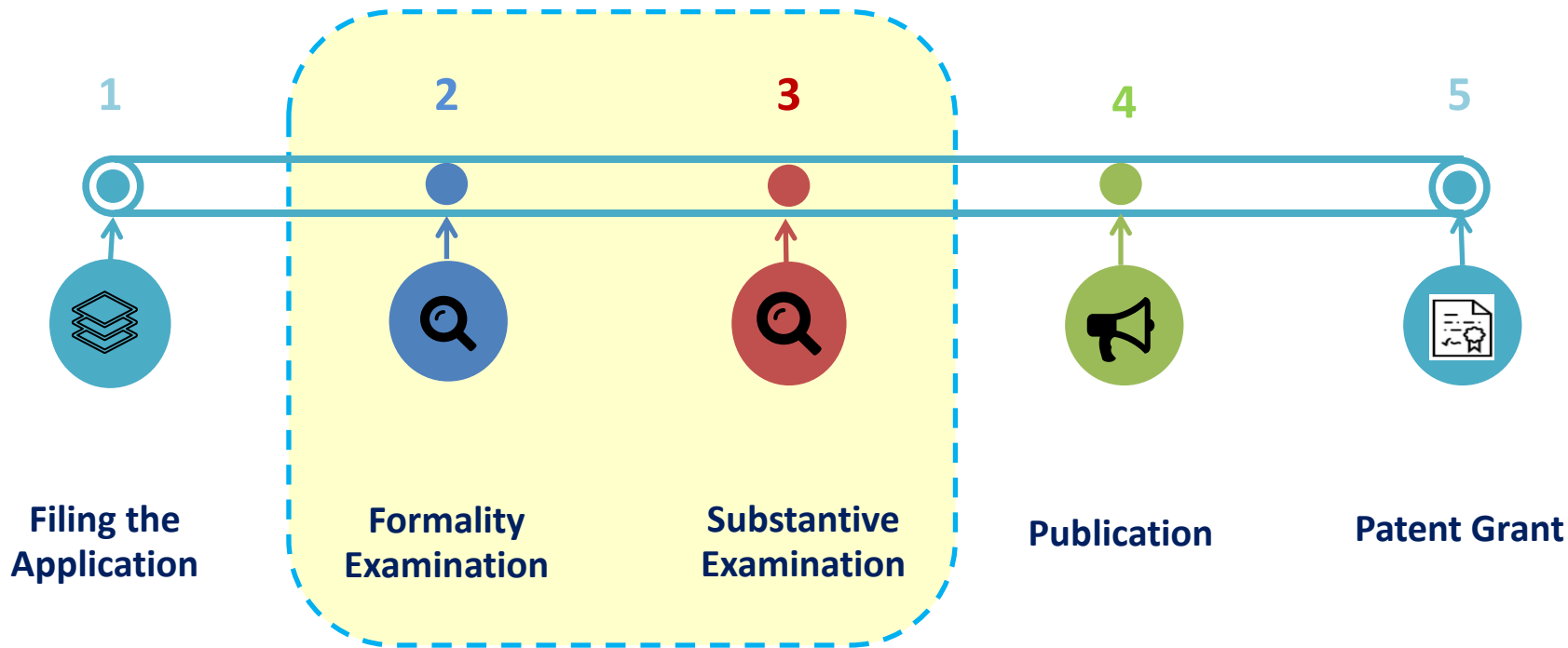
to streamline registration and administration procedures patent for designs.



to prepare for the accession of Thailand to the Hague Agreement Concerning the International Registration of Industrial Designs



Areas of the Draft Amendment in order to streamline Design Patent registration and administration procedures

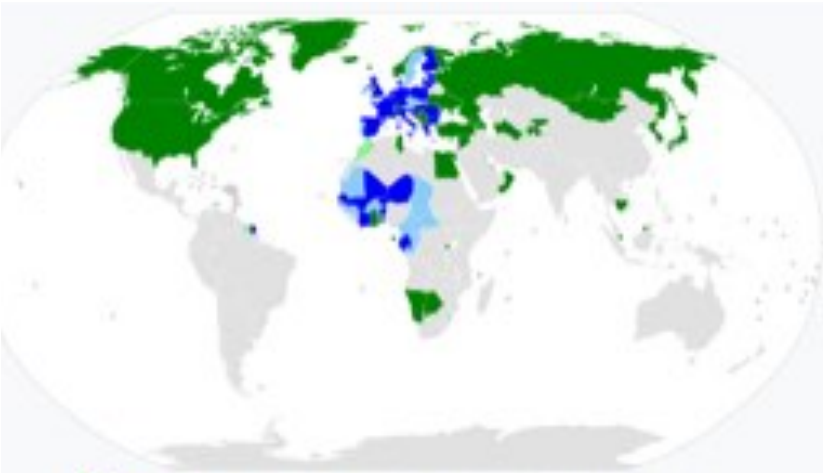


Hague Agreement

Concerning the International Registration of Industrial Designs



WIPO | HAGUE



Hague Agreement is the system for international registration of industrial designs, established by WIPO. It offers the possibility of obtaining protection for industrial designs in several Contracting Parties by means of a single international application.

Two Acts of the Hague Agreement are currently in operation

- the Geneva Act, which was adopted on July 2, 1999.
- the Hague Act, which was adopted on November 28, 1960.

There are 70 contracting parties

(Status on October 7, 2019 From <http://www.wipo.int/hague/en/>)

Preparation for Accessing to Hague Agreement

A blue chevron-shaped arrow pointing to the right, containing the text 'PROCESS ANALYSIS'.

PROCESS
ANALYSIS

A red chevron-shaped arrow pointing to the right, containing the text 'LEGISLATIVE CHANGE'.

LEGISLATIVE
CHANGE

A purple chevron-shaped arrow pointing to the right, containing the text 'PROCEDURAL CHANGE'.

PROCEDURAL
CHANGE

A green chevron-shaped arrow pointing to the right, containing the text 'IT SYSTEM CHANGE'.

IT SYSTEM
CHANGE

An orange chevron-shaped arrow pointing to the right, containing the text 'COMMUNITY CHANGE'.

COMMUNITY
CHANGE

Other Important Amendments



Allow Partial Designs protection

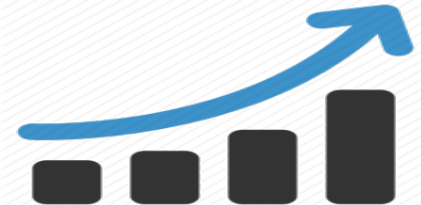
Extend the period of protection from 10 years to 15 years

Amend prior art conditions to meet international standard such as including a design which was widely known or used outside the country

Add a provision for deferment of publication

Allow an applicant to request for separation an application into a number of applications

Amend fees schedule such as increases filing fees



Thank You

For more information

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Facebook : IP Thailand

Twitter : [@dip_thailand](https://twitter.com/dip_thailand)