

COUNTRY REPORTS – APAA 2016

PHILIPPINES

Patent Committee Report

1. Filing and Grant Statistics

Based on the statistics provided by the Philippine Intellectual Property Office, Invention Patent Filings increased by 1.1% from 3,287 in 2014, to 3,323 in 2015. Invention Patents Granted increased by 0.5% from 2,022 in 2014, to 2,033 in 2015.

Utility Model Filings increased by 2.7% from 777 in 2014, to 798 in 2015. Utility Model Registrations on the other hand decreased by 5.03% from 557 in 2014 to 529 in 2015.

Industrial Design Applications decreased by 18.68% from 1,333 in 2014, to 1,084 in 2015. Industrial Design Registrations decreased by 9.38% from 1,119 in 2014, to 1,014 in 2015.

2. Changes to Legislation

No new law or amendment was since last year.

3. Changes to Practice

i. Office Order No. 15-100 series of 2015

Office Order No. 15-100 series of 2015 issued by the Intellectual Property Office of the Philippines (IPOHL) implemented the patent prosecution highway (PPH) pilot program between the IPOHL and the Korean Intellectual Property Office (KIPO). IPOHL through its then Director General, Atty. Ricardo Blancaflor, has signed a Memorandum of Understanding (MOU) with the Korean Intellectual Property Office (KIPO) Commissioner Kim Young-min in Manila, Philippines, on April 9, 2014 for the implementation of a IPOHL-KIPO PPH Pilot Program. On May 1, 2015, the IPOHL has commenced the PPH and Patent Cooperation Treaty (PCT)-PPH pilot program with KIPO. The PPH Pilot Program will be implemented for an initial period of two (2) years, or until April 30, 2017, subject for review and renewal as will be agreed upon by both IP Offices.

The IPOHL-KIPO PPH follows the PPH *Mottanai* Program, which is similar with the guidelines adopted for the IPOHL-JPO PPH. The IPOHL now accepts PPH requests under the IPOHL-KIPO PPH Pilot Program. Applicants with corresponding patent applications filed in KIPO and IPOHL can avail for preferential examination by filing a PPH Request and relevant documents prescribed in the corresponding guidelines.

ii. Revenue Memorandum Order No. 27-2016

Revenue Memorandum Order (RMO) No. 27-2016 issued by the Bureau of Internal Revenue (BIR) provides the procedure for claiming tax treaty benefits for dividend, interest, and royalty income of nonresident income earners. This RMO applies to royalties derived from patent licensing

In lieu of the mandatory tax treaty relief applications (TTRA), preferential treaty rates for dividends, interests and royalties are granted outright by withholding final taxes at applicable treaty rates. In the event of future audit investigation, withholding agents should keep supporting documentary substantiation to support the claim for preferential treaty rates. For royalties, documentary support includes the original or certified true copy of the notarized Royalty Agreement, Technology Transfer Agreement, or Licensing Agreement, and when applicable, a certified copy of the Intellectual Property Office (IPO) registration.

4. Significant Decisions (either Court or Patent Office)

Intellectual Property Association of the Philippines v. Ochoa, G .R. No. 204605, July 19, 2016. This case deals with trademark law, but is included here because of the Supreme Court's reaffirmation that it is the policy of the state to streamline administrative procedures to register patents and other intellectual property rights.

In Intellectual Property Association of the Philippines v. Ochoa,¹ the Supreme Court affirmed the validity and constitutionality of the President's ratification of the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks ("Madrid Protocol"). The Court also ruled that the Madrid Protocol is not in conflict with the Intellectual Property Code of the Philippines (IP Code).

Citing Commissioner of Customs v. Eastern Sea Trading² (the "Eastern Sea Trading case"), the Court distinguished between treaties and international agreements, which require the Senate's concurrence, on one hand, and executive agreements, which may be validly entered into without the Senate's concurrence. International agreements involving political issues or changes of national policy and those involving international arrangements of a permanent character usually take the form of treaties. The concurrence of Congress is required by our fundamental law in the making of "treaties." Treaties are formal documents which require ratification with the approval of two thirds of the Senate.

But international agreements embodying *adjustments of detail* carrying out well-established national policies and traditions and those involving arrangements of a more or less *temporary* nature usually take the form of executive agreements, which become binding through executive action *without* the need of a vote by the Senate or by Congress.

The Eastern Sea Trading case cited a Columbia Law Review article which in turn cites US jurisprudence. The Court noted that the registration of trademarks and copyrights have been the subject of executive agreements entered into without the concurrence of the Senate. Some executive agreements have been concluded in conformity with the policies declared in the acts of Congress with respect to the general subject matter.

¹ G .R. No. 204605, July 19, 2016.

² No. L-14279, October 31, 1961.

It then becomes relevant to examine the state policy on intellectual property in general, as reflected in Section 2 of our IP Code, to wit:

Section 2. ***Declaration of State Policy.*** - The State recognizes that an effective intellectual and **industrial property system is vital to the development of domestic and creative activity, facilitates transfer of technology, attracts foreign investments, and ensures market access for our products. It shall protect and secure the exclusive rights of scientists, inventors, artists and other gifted citizens to their intellectual property and creations, particularly when beneficial to the people, for such periods as provided in this Act.**

The use of intellectual property bears a social function. To this end, the State shall promote the diffusion of knowledge and information for the promotion of national development and progress and the common good.

It is also the policy of the State to streamline administrative procedures of registering patents, trademarks and copyright, to liberalize the registration on the transfer of technology; and to enhance the enforcement of intellectual property rights in the Philippines.³

In view of the expression of state policy having been made by the Congress itself, it is therefore incorrect to assert that ‘there was no Congressional act that authorized the accession of the Philippines to the Madrid Protocol.’”

5. Names of Contributors

Atty. Llewellyn L. Llanillo
Engr. Mari-len Montoya-Capisanan

³ Emphasis in original.