



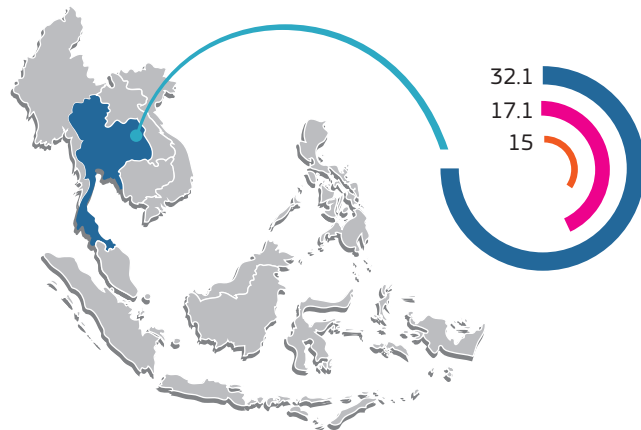
THAILAND

ASEAN IPR SME Helpdesk IP Country Factsheet



1. THE FACTS: Business in Thailand for EU Companies

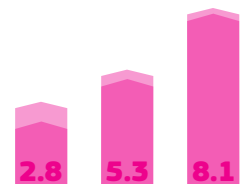
(Source: [DG Trade](#) / [EU Delegation to Thailand](#))



SIZE of Market :

- EU goods exports to Thailand in 2013: € 15 billion
- EU goods imports from Thailand in 2013: € 17.1 billion
- Total trade in goods in 2013: € **32.1 billion**

EU services exports to Thailand in 2012: € 2.8 billion
EU services imports from Thailand in 2012: € 5.3 billion
Total trade in services in 2012: € **8.1 billion**



Thailand GDP in 2011: € **267.4 billion** (Source: [World Bank](#))

Thailand GDP growth in 2011: **0.1%** (Source: [World Bank](#))

1 THE FACTS: Business in Thailand for EU Companies

SIZE of market
Key INDUSTRY SECTORS

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> Thailand is the EU's third largest trading partner in the Association of Southeast Asian Nations (ASEAN) (behind only Singapore and Malaysia) and 25th overall. Conversely, the EU is Thailand's 3rd largest trading partner overall (after Japan and China).

> Negotiations for an EU-Thailand Free Trade Agreement (FTA) were formally launched in March 2013, marking an important step in EU-Thai relations. The ambition is to conclude a comprehensive FTA, covering tariffs, non-tariff barriers and other trade related issues such as services, investment, procurement, intellectual property, regulatory issues, competition and sustainable development. (Source: DG Trade)



Key INDUSTRY SECTORS:

- The top three **EU exports** to Thailand in 2013 were (i) **Machinery and appliances** (28% of total EU's exports to Thailand), (ii) **Transport equipment** (18%) and (iii) **Products of the chemical or allied industries** (12.1%).
- The top three **EU imports** from Thailand in 2013 were (i) **Machinery and appliances** (38.6% of total EU's imports from Thailand); (ii) **Foodstuffs, beverages, tobacco** (11.4%) and (iii) **Plastics, rubber and articles thereof** (9.3%).

2. IPR in Thailand for SMEs: BACKGROUND

Intellectual Property Rights for SMEs: Why is this RELEVANT to you?

Intellectual Property Rights (IPR), as intangible assets, are a key factor in the [competitiveness of your business](#) in the global economy. Investing in IP is a primary method for securing a return on investment in innovation, and is particularly relevant to Small and Medium-sized Enterprises (see EC definition – http://ec.europa.eu/enterprise/policies/sme/facts-figures-analysis/sme-definition/index_en.htm) when they internationalise their business with third countries such as those in Southeast Asia. Not only a way to help you [protect your innovations](#) from competitors, IP assets can also be an important source of cash-flow for SMEs through licensing or selling IP, as well as a significant pull-factor when attracting investors.

Although SMEs often have limited time and resources, it is important to be aware of how IP can be valuable to your business. IPR infringement is one of the most common concerns for businesses when dealing with countries from the Association of Southeast Asian Nations (ASEAN), and could lead to loss of business, revenue, reputation and competitive advantage, both in Southeast Asia and in core domestic markets, unless you take proactive steps to protect your IP and deter potential infringers.

How does THAILAND's IP legal framework compare to INTERNATIONAL STANDARDS?

In 2008 and 2009 respectively, Thailand signed the Paris Convention for the Protection of Industrial Property and the Patent Cooperation Treaty (PCT) so as to be in line with the international standards provided in the Trade Related Aspects of International Property Rights (TRIPs) agreement as per World Trade Organisation

(WTO) requirements (see the WIPO website for more details on each treaty – <http://www.wipo.int/treaties/en/>). Thailand is also currently undertaking a vast programme of reforms as regards major IP laws, in particular the Trademark Act and the Copyright Act.

In 1997, Thailand established the Central Intellectual Property and International Trade Court (CIPITC) which has exclusive jurisdiction to adjudicate civil and criminal cases involving IP. The experience of the judges has been improving over the years, including through training for court officials, judges, customs authorities, and other IP enforcement agencies (notably Department of Special Investigation and the Royal Thai Police).

The launch of the National IPR Centre of Enforcement (NICE) in March 2013 was a welcome development aimed at ensuring well-coordinated efforts among enforcement agencies in the prevention of IPR violations in Thailand. An IP database to keep track of the status of infringement cases, court decisions and repeated offences shall also be set up in the near future, which should improve the overall level of IP enforcement in Thailand. In March 2013, the EU and Thailand launched negotiations for a comprehensive [Free Trade Agreement \(FTA\)](#), which comprises Intellectual Property Rights as a key focus area, and should strengthen the economic ties between Thailand and Europe even further.

NICE's Action Plan for 2014 shall focus on trade mark infringements related to medicines, cosmetics, wines and spirits and emphasis shall also be put on software, music, films and computer games when it comes to copyright piracy.

IP law developments:

Following the dissolution of the Parliament in December 2013 and the military coup on May 22, 2014, the legislative process was suspended until the formation of a new government.

A new National Legislative Assembly (NLA) has been formed by the National Council for Peace and Order (NCPO) on August 7, 2014, subsequently to which the Department of Intellectual Property (DIP) has resubmitted the draft amendments to main IP laws to the NCPO and the NLA.

In line with the commitments put forward by the NCPO to reinforce Thailand's IPR enforcement against counterfeiting and piracy, in August 2014, the NLA has accepted in principle the draft Copyright reform legislation to strengthen Thailand's enforcement against digital piracy and illegal cam-cording in cinemas as well as the

draft amendment to the Customs Act to grant ex officio powers to Customs Officers to inspect goods in transit and transshipment submitted by the Ministry of Finance. NLA committees would be set up to help review the proposed amendments. Other legislative proposals which were under the consideration of the Parliament and will need to be reconsidered by the NLA are the following:

- The amendment to the [Trademark Act](#) to broaden the scope of protection (registration of scent and sound marks), streamline the registration process (shorten the time-spans for proceedings), adopt multi-class filing system and adjust official fees.
- The amendment to the [Trade Secret Act](#) to restructure the Trade Secret Committee and modify penalties.

Another draft amendment to the Trademark Act to support accession of Thailand to the Madrid Protocol and consider refilling practice as an offense was under the consideration of the Council of State.

Although SMEs often have limited time and resources, it is important to be aware of how IP can be valuable to your business.

The study on landlord liability provisions commissioned by the DIP was completed and is under consideration of the DIP. Amendments to the [Patent Act](#) to implement the provisions of the Doha Declaration and the Hague Agreement System, extend the scope of protection of design patents, adjust the registration procedure, adopt recordal system for patent licensing and review the official fees was submitted by the Ministry of Commerce.

The draft amendment to the [Computer Crime Act](#) to provide for online infringement of IPR as an offense was submitted by the Ministry of Information, Communications and Technology.

EU-Thailand IPR Dialogue:

Since February 2011, regular dialogues on IP issues are held between the EU and Thai authorities. These discussions aim at sharing information and best practices, and at ensuring that the concerns of EU companies on IP protection and enforcement are raised with a view to providing a platform where proposals could be made to improve the shortcomings identified in the process.

EU-Thailand FTA negotiations:

The negotiations for a Free Trade Agreement (FTA) between the EU and Thailand was launched on March 6, 2013 and reached the third round of negotiations in December 2013. Due to the political situation in Thailand, the process has continued at technical level and paused since the military coup in May 2014, and re-engagement at technical level is now being reconsidered.

Given the importance of adequate protection and enforcement of intellectual property rights, FTA negotiations would provide opportunities for the EU and Thailand to discuss rules on the

protection of intellectual property rights such as patents, trade marks, designs, copyrights and geographical indications and has the potential of resolving market access issues that EU companies are facing in Thailand. Some examples of these include:

- Lack of protection against illegal refilling practices
- Landlord liability for IP infringement in Thailand
- Delay in patent registration of pharmaceutical and other products
- Enforcement of intellectual property rights



IP TIPS and WATCH-OUTS in Thailand

- Whatever the efforts of the authorities to improve the implementation and enforcement of IPR in Thailand, timely application by EU SMEs for grant and registration of their IP rights before the DIP is still crucial in order for EU SMEs to have a chance of defending and enforcing them. Patents, designs and trade marks are territorial in nature, which means that [registrations in one country's jurisdiction are not automatically enforceable in others](#), and therefore registrations in multiple countries may be necessary.
- Thailand operates under a '[first-to-file](#)' system, meaning that the first person to file an IP right in the Thai jurisdiction will own that right once the application is granted.



copyright

3. IP Rights in Thailand: THE BASICS

A. Copyrights

WHAT are Copyrights?

Copyright is a legal term used to describe **exclusive rights granted to authors, artists and other creators for their creations**. Copyrights allow for the exclusive right of an author or a copyright holder to publish or reproduce their work. These rights include copying; publishing; translating; adapting and altering; distributing; etc. Works that can be protected include works of literature, music, drama, visual and graphic arts, such as (but not limited to) books, movies, songs, computer software, websites and photographic works. This means that the concepts and ideas themselves are not recognised as copyrightable, but the modes in which these ideas and facts are expressed may be protected by copyright.

Copyrights in THAILAND: What you need to know

The Thai Copyright Act recognises copyrighted works conferred in foreign jurisdictions provided that the creator is a national, resident or first published the work in a member country of the Berne Convention (<http://www.wipo.int/treaties/en/ip/berne/>) or the TRIPS agreement of the WTO (http://www.wto.org/english/tratop_e/trips_e/t_agm0_e.htm).

Although the Berne Convention requires that copyrights be awarded automatically to the creator without the formal need to register these rights, **it is still advisable to register copyrights in Thailand** as this will make it much easier to prove your ownership in court proceedings, if you ever need to enforce these rights before a Thai court.

How LONG does legal protection last?

Thai copyright law meets the minimum requirements set out in the Berne Convention for the Protection of Literary and Artistic Works, with copyrights on all creative works (except for 'works of applied art' whose protection is reduced to 25 years) **protected for the lifetime of the author plus an additional period of 50 years** after his or her death.

Although copyright protection arises automatically at the time of creation of eligible work, **formally registering your copyright at the Thai Copyright Office is recommended** as it would be useful as evidence of ownership in the event of a dispute. A copyright notice should also be affixed to the copyrighted work.

1. Required Information:

- Name of the creator(s)/author(s) of the work
- Date and place of creation
- Date and place of publication for the first time
- Name and contact details of the owner of the copyright
- Name of the copyrighted work and the brief details on creation and inspiration (10 lines)

2. Required Documents:

- 1 set of the copyrighted work
- Full name, address, country and occupation of the applicant
- Power of Attorney (POA) to be signed by the applicant (to be provided upon receipt of instructions)
- Signed copy of valid identification card of the signatory (who signs the POA)
- The original copy of certificate of incorporation of the applicant (if applying on behalf of a company)
- Statement of applicant's rights to be simply signed by the applicant
- If the author was contracted to create the work for the copyright owner, a copy of this contract is required.

The Copyright registration office in Thailand can be found at the below address:

Department of Intellectual Property (DIP), Ministry of Commerce
44/100 Nonthaburi 1 Rd., Bangkrasor, Muang, Nonthaburi 11000
(66 2) 5474621 - extension 5

WHO can register?

Any individual or corporation can register work, either through a legal representative or by themselves, provided that their domicile/

It is advisable to register copyrights in Thailand as this will make it much easier to prove your ownership in court proceedings, if you ever need to enforce these rights before a Thai court.



head office is in Thailand, or they have **real business operations/dealings in Thailand**.

Which LANGUAGES can I use?

The application form and other relevant required documents must be **submitted in the Thai language or accompanied by a Thai translation**.

How much does it COST?

There is **no official fee** for copyright recordation in Thailand. Seek a quotation for cost and service fees if you are considering using a local IP agent.



Copyrights TIPS and WATCH-OUTS in Thailand

Software, music and movie piracy are still rampant in Thailand and pirated goods are fairly accessible in major tourist areas in Bangkok city and elsewhere, and Thai government officials are fighting a long-running battle against pirated music CDs, digital movies and computer software. According to the Thai Department of Intellectual Property (DIP), 369,920 pirated movie DVDs, 142,257 pirated music CDs, and 54,409 pirated copies of software were seized in 2012 alone.

For more information on copyright protection in Thailand, check out our ASEAN IPR SME Helpdesk Guide to Copyright Protection in Southeast Asia, which is available to download from our website - <http://www.asean-iprhelpdesk.eu/sites/default/files/publications/Copyright-English.pdf>

B. Patents

WHAT are Patents?

A patent is a right granted to the owner of an invention to prevent others from making, using, importing or selling the invention without his permission. A patent may be obtained for a product or a process that gives a new technical solution to a problem or a new method of doing things, the composition of a new product, or a technical improvement on how certain objects work.

The Thai IP system divides patents into two categories: **patents of invention and utility models** (also called 'petty patents'). Both are exclusive rights temporarily granted for an invention.

Obtaining a patent is the only way to efficiently secure a product or a method against counterfeiters. More than simple protection, this asset provides you with an **exclusive right to produce, use, offer for sale or import your patented product or process**. This intangible asset may therefore give you a competitive advantage, and generate a profitable return on investment. Owning a patent, or better a portfolio of several patents, may also attest to the innovation capacity of your company in the eyes of your potential clients or partners, and may therefore boost the development of your business.

Patents in THAILAND: What you need to know

Both current types of patents in Thailand (invention and petty

patents) are required to be 'new' (this means it has not been published anywhere or disclosed to the public prior to the date of filing).

Thailand operates under a 'first-to-file' system, so if you are applying for a patent it is important to do so early.

Patents of invention, in addition to being new, have to be '**inventive**' (this means a new technical solution or improvement to a product or process) and '**industrially applicable**', as is the case in most international patent systems.

Contrary to patents of invention, **petty patents are not required to be 'inventive'**, and thus the registration process is different. There are also differences in the length of protection (see below).

Thailand is a member of the Paris Convention and the Patent Cooperation Treaty (PCT), which means that applicants for invention patents and petty patents are entitled to a 'right of priority' (i.e. you can use the same filing date as the original application made in your home country – this is called the 'right of priority' date), if the same filing has been made within the **last 12 months in any other country** also belonging to the Convention (see the WIPO website here for more details on these treaties and a full list of members - <http://www.wipo.int/treaties/en/>).

Thailand enacted the Plant Varieties Protection Act of 1999 and since then, new plant varieties can be registered in Thailand. A plant variety is defined as a plant group within a single botanical taxon of the lowest rank. A person who breeds plants and discovered and developed a new and distinctive plant variety can seek protection for it. The Act gives the rights-holder of a new plant variety the sole right to produce, sell or distribute, import, export, or possess it. New plant variety registrations in Thailand last from 12 to 27 years from the date of issuance of the certificate of registration, depending on the type of the plant variety. Foreign applicants from EU countries are eligible to apply for registration of protection of a plant variety. However, the Plant Variety Protection Office requires the applicant to actually grow the subject plant variety in Thailand for the purpose of examination.



How LONG does legal protection last?

Patents of invention last **20 years from the filing date in Thailand**, with no possibilities for extension/renewal. The **registration process** currently suffers severe backlogs and **takes up to 5 - 6 years or more**. Patent applications in physics and biotechnology fields can take between 5 to 9 years and in some cases well over 10 years, especially for pharma and complex chemical patents. **Petty patents last 6 years** from the filing date in Thailand, and are **extendible twice for 2 more years** (i.e. maximum term of 10 years). The registration process typically takes between 3 to 5 years.

HOW do I register?

Thailand operates under a **'first-to-file' system**, so if you are applying for a patent it is important to do so early. Once the patent is granted, the duration of protection is measured from the date of filing in Thailand. The preliminary examination of applications is usually completed within 2 years after the submission of all required documents.

Applicants who have filed an international Patent Cooperation Treaty (PCT) application and who wish to obtain patent protection in Thailand via the PCT route ('right of priority') must file a national phase entry application in Thailand **within 30 months from the first filing date under the PCT system**.

1. Required Information:

- Full details of the applicant(s): name, address, nationality
- Full details of the inventor(s)/designer(s): name, address, nationality
- Specification of the invention/design in English or any other language including:
 - Description
 - Claims
 - Abstract
 - Drawings (if any)
- If you are claiming the 'right of priority':
 - Date of priority
 - Priority number
 - Country of filing
 - Current status of priority application (for design patents)

2. Required Documents:

- Power of Attorney (notarisation is required if the applicant is not a Thai national)
- Deed of Assignment (if the applicant is not the inventor)
- Statement of Applicant's Right (if the applicant is the inventor)
- Certified copy of the priority documents (if any)
- Thai translation of the patent text

Patent applications should be filed at the below address:

Department of Intellectual Property (DIP), Ministry of Commerce
44/100 Nonthaburi 1 Rd., Bangkrasor, Muang, Nonthaburi 11000
(66 2) 5474621 - extension 5

WHO can apply for a patent?

Any individual or corporation can file an application. The applicant needs to retain a patent agent qualified before the Thai Department of Intellectual Property (DIP) if they do not have a domicile/head office in Thailand or have real business operations in Thailand. **It is recommended to hire a local IP agent to represent you before the DIP.**

Which LANGUAGES can I use?

The application form and other relevant required documents must be submitted **in the Thai language or accompanied by a Thai translation** (such as the patent specification, Power of Attorney and Deed of Assignment documents).

How much does it COST?

The official filing fee for a patent application in Thailand is **THB 500 (approximately EUR 12)**. Additional costs and services fees should be added if using a local IP agent (seek quotations beforehand).

Obtaining a patent is the only way to efficiently secure a product or a method against counterfeiters. More than simple protection, this asset provides you with an exclusive right to produce, use, offer for sale or import your patented product or process.





Patents TIPS and WATCH-OUTS in Thailand

- While applications for design patents and petty patents are still largely dominated by domestic applicants, applications for patents of invention are mostly filed by foreign applicants. Since 2011, the trend among foreign applicants has been to file fewer direct national applications, and instead there has been a sharp increase of applications through the PCT route. Accordingly, the backlog has been increasing over the years, which has become worrisome: among the 23,000 pending applications made in 2012, only 1,000 have been granted so far. Therefore, it is recommended for EU SMEs to apply via the direct national application system rather than the PCT route where possible, as the application wait time may be reduced.
- A direct national filing only makes sense, however, if parallel applications of the same patent which have been filed in other countries are expected to end up with quick grants, as in Thailand the examination of foreign patent applications depends on the outcome of any patent application already filed abroad at other Patent Offices. Otherwise, filing an application for a petty patent in place of a patent of invention should be considered, if the invention is eligible, and if a 10-year protection is sufficient.
- ASEAN Patent Examination Co-operation (ASPEC) is a regional patent work sharing programme involving 9 of the 10 IP Offices in the ASEAN Member Countries (only Myanmar is not yet involved). The objectives of ASPEC are to reduce complexity, achieve time savings and improve the quality of search and examination. Reference made to an earlier examination already performed in one IP office will help an examiner in the other IP office to better understand the invention claim, reduce searches and develop a more comprehensive examination strategy. For example, a patent application from Singapore would, in theory, be able to take advantage of an expedited process at the Department of Intellectual Property in Thailand allowing for the eventual speedier grant of patent protection. ASPEC is free-of-charge and operates in English in all ASEAN IP Offices (except Myanmar).
- Patent pendency, technology transfer and border control measures for patent offences are of real concern for EU companies - in particular in the pharmaceutical industry wishing to invest in Thailand. Patent Examination Guidelines for Chemical and Pharmaceutical Patents aimed at reducing the backlog have been implemented on September 30th, 2013.
- Patent term restoration has been suggested by right holders as a remedy given the current backlog and delay in the grant of regulatory marketing authorization.

For more information on patent protection in Thailand, check out our ASEAN IPR SME Helpdesk Guide to Patent Protection in Southeast Asia, which is available to download from our website - <http://www.asean-iprhelpdesk.eu/?q=en/helpdesk-guides>



C. Designs

WHAT are Design rights?

A design right is an **exclusive right temporarily granted for a form or composition of lines or colours**, which gives a special appearance to a product and can serve as a pattern for a product of industry or handicraft.

Design rights in THAILAND: What you need to know

Design rights, which in Thailand are called **Design Patents**, cover products with a distinctive shape, pattern, colour or the combination of these, which must be 'novel'. This means essentially not widely known or used by others in Thailand or a foreign country before the filing of the application for a design patent, and also not mentioned in a document or a printed publication in Thailand or a foreign country before the filing of the application for a design patent. Moreover, according to Thai Patent law, a registered design should not resemble any prior design.

Thailand is a member of the Paris Convention, which means that applicants' Design Patents are entitled to a 'right of priority' (i.e. you can use the same filing date as the original application made in your home country), if the same filing has been made within the last 6 months (see the WIPO website here for more details on the Paris Convention and a full list of members - <http://www.wipo.int/treaties/en/>).

How LONG does legal protection last?

Design Patents last **10 years** from the filing date in Thailand. The registration process typically takes up to **2 years**.

HOW do I register?

Thailand operates under a '**first-to-file**' system, so if you are applying for a design patent it is important to do so early. Once the design patent is granted, the duration of protection is measured from the date of filing in Thailand.

To file an application for a design patent, the following data has to be submitted:

- Claims;
- Drawings;
- Power of Attorney;
- Name and address of the applicant;
- Name of the designer;

- Information whether the colour shall be claimed;
- Priority document if based on prior foreign application.

The following documents have to be submitted on the date of filing or within 90 days after the date of filing:

- Deed of Assignment (if the applicant is not the designer);
- Statement of Applicant's Rights (if the applicant is the designer);
- Power of Attorney.

Design patent applications should be filed at the below address:

Department of Intellectual Property (DIP), Ministry of Commerce
44/100 Nonthaburi 1 Rd., Bangkrasor, Muang, Nonthaburi 11000
(66 2) 5474621 - extension 5

WHO can apply for a Design Patent?

Any individual or corporation can file an application. Applicants need to retain an agent qualified before the Thai Department of Intellectual Property (DIP) if they do not have a domicile/head office in Thailand or have real business operations in Thailand. It is recommended to hire a local IP agent to represent you before the DIP.

Which LANGUAGES can I use?

The application form and other relevant required documents must be submitted in the **Thai language** or accompanied by a **Thai translation**.

How much does it COST?

The official filing fee for a patent application in Thailand is **THB 250 (approximately EUR 6)**. Additional costs and services fees should be added if using a local IP agent (seek quotations beforehand).

Design rights in Thailand cover products with a distinctive shape, pattern, colour or the combination of these, which must be 'novel'.

D. Trade Marks

WHAT are Trade Marks?

A trade mark is a sign that allows consumers to identify and distinguish goods or services of one undertaking from those of another. The sign may be composed of words, slogans, devices, letters, numerals, combinations of colours or any combinations of the above.

The registration of a trade mark provides you with an exclusive right to exploit the trade mark within a geographic territory. You may thus license your rights to allow a third party to sell goods or services under your mark and collect royalties.

Trade Marks in THAILAND: What you need to know

In Thailand, three-dimensional signs (shapes) can be registered as trade marks, but few applications have actually been accepted for registration. There is currently in the legislative process an amendment to the Trademark Act that will recognise the protection of sound and scent marks. This draft also suggests changes to streamline the examination procedure, and a revision of fees.

To be registered, the trade mark sign must be distinctive (i.e. neither generic nor descriptive of the designated products or services), non-deceptive (as to the proprietorship or origin of the goods or services), and available (not identical with or similar to prior trade marks filed by a third party).

Because Thailand is party to the Paris Convention for the Protection of Industrial Property, Thai trade marks enjoy a 'right of priority' if the same filing has already been made in any other country also belonging to the Convention within a six month period prior to registration in Thailand (see more details and a full list of members to the Paris Convention - <http://www.wipo.int/treaties/en/ip/paris/>).

Thailand operates under a 'first-to-file' system for trade mark registration. It is therefore very important to register early, before entering into the market, so as to diminish the risk of trade marks being registered by someone else first, or in other words,

registered 'in bad faith'.

Many amendments have been recently proposed for the current Trademark Act. Amendments cover among others:

- Thailand's compliance with the Madrid Protocol by 2015
- Allowing multiple-class applications
- Allowing for a six-month expiry grace period for trade mark renewals
- Providing protection for new types of marks, including smells and sounds
- Changing the maximum number of days for oppositions and responses to official actions to 60 days, instead of 90 days
- Increased government fees
- Ensuring that TM provides protection against "refilling" practices.

How LONG does legal protection last?

Trade mark protection lasts for 10 years from the filing date in Thailand, with the option to indefinitely extend for consecutive 10 years periods, subject to timely application for renewal. The registration process typically takes between 12 to 18 months.

Trade mark protection lasts for 10 years from the filing date in Thailand, with an unlimited option to extend for consecutive 10 years periods, subject to timely application for renewal.

HOW do I register?

When the application for registration of a trade mark has been submitted, the registrar will send a letter to notify the result of the examination to the applicant within an average of 12 to 18 months. Once the trade mark has been accepted by the registrar, the mark will be published, opening a 90 day period in which other parties can register an opposition. If no opposition is submitted within the prescribed period, the trade mark proceeds to registration and the certificate of registration is issued.



PATENT

TRADEMARK

INTELLECTUAL
PROPERTY**Required Information and Documents:**

- 1 electronic sample of the mark in black and white or in colour (max 5 cm x 5cm)
- Full name, address, country and occupation of the applicant
- Description of the goods and services to be designated
- Power of Attorney, notarised (can be submitted at a later stage)
- Country, date and number of the priority trade mark application (if you are claiming 'right of priority')
- Certified copy of the priority application (if you are claiming 'right of priority') and translation (can be submitted at a later stage)
- Date of first use of trade mark (if any)

Trade mark applications should be filed at the below address:

Department of Intellectual Property (DIP), Ministry of Commerce
44/100 Nonthaburi 1 Rd., Bangkrasor, Muang, Nonthaburi 11000
(66 2) 5474621 – Ext. 5

WHO can register?

Any individual or corporation can file a trade mark registration either through a legal representative (using a local IP agent to represent you before the Thai Department of Intellectual Property (DIP) is an option) or by themselves provided that their domicile/head office is in Thailand, or they have real business operations/dealings in Thailand.

Which LANGUAGES can I use?

The application form and other relevant required documents must be submitted in the **Thai language or accompanied by a Thai translation**.

How much does it COST?

Official fees are calculated per product/service designated, and not by 'class' (meaning the product categories or industry sectors in which you choose to register): **THB 500 (or approximately EUR 12)** at time of filing, and **THB 300 (or approximately EUR 7)** at time of registration for each product/service specified. More details can be found on the DIP's website. Additional costs and services fees should be added if using a local IP agent (seek quotations beforehand).

**Trade Marks TIPS and WATCH-OUTS in Thailand**

- In Thailand, there is some additional protection for 'well-known trade marks', provided that the mark is 'well-known' in Thailand.
- A way to cancel a bad-faith registration is by proving that the mark was unused for a period of 3 years prior to the petition for cancellation, in which case you can file a petition of cancellation on the grounds of 'non-use'.

For more information on trade mark protection in Thailand, check out our ASEAN IPR SME Helpdesk Guide to Trade Mark Protection in Southeast Asia, which is available to download from our website - <http://www.asean-iprhelpdesk.eu/?q=en/helpdesk-guides>

Thailand operates under a 'first-to-file' system for trade mark registration. It is therefore very important to register early so as to diminish the risk of trade marks being registered by someone else first.

E. Geographical Indications

WHAT are Geographical Indications?

A Geographical Indication is a name or a sign used on goods that have a specific geographical origin and possess qualities, a reputation or characteristics that are essentially attributable to that place of origin. For example, agricultural products typically have qualities that derive from their place of production and are influenced by specific local factors, such as climate and soil. In other words, a Geographical Indication informs consumers that a product comes from a certain place and has special qualities due to that place of origin.

Unlike a trade mark, it may be used by all producers who make their products in the place designated by a Geographical Indication and whose products share specified qualities.

Geographical Indications in THAILAND: What you need to know

GIs are recognised and can be registered in Thailand since 2004. Thailand is one of the pioneers of GIs protection in Asia with several GIs already registered nationally (nearly forty Thai registered geographical indications in Thailand) and abroad. 'Champagne' from France, 'Prosciutto di Parma' from Italy, 'Scotch Whisky' from Scotland and 'Cognac' from France are all examples of European GIs which are recognised in Thailand. In 2013 'Khao Hom Mali Thung Kula Ronghai' or "jasmine rice" from Thailand became the first Southeast Asian GI to be recognised in the European Union.

For a GI of a European country to enjoy protection in Thailand, there must be explicit evidence that such GI is protected under the law of such country and has been used continuously until the date of filing an application for registration in Thailand.

Unlike in the EU, GIs might become generic in Thailand. GIs on wines and spirits and rice get stronger protection than those on agri-food products. In addition, GIs on handy crafts are protectable in Thailand.

Concerns have been raised by EU companies regarding non-compliance in respect of Article 22(2) and 23 of WTO TRIPS. Article 22(2) requires countries to provide a legal means to prevent the use of a geographic indication that "suggests that the good in question originates in a geographic area other than the true place of origin." Under Article 23, a country shall provide a legal means to prohibit the inaccurate use of a geographic indication for wines

and spirits regardless of whether the use of the indication on a similar product would be misleading. This provision applies also in cases where the geographic indication is "used in translation or accompanied by expressions such as 'kind', 'type', 'style' or 'imitation' or the like." According to this principle, the use of an expression, such as "Scotch-type Whisky", shall be prohibited. Meanwhile, only registered Geographical Indications are protected in Thailand, whilst indicating or suggesting that a good originates from a GI-protected geographical area is not.

How LONG does legal protection last?

Once obtained, these rights will last continuously, without the need to renew the registration.

HOW do I register?

Applications for GIs shall be submitted with the Department of Intellectual Property.

Department of Intellectual Property (DIP), Ministry of Commerce
44/100 Nonthaburi 1 Rd., Bangkrasor, Muang, Nonthaburi 11000
(66 2) 5474621 - extension 5

GIs may be used by all producers who make their products in the place designated by a Geographical Indication and whose products share specified qualities.

WHO can register?

Government agencies, public bodies, state enterprises, local administration organisations or other state organisations having area of responsibility covering the geographical origin of the goods; natural persons, groups of persons or juristic persons engaging in trade which is related to the goods using GI and domiciled in the geographical origin of the goods; groups of consumers or organisations of consumers of the goods using GI are eligible to apply for registration of a GI in Thailand.

Which LANGUAGES can I use?

The application form and other relevant required documents must be submitted in the Thai language or accompanied by a Thai translation.



F. Trade Secrets

WHAT are Trade Secrets?

Trade Secrets are any piece of information that can satisfy the below 3 criteria in order to make them enforceable before a court:

- It must be non-public information
- It can offer business advantages to the owner
- You must be able to prove that you took measures to protect the confidentiality of the information

Typically, trade secrets could include **new products or business models, special techniques, formulas, customers and suppliers' lists, technical know-how, etc.**

Trade Secrets in Thailand: What you need to know

The protection of trade secrets was incorporated into Thai law in 2002, and it is currently being reviewed again by the Parliament.

As trade secrets are '**unregistered rights**', there is **no formal registration system** for these. However, trade secrets can actually be voluntarily recorded with the Thai Department of Intellectual Property (DIP). Only basic information is required for this recordal, and efficient recording strategies can be set up without actually disclosing essential contents of the trade secret.

Even though trade secrets are automatically protected under Thai law without registration (as long as they satisfy the 3 criteria a-c listed above), recordal with the DIP could be advantageous as it can be used as fundamental evidence in the case of legal disputes.

How LONG does legal protection last?

Because there is no formal registration process for trade secrets, these are often referred to as '**unregistered rights**', meaning that they **can theoretically last forever** – as long as they remain secret.



Trade Secrets TIPS and WATCH-OUTS in Thailand

Thai law does not yet grant data 'exclusivity', which would guarantee additional market protection for originator pharmaceutical companies (i.e. companies that have discovered and developed pharmaceuticals). This means that in Thailand, regulators, such as health authorities or generic drug applicants, are not prohibited from using the originator pharmaceutical companies' data to approve generic versions of the originator's product. The current measures aim only to protect the "physical disclosure" of confidential information.

Overall, delays in obtaining Market Authorization from the FDA and the mandatory disclosure of price structure for patented pharmaceuticals constitute major issues for the EU pharmaceutical industry.

For more information on trade secret protection in Thailand, check out our ASEAN IPR SME Helpdesk Guide to Trade Secrets in Southeast Asia, which is available to download from our website - <http://www.asean-iprhelpdesk.eu/sites/default/files/publications/Trade-Secret-English.pdf>

*Because trade secrets are '**unregistered rights**', there is no formal registration system for these. However, trade secrets can actually be voluntarily recorded with the Thai Department of Intellectual Property (DIP).*



4. Using CUSTOMS to block counterfeits

WHAT are Customs?

Customs are the governmental agency that is authorised, among others, to implement trade enforcement measures including checking and detaining suspected infringing goods crossing a border.

At present, the Customs Act on Examination of Goods and Prevention of Smuggling gives customs officers the power to search, inspect and seize pirated copyright and counterfeit trade mark goods imported into and exported from Thailand. The Export and Import of Goods Act also gives power to the Minister of Commerce to issue notifications in the Royal Gazette magazine specifying particular goods that are prohibited from export and import.

Customs in THAILAND: What you need to know

Although **registering with Thai customs is not mandatory, it is advisable to register your rights in their database** (also known as the 'Customs Watch List') as it will help the customs authorities to recognise counterfeit versions of your products, and improve the chances of such suspect items being blocked at the border. If you know of a suspected illegal shipment of your products, you can also work together with customs in advance to detain such shipments.

WHAT can be registered?

At the moment, **only trade marks and copyright works** can be recorded with the Thai Customs.

How LONG does legal protection last?

There is **no formal need to periodically renew such registrations**. However, it is best to keep customs and/or the Thai Department of Intellectual Property (DIP) updated of any relevant new IP registrations you make or any change in relevant information.

HOW do I register?

You may file an application for customs recordal with the DIP or a copyright or trade mark notice with customs to ensure that they are actively monitoring for infringing or pirated products and enable them to seize suspected counterfeit goods. It is also possible to file a **specific request with the Customs to detain a specific shipment**. It is recommended to hire a local IP agent to represent you and quickly follow-up with notifications.

Required Documents:

- Certified copy of the Certificate of Registration (or other adequate documents)

- Notarised Power of Attorney
- Letter of guarantee from the applicant (to bear damages that may be suffered by the exporter/importer in the case that goods detained turn out to not be infringing items)
- Samples of the products

More details can be found on the Customs Department's website here, and Customs registrations can be made at this address:

The Customs Department

1 Sunthornkosa Road, Klong Toey, Bangkok, 10110, THAILAND
Tel: 02 667 6000/ 02 667 7000
Email: customs_clinic@customs.go.th

Which LANGUAGES can I use?

The application form and required documents shall be completed and provided in the **Thai language**.

How much does it COST?

Registration with Thai Customs is **free of charge**. There is no government fee for filing an application, and there is no cost for keeping the seized goods in the Customs warehouse. In practice, the expenses for destruction of the seized goods are shared among the intellectual property right owners whose counterfeit goods are destroyed during destruction ceremonies, and reimbursed to the Customs Department. Additional costs and service fees should be added if using a local IP agent (seek quotations beforehand).



Customs TIPS and WATCH-OUTS in Thailand

Piracy and counterfeiting is still widespread in Thailand as infringers are demonstrating increasingly sophisticated counterfeiting methods, and are finding new ways to try to outwit customs and other IP enforcement authorities such as 'transshipment' whereby goods are first shipped to an intermediate location in order to hide the point of origin. It is therefore strongly recommended that European business owners register with Thai Customs and actively cooperate with them.

5. ENFORCING your IP

In the case of your IP assets being infringed in Thailand, there are **three main avenues of enforcement** you can consider which are outlined below: administrative actions, civil litigation and criminal prosecution. In many cases however **private mediation via legal professionals is more effective** and should be considered as a viable option, particularly for SMEs facing budget constraints.

Administrative actions

Administrative measures in Thailand are generally seen as **deficient and not effective** due to a lack of sufficient resources (both financial and human) and proper training of the enforcement agencies, as well as non-deterrent punishments imposed on infringers. The efficiency of raids actions may also be compromised by leaks from police sources and corruption. However, the signing of an MOU between the DIP and the Royal Thai Police establishing special IPR Suppression Centres in major cities in Thailand in April 2012, and the launch of the National IPR Centre of Enforcement (NICE) in March 2013, confirm the willingness of the Thai government to intensify enforcement actions and reduce IPR violations in the country. The focus will be on large-scale infringers and dangerous goods though, and particularly on the IPR 'Red Zones', or priority areas, such as MBK and Panthip Plaza in Bangkok, Patong, Kata and Karon beaches in Phuket, Walking Street in Pattaya, etc.

Civil Litigation

Civil litigation is **rarely used** in Thailand. In 2010, 138 civil litigation cases were brought to the CIPIT Court, while in 2011 and 2012 (from January to October) this number decreased to 119. By comparison, 5,148 and 4,766 criminal cases were respectively brought to Court in 2010 and 2011 (4,463 cases between January to October 2012).

This is due to several reasons, such as the **difficulty in proving 'actual damages'**, the **lack of a formal discovery process**, and the **delays in prosecuting the case**. There is also a lack of proper IP training and human resources within the judicial system, meaning that case outcomes can be somewhat unpredictable.

In civil proceedings, **possible outcomes include injunctions and awards of damages**. However, preventive injunctions are rarely granted in Thailand due to the difficulty for the plaintiff to prove the 'emergency' of the case to the judge, and the amount of damages awarded is low, thus usually not warranting the investment necessary to engage in litigation.

Criminal Prosecution

Criminal prosecutions are usually considered as **the most cost-effective enforcement route** available to IP right holders. However, search warrants necessary to conduct a raid action are also very difficult to obtain, as the standard of evidence of the alleged infringement required is very high. The judges are reluctant to impose harsh penalties on infringers, especially for first-time and minor offenders. This results in light penalties which often do not act as a deterrent to infringers.

Penalties available under criminal prosecution are under the form of fines and imprisonment. Penalties for infringement of a trade mark registered in Thailand can include fines of up to THB 400,000 (approximately EUR 10,000) and/or prison sentences of up to four years (but usually reduced or suspended for first-time offenders).

There are some penalties for infringement of non-registered marks in Thailand, covered by the 'law of passing off' which essentially prevents other traders from unfairly riding on the reputation and success that you have built for your trade mark. These penalties include fines of up to THB 6,000 (EUR 150) and/or imprisonment of up to three years, however, the legal remedies available to you would be more limited than if you had registered the trade mark.



Enforcement TIPS and WATCH-OUTS in Thailand

Although the legal framework in Thailand is relatively developed, major obstacles to an effective fight against infringement remain, as is the case across the majority of Asian countries. Strong enforcement of IP laws together with well-coordinated IP awareness campaigns are necessary to effectively deal with rampant IP infringements in Thailand.

For more detailed information about IP enforcement in Thailand, look out for the ASEAN IPR SME Helpdesk's forthcoming Guide to IP Enforcement in the ASEAN Region, to be made available for download from [our website](#) in the coming months.

Administrative measures in Thailand are generally seen as deficient and not effective due to a lack of sufficient resources.



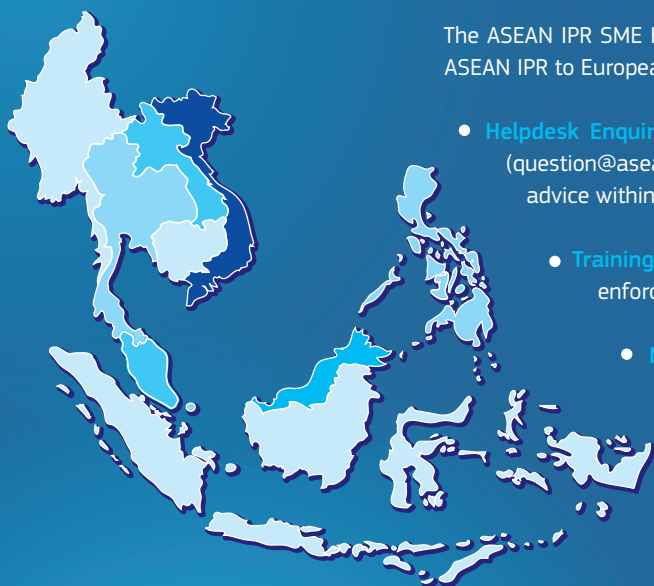
6. RELATED LINKS and Additional Information

- > ASEAN IPR SME Helpdesk website – www.asean-iprhelpdesk.eu
- > Helpdesk blog www.yourIPinsider.eu for related articles on IP in South-East Asia and China
- > Delegation of the European Union to Thailand – http://eeas.europa.eu/delegations/thailand/index_en.htm
- > World Intellectual Property Organisation – www.wipo.org
- > The Thai Department of Intellectual Property (DIP) – <http://www.ipthailand.org/>
- > Central Intellectual Property and International Trade Court – <http://www.cipitc.or.th/>
- > Royal Thai Police Bureau – <http://www.royalthaipolice.go.th/>
- > Thai Customs Department – <http://www.customs.go.th/>
- > Department of Special Investigation – <http://www.dsi.go.th/>
- > ASEAN IP Portal – <http://www.aseanip.org>





ASEAN IPR SME HELPDESK



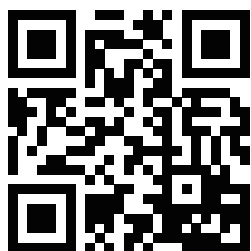
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- **Helpdesk Enquiry Service:** Submit further questions to the Helpdesk via phone, email (question@asean-iprhelpdesk.eu) or in person and receive free and confidential first-line advice within five working days from an ASEAN IP expert.
- **Training:** The Helpdesk arranges training on ASEAN IPR protection and enforcement across Europe and Southeast Asia, tailored to the needs of SMEs.
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- **Online Services:** Our multi-lingual online portal (www.asean-iprhelpdesk.eu) provides easy access to Helpdesk guides, case studies, E-learning modules, event information and webinars.

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Guide developed in collaboration with: Vidon IP Law Group

Guide Last Updated: October 2014