

AGREEMENT BETWEEN  
THE ROYAL GOVERNMENT OF THE KINGDOM OF CAMBODIA  
AND THE EUROPEAN PATENT ORGANISATION  
ON VALIDATION OF EUROPEAN PATENTS

(VALIDATION AGREEMENT)

THE ROYAL GOVERNMENT of THE KINGDOM OF CAMBODIA (hereinafter referred to as "Cambodia"), represented by His Excellency Dr. Cham Prasidh, Senior Minister, Ministry of Industry and Handicraft, hereinafter referred to as "the MIH"

and

THE EUROPEAN PATENT ORGANISATION (hereinafter referred to as "the Organisation"), represented by Mr. Benoît Battistelli, President of the European Patent Office (hereinafter referred to as "the EPO")

HAVING REGARD

to the Convention on the Grant of European Patents of 5 October 1973 as last revised by the Act revising the European Patent Convention of 29 November 2000 (hereinafter referred to as "European Patent Convention") and, in particular, Article 33(4) thereof,

to the Law of Cambodia on the Patents, Utility Model Certificates and Industrial Designs of 22 January 2003,

TAKING INTO ACCOUNT

that the Law of Cambodia on the Patents, Utility Model Certificates and Industrial Designs provides for a level of protection similar to that existing in the member states of the Organisation, except for the patent protection concerning pharmaceutical products since Cambodia benefits from the WTO waiver allowing the least developed Country members to choose whether or not to protect pharmaceutical products by patents till 2033,

that Cambodia will provide for a system enabling the effects of European patent applications and patents to be validated on request in its territory by introducing in its national legal framework provisions implementing the validation system (hereinafter referred to as "validation system"),

WHEREAS

Cambodia is a party to the Patent Cooperation Treaty and has designated the EPO as International Searching and Preliminary Examining Authority under the said Treaty,

# RECOGNISING

the need fully to apply the standards of the Agreement on Trade-Related Aspects of Intellectual Property Rights (hereinafter referred to as "TRIPs Agreement"),

# CONVINCED

that the establishment of a validation system between the Organisation and Cambodia is of mutual interest and will strengthen the protection of industrial property in Cambodia and, at the same time, make the European patent system more attractive,

HAVE AGREED AS FOLLOWS:

## Article 1

### Subject of the Agreement

The contracting parties shall co-operate within the scope of this Agreement to develop an efficient system of validation of European patents in Cambodia.

## Article 2

### Technical and legal assistance

Within the scope of its capabilities the Organisation shall provide Cambodia with technical and legal assistance necessary for the implementation of the validation system.

## Article 3

### Legal and administrative co-operation

- (1) The contracting parties shall regularly exchange information on legal developments relating to their respective patent system.
- (2) If requested by Cambodia, the Organisation shall within the scope of its capabilities give advice on proposals for enacting or amending legal provisions relating to Cambodia's patent system.

#### Article 4

##### Processing of requests for validation

- (1) The EPO shall accept, process and publish any request for validation of European patents in Cambodia and shall communicate to the MIH any necessary information regarding the proceedings relating to the European patent applications and patents concerned.
- (2) Within the scope of its capabilities, the EPO shall on request give assistance to the MIH by communicating any other useful information.

#### Article 5

##### Information concerning validated European patents

The MIH shall inform the EPO of the legal status of any validated European patent, in particular of its being void, of its lapse, renunciation, limitation or revocation.

#### Article 6

##### Financial matters

For each request for validation, a validation fee shall be due to the EPO. The President of the EPO shall lay down the amount of the validation fee and the proportion thereof to be kept by the EPO upon an agreement between the EPO and the MIH.

#### Article 7

##### Joint committee and Technical working group

- (1) A joint committee shall be set up to discuss all matters arising from this Agreement and its implementation. The committee shall be composed of representatives of the EPO and the MIH. Representatives of other government bodies of Cambodia involved in or directly affected by the implementation of this Agreement may be consulted.



- (2) The committee shall meet on the initiative of either the Head of the MIH or the President of the EPO. The agenda for each meeting, the venue and date thereof, shall be fixed by agreement between the MIH and the EPO.
- (3) The committee shall supervise the activities of a technical working group dealing with specific legal and technical issues arising from the implementation of this Agreement.

#### Article 8

##### Implementation of the Agreement

- (1) The tasks incurred by the contracting parties in consequence of this Agreement shall be carried out by the EPO and the MIH. The EPO may entrust individual tasks under Article 2 of this Agreement to the patent offices of the contracting states to the European Patent Convention, subject to their consent.
- (2) The details of the implementation of this Agreement shall be fixed by agreement between the Head of the MIH and the President of the EPO.

#### Article 9

##### Amendment of the Agreement

At the request of the Organisation or of the Royal Government of Cambodia, the contracting parties shall enter into negotiations on amending this Agreement.

#### Article 10

##### Duration and termination of the Agreement

- (1) This Agreement shall be concluded for a period of five years, and shall be extended for further five-year periods unless a contracting party objects to this in writing no later than six months prior to the end of the five-year period in force.
- (2) Notwithstanding paragraph 1, this Agreement may be terminated at any time in writing by either contracting party; termination shall take effect one year after receipt by the other party of the notice of termination, unless the said notice specifies a longer period or the contracting parties agree on a shorter period.

- (3) If this Agreement is terminated, Articles 4 to 6 shall continue to apply to any European patent application in respect of which a request for validation has been filed prior to termination, and to any European patent granted thereon.

#### Article 11

##### Entry into force

The date of entry into force of this Agreement shall be determined by an exchange of notes between the MIH and the EPO, following the enactment by Cambodia of provisions in accordance with those attached to this Agreement.

#### Article 12

##### Transitional provisions

This Agreement shall not apply to European patent applications seeking protection for pharmaceutical products and European patents granted upon such applications to the extent to which the transitional period under Article 66.1 of the TRIPS Agreement as well as the decisions of the Council for TRIPS on the extension of this transitional period apply to Cambodia.

Done at Phnom Penh on 23 January 2017, in two originals in each of the Khmer, English, French and German languages. In the event of ambiguity, conflict or discrepancy between the four language versions, the English version shall prevail for interpretation purposes.

For the Royal Government of the  
Kingdom of Cambodia



CHAM Prasidh

Senior Minister,  
Minister of Industry and Handicraft

For the European Patent Organisation



Benoît BATTISTELLI

President of the European  
Patent Office

ATTACHMENT

Model provisions governing the validation  
of European patents in Cambodia

Article 1

Validation of European patents

- (1) A European patent application and a European patent validated in Cambodia shall, subject to the following provisions, have the effect of and be subject to the same conditions as a national patent application and a national patent under the Law of Cambodia on the Patents, Utility Model Certificates and Industrial Designs (hereinafter referred to as "Patent Law").
- (2) For the purposes of these provisions,
  - (a) "European patent application" means an application for a European patent filed under the European Patent Convention (hereinafter referred to as "EPC"), as well as an international application filed under the Patent Cooperation Treaty (hereinafter referred to as "PCT") for which the European Patent Office (hereinafter referred to as "EPO") is designated or elected Office, and which has been accorded an international date of filing, and in which Cambodia is designated;
  - (b) "validated European patent" means a European patent granted by the EPO on a European patent application in respect of which validation in Cambodia has been requested;
  - (c) "national patent application" means a patent application filed under the Patent Law with the Ministry of Industry and Handicraft (hereinafter referred to as "the MIH");
  - (d) "national patent" means a patent granted on a national patent application.



## Article 2

### Request for validation

- (1) A European patent application and a European patent granted on such application shall be validated in Cambodia at the request of the applicant. The request for validation shall be deemed to be filed with any European patent application filed on or after the date on which the validation agreement between the Royal Government of the Kingdom of Cambodia and the European Patent Organisation enters into force.
- (2) The MIH shall publish any request for validation as soon as possible after it has been informed by the EPO that the prescribed validation fee has been paid, but not before the expiry of 18 months from the filing date or, if priority has been claimed, the earliest priority date.
- (3) The request for validation may be withdrawn at any time. It shall be deemed withdrawn where the prescribed validation fee has not been paid in time or where the European patent application has been finally refused, withdrawn or deemed withdrawn. The MIH shall publish this as soon as possible if the request for validation has already been published by it in accordance with paragraph 2.

## Article 3

### Validation fee

- (1) The validation fee under Article 2(2) shall be paid to the EPO following the date of publication of the mention in the European Patent Bulletin of the publication of the European search report but not later than within six months of that date, or, where applicable, within the period for performing the acts required for entry into the European phase of an international application within the meaning of Article 1, paragraph 2(a).
- (2) The validation fee may still be validly paid within an additional period of two months of expiry of the relevant period referred to in paragraph 1, provided that a 50% surcharge is paid within this additional period.
- (3) For the payment of validation fees the EPO Rules relating to Fees shall apply mutatis mutandis. Validation fees validly paid shall not be refunded.



## Article 4

## Effects of European patent applications

A European patent application which has been accorded a filing date shall be equivalent to a regular national patent application, where appropriate with the priority claimed for the European patent application, whatever its outcome may be.

## Article 5

## Effects of European patents

- (1) A validated European patent shall, subject to paragraphs 2 to 7, confer as from the date of publication of the mention of its grant by the EPO the same rights as would be conferred by a national patent under the Patent Law.
- (2) Within three months of the date on which the mention of the grant of the European patent has been published, the proprietor of the patent shall furnish to the MIH the translation into Khmer and English of the claims and pay the prescribed fee for publication.
- (3) If, as a result of an opposition or a request for limitation filed with the EPO, the European patent is maintained in amended form, the proprietor of the patent shall, within three months of the date on which the mention of the decision to maintain the European patent as amended or to limit it was published, furnish to the MIH the translation into Khmer and English of the amended claims and pay the prescribed fee for publication.
- (4) Where the text of claims contains reference signs used in the drawings, such drawings shall be attached to the translation referred to in paragraph 2 or 3.
- (5) The MIH shall publish any translation duly filed under paragraph 2 or 3 as soon as possible.
- (6) If the translation specified in paragraph 2 or 3 is not filed in due time or the publication fee is not paid in due time, the validated European patent shall be deemed to be void ab initio. The translation may still be validly filed within an additional period of three months of expiry of the relevant periods referred to in paragraphs 2 and 3.

- (7) A validated European patent shall be deemed not to have had ab initio the effects specified in paragraph 1 to the extent that the patent has been revoked in opposition or central revocation proceedings or limited in limitation proceedings before the EPO.

#### Article 6

##### Authentic text of European patent applications or European patents

- (1) The text of a European patent application or a European patent in the language of the proceedings before the EPO shall be the authentic text in any proceedings in Cambodia.
- (2) However, the translation as provided for under Article 5 shall be regarded as authentic, except in revocation proceedings, should the patent in the language of the translation confer protection which is narrower than that conferred by it in the language of the proceedings.
- (3) The patent proprietor of a validated European patent may file, at any time, a corrected translation. The corrected translation of the claims of a validated European patent shall not have any legal effects until it has been made available to the public by the MIH.
- (4) Any person who, in good faith, uses or has made effective and serious preparations for using an invention, the use of which would not constitute infringement of the patent in the original translation may, after the corrected translation takes effect, continue such use in the course of his business or for the needs thereof without payment.

## Article 7

### Rights of earlier date

- (1) A European patent application for which the validation fee has been paid and a validated European patent shall have with regard to a national patent application and a national patent the same prior-art effect as a national patent application and a national patent.
- (2) A national patent application and a national patent shall have with regard to a validated European patent the same prior-art effect as they have with regard to a national patent.

## Article 8

### Simultaneous protection

If a validated European patent and a national patent with the same filing date or, where priority has been claimed, the same priority date have been granted to the same person or his successor in title, the national patent, to the extent that it covers the same invention as the validated European patent, shall have no effect as from the date on which the time limit for filing an opposition to the European patent has expired without an opposition having been filed, or as from the date on which a final decision maintaining the European patent has been taken.

## Article 9

### Annual fees for validated European patents

- (1) Annual fees for a validated European patent shall be paid to the MIH for the years following the year in which the mention of the grant of the European patent was published.
- (2) If annual fees for a validated European patent fall due within two months as from the date on which the mention of the grant of the patent was published in the European Patent Bulletin, they shall be deemed to have been validly paid provided they were paid to the MIH within the period mentioned.



Article 10

Applicability of the EPC

The provisions of the EPC and its Implementing Regulations shall not apply unless otherwise provided in the present provisions.