New Patent Law in Brunei Darussalam from 01 January 2012

Brunei Darussalam's Patents Order, 2011 came into force on 01 January 2012. The Order repeals the Inventions Act 1925 (subject to transitional provisions), establishes for the first time an independent patent system for the receipt, processing and grant of patents by a new Registry of Patents, and provides for the country's future accession to the PCT.

The substantive and procedural aspects of the new law closely mirror those of the Singapore Patents Act 1994. Patentability under the Order is subject to a worldwide absolute novelty standard with only a limited 12-month grace period covering abuse of rights, disclosure at an international exhibition, and the reading or publication of a paper by the inventor before a learned society.

An application filed under the Order may claim priority from a relevant earlier application filed in any Paris Convention or WTO member state.

A person resident in Brunei Darussalam is only allowed to file, or caused to be filed, a patent application outside of the country if:

i) prior written authority has been granted by the Registrar of Patents, or

ii) a first patent application has been filed in Brunei and the filing outside of the country is made not less than two months after that first filing.

In case ii), the first application must not be subject to directions from the Registrar that prohibit or restrict publication or communication of its content.

Similar to Singapore, the prosecution options include independent search and examination; reliance on the grant or final examination results of a recognized corresponding foreign application; or a combination of these options. Independent search and examination will be contracted out to one or more foreign patent offices.

The term of a patent granted under the Order shall be 20 years from its filing date. Annual fees shall be payable in respect of the fifth year onwards. Restoration of lapsed patents will be possible, subject to meeting a standard of reasonable care. There are provisions for patent term extension in certain situations, including where the need for marketing approval of a pharmaceutical product has curtailed the opportunity to exploit a patented invention.

The transitional provisions allow for continued re-registration of a GB, EP(GB), MY or SG granted patent ("qualifying patent") under the old Inventions Act 1925, as follows:

1) Any re-registration application filed before 01 January 2012 will be processed under the old Act.

2) Any qualifying patent that is granted no more than three years before 01 January 2012, and is in force on that date, may be made the subject of an application for re-registration under the old Act within two years of 01 January 2012.

3) An application for a qualifying patent that is pending as of 01 January 2012 may be made the subject of an application for re-registration under the old Act within 12 months of the grant of that patent.

All existing re-registration patents, and those obtained under provisions 1) to 3) above will be subject to the payment of local annual fees. The term of these patents will remain 20 years from the filing date of the qualifying patent, provided that patent has not been revoked in the United Kingdom, Malaysia or Singapore, as the case may be.

In other circumstances not covered by the transitional provisions, and until Brunei joins the PCT, patent protection will only be obtainable by filing a direct national application under the new Order.

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