Inputs from Member States and Regional Patent Offices to the Thirty-Eighth Session of the Standing Committee on the Law of Patents

Respondent Information

First Name:

[redacted]

Last Name:

[redacted]

Country:

Brunei Darussalam

IP Office

Brunei Intellectual Property Office

Job title

Deputy Registrar / Counsel

Email address:

[redacted]

Email address confirmation:

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Disclaimer:

The information provided in response to this questionnaire is understood to be submitted on behalf of the Member State or regional organization concerned, through its competent authority and in accordance with its applicable official internal procedures.
It is assumed that the person completing and submitting the questionnaire is duly authorized to do so and that the information reflects the official position or practice of the Member State or organization, to the extent possible.

I confirm that I have read and understood the statement above and that I agree with its contents.

i) Study on the determination of inventorship and conditions of foreign filing, with a view to identifying potential challenges for innovators in the cross-border collaborative environment

1. Which of the following does the applicable legal framework in your jurisdiction require before a patent application can be filed in another country or at a regional patent organization?

'First filing' or first domestic filing requirement (FDFR)

2. Please list the statutes or guidance documents that patent applicants in your country can consult to inform themselves of the foreign filing requirements and the procedure to follow.

Patents Act (Chapter 262) and Patent Rules

3. Please list the most important case law on foreign filing conditionality requirements, if any, with a brief summary of the main findings.

Not applicable.

4. What specific criteria will trigger the Foreign Filing Conditionality?

Nationality or residency of the applicant;

Please provide any further details on the scope of the specific criteria applicable in your jurisdiction.

Section 33 applies to persons resident in Brunei Darussalam. Such persons may not file a patent application outside Brunei Darussalam unless:

(i) an application for the same invention has been filed in Brunei Darussalam at least 2 months earlier; and
(ii) no directions have been issued under section 32, or any such directions have been revoked.

Section 32 empowers the Registrar to issue directions prohibiting or restricting publication or communication of information relating to an invention where it is considered relevant to national security.

5. Does your law allow for a deemed license or automatic approval, if the Office does not act or respond within a specific time period?

No

6. Does your jurisdiction's patent law provide for the imposition of a "Secrecy Order" (or other similar national security restrictions) that prohibits or restricts an applicant from filing for patent protection in other jurisdictions?

Yes

What is the nature/impact of this restriction regarding foreign filing?

The Term "Secrecy Order" is not found in Brunei's Patents Act but Section 32 provides for directions prohibiting or restricting publication or disclosure of an invention on national security grounds, specific sections of which state:

"32. (1) Where an application for a patent is filed in the Registry (whether under this Act or any treaty or international convention to which Brunei Darussalam is a party) and it appears to the Registrar that the application contains information of a description notified to him by the Attorney General as being information the publication of which might be prejudicial to the defence of Brunei Darussalam, the Registrar shall give directions prohibiting or restricting the publication of that information or its communication to any specified person or description of persons.

(2) If it appears to the Registrar that any application so filed contains information the publication of which might be prejudicial to the safety of the public, he may give directions prohibiting or restricting the publication of that information or its communication to any specified person or description of persons until the end of a period not exceeding 3 months from the end of a period prescribed for the purposes of section 27.

(3) While directions are in force under this section with respect to an application —

(a) if the application is made under this Act, it will be held in abeyance after the formal requirements of this Act and the rules have been met and will not proceed to be processed in accordance with section 29 until the directions are revoked under subsection (4)(e); and

(b) if it is an international application for a patent, a copy of it shall not be sent to the International Bureau or any international searching authority appointed under the Patent Co-operation Treaty.

(4) Where the Registrar gives directions under this section with respect to any application, he shall give notice of the application and of the directions to the Attorney General, and the following provisions shall then have effect —

(a) the Attorney General shall, on receipt of the notice, consider whether the publication of the application or the publication or communication of the information in question would be prejudicial to the defence of Brunei Darussalam or the safety of the public;

(b) if the Attorney General determines under paragraph (a) that the publication or communication of that information would be prejudicial to the safety of the public, he shall notify the Registrar who shall continue his directions under subsection (2) until they are revoked under paragraph (e);

(c) if the Attorney General determines under paragraph (a) that the publication of the application or the publication or communication of that information would be prejudicial to the defence of Brunei Darussalam or the safety of the public, he shall (unless a notice under paragraph (d) has previously been given by the Attorney General to the Registrar) reconsider that question during the period of 9 months from the date of filing the application and at least once in every subsequent period of 12 months;

(d) if on consideration of an application at any time it appears to the Attorney General that the publication of the application or the publication or communication of the information contained in it would not, or would no longer, be

prejudicial to the defence of Brunei Darussalam or the safety of the public, he shall give notice to the Registrar to that effect; and

(e) on receipt of such a notice the Registrar shall revoke the directions and may, subject to such conditions (if any) as he thinks fit, extend the time for doing anything required or authorised to be done by or under this Act in connection with the application, whether or not that time has previously expired.

(8) Any person who fails to comply with any direction under this section is guilty of an offence and liable on conviction to a fine not exceeding $5,000, imprisonment for a term not exceeding 2 years or both."

Patents Act, S.32(3). "While directions are in force under this section with respect to an application —

(b) if it is an international application for a patent, a copy of it shall not be sent to the International Bureau or any international searching authority appointed under the Patent Co-operation Treaty."

Patents Act," S. 33. (1) Subject to this section, no person resident in Brunei Darussalam shall, without written authority granted by the Registrar, file or cause to be filed outside Brunei Darussalam an application for a patent for an invention unless —

(b) no directions have been given under section 32 in relation to the application in Brunei Darussalam or all such directions have been revoked.

(2) Subsection (1) does not apply to an application for a patent for an invention for which an application for a patent has first been filed in a country outside Brunei Darussalam by a person resident outside Brunei Darussalam.

(3) Any person who files or causes to be filed an application for the grant of a patent in contravention of this section is guilty of an offence and liable on conviction to a fine not exceeding $5,000, imprisonment for a term not exceeding 2 years or both."

7. Please cite, if available, any official studies, policy documents, or reports which highlight the working of the foreign filing requirements in your jurisdiction.

Not applicable.

8. Please provide any additional information that you feel would be relevant to this study, by attaching the corresponding document (Word, PDF, etc.)

Patents_Act,_Chapter_262.pdf

Final review before submission

Confirmation of submission

I am aware that by clicking "Submit" below, my responses will be sent to the SCP Secretariat.