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## PHILIPPINES IP HANDBOOK

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PATENT



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TRADEMARK



INDUSTRIAL DESIGN

## TRADEMARK APPLICATION IN PHILIPPINES

### 1. Legislation:

The Intellectual Property Code of the Philippines (Republic Act No. 8293).

### 2. Definition:

"Mark" means any visible sign capable of distinguishing the goods (trademark) or services (service mark) of an enterprise and shall include a stamped or marked container of goods.

### 3. Criteria:

A mark cannot be registered if it:

- (a) Consists of immoral, deceptive or scandalous matter, or matter which may disparage or falsely suggest a connection with persons, living or dead, institutions, beliefs, or national symbols, or bring them into contempt or disrepute;
- (b) Consists of the flag or coat of arms or other insignia of the Philippines or any of its political subdivisions, or of any foreign nation, or any simulation thereof;
- (c) Consists of a name, portrait or signature identifying a particular living individual except by his written consent, or the name, signature, or portrait of a deceased President of the Philippines, during the life of his widow, if any, except by written consent of the widow;
- (d) Is identical with a registered mark belonging to a different proprietor or a mark with an earlier filing or priority date, in respect of: (i) The same goods or services, or (ii) Closely related goods or services, or (iii) If it nearly resembles such a mark as to be likely to deceive or cause confusion;
- (e) Is identical with, or confusingly similar to, or constitutes a translation of a mark which is considered by the competent authority of the Philippines to be well-known internationally and in the Philippines, whether or not it is registered here, as being already the mark of a person other than the applicant for registration, and used for identical or similar goods or services: Provided, That in determining whether a mark is well-known, account shall be taken of the knowledge of the relevant sector of the public, rather than of the public at large, including knowledge in the Philippines which has been obtained as a result of the promotion of the mark;
- (f) Is identical with, or confusingly similar to, or constitutes a translation of a mark considered well-known in accordance with the preceding paragraph, which is registered in the Philippines with respect to goods or services which are not similar to those with respect to which registration is applied for: Provided, That use of the mark in relation to those goods or services would indicate a connection between those goods or services, and the owner of the registered mark: Provided further, That the interests of the owner of the registered mark are likely to be damaged by such use;
- (g) Is likely to mislead the public, particularly as to the nature, quality, characteristics or geographical origin of the goods or services;
- (h) Consists exclusively of signs that are generic for the goods or services that they seek to identify;
- (i) Consists exclusively of signs or of indications that have become customary or usual to designate the goods or services in everyday language or in bona fide and established trade practice;
- (j) Consists exclusively of signs or of indications that may serve in trade to designate the kind, quality, quantity, intended purpose, value, geographical origin, time or production of the goods or rendering of the services, or other characteristics of the goods or services;
- (k) Consists of shapes that may be necessitated by technical factors or by the nature of the goods themselves or factors that affect their intrinsic value;
- (l) Consists of color alone, unless defined by a given form; or
- (m) Is contrary to public order or morality.

**4. Membership:**

- √ - Paris Convention
- √ - Madrid Protocol

Philippines is a member of the Paris Convention from 1965, whereby applications from convention countries will be subject to the same priority date in Philippines. The application for priority has to be made within six months of the first application in a convention country.

**5. Rule of Priority:**

“First to Use” is the rule followed by Philippines in determining priority of trademarks.

**6. Duration and Renewal:**

A certificate of registration shall remain in force for ten (10) years: Provided, That the registrant shall file a declaration of actual use and evidence to that effect, or shall show valid reasons based on the existence of obstacles to such use, as prescribed by the Regulations, within one (1) year from the fifth anniversary of the date of the registration of the mark. Otherwise, the mark shall be removed from the Register by the Office. A certificate of registration may be renewed for periods of ten (10) years at its expiration upon payment of the prescribed fee and upon filing of a request.

**PHILIPPINES TRADEMARK APPLICATION PROCEDURES**

**1. Application**

Every applicant is required to submit an application with Intellectual Property Office of the Philippines.



**2. Examination**

A Trademark application is examined 12 to 18 months from the date of filing.



**3. Publication**

The IPO then issues a notice of allowance and publishes the application 12 to 24 months from the filing date. An application fee is required to be paid within 2 months from mailing date of notice of allowance. IPO publishes the application in the official gazette for purposes of opposition within 6 to 8 months from notice.



**4. Opposition**

Aggrieved parties are required to submit oppositions within 30 days from the date of publication.



**5. Notice of Issuance**

Where no opposition is filed a notice of issuance and publication is issued by the IPO within 3 months from the publication of the notice of allowance.



**6. Registration**

The IPO issues a certificate of registration within 5 to 7 months of notice of issuance subsequent to payment of fees by the applicant within 2 months from mailing date notice of issuance .

**Filing Requirements**

The following information and/or documents are required to file an application for a trademark application in Philippines:-

1. Application Form.
2. Power of Attorney.
3. One (1) clear copy of the mark.
4. A list of goods or services ( which closely follow the Nice International Classification).
5. The full name, nationality and registered address of the applicant.
6. Description of claim if colour or a combination of colour or a combination of colours is claimed as Trademark.
7. For marks that contain non-English words, a certified

## Documents To Be Furnished For Filing Trade/Service Mark Application in Philippines

### Basic Requirements

Documents	Remarks	Time of Filing
Power of attorney	Signed. No need for notarization/ certification/ legalization	May be submitted later or up to 2 months from date of filing of application.
Image/ representation of the mark	Must be 2in. X 3in. in dimension; must show the colors being claimed if applicable	On filing date.

### Additional Documents for Claiming a Convention Priority

Documents	Remarks	Time of Filing
Certified true copy of the priority application	Must have English translation if in another language	3 months from date of filing of application.
Certified true copy of the priority registration	Must have English translation if in another language	Upon completion of all requirements of registrability as assessed by Examiner; If the only issue remaining in an application based on foreign application claiming priority right is the submission of a certified copy of the foreign or home registration, the Examiner may provisionally allow the application and suspend the submission of the certified copy of the foreign or home registration for a period not exceeding twelve (12) months counted from allowance.

### Documents for Filing a Request of Recordals of Assignments and Changes

Documents	Remarks	Time of Filing
Copy of Deed of Assignment	Legalized	Upon filing of request

### Documents for Filing an Opposition or Counter-Statement (Deadline for Applying is during 3 Months Publication Period of the Trade Mark Application to be Opposed)

Documents	Remarks	Time of Filing
Notice of Opposition		Within 30 days from Publication of mark to be opposed
Extension to File Verified Motion of Opposition		Opposer is allowed 3 extensions that has to be filed every 30 days from First notice mentioned above allowing time to put together the Verified Motion of Opposition
Power of Attorney	notarized and duly authenticated by the Philippine Consulate Office.	Upon Filing Verified Motion of Opposition
Verification and Certification of Non-Forum Shopping	notarized and duly authenticated by the Philippine Consulate Office.	Upon Filing Verified Motion of Opposition
Affidavit-direct testimony of witness opposing company	notarized and duly authenticated by the Philippine Consulate office. This affidavit should contain some information on the company, some history on the marks, a list of worldwide registration and application of the mark, some samples of said trademark registrations, information on worldwide sales, and Philippine sales, some information on expenditures on advertising and promotions worldwide and in the Philippines.	Upon Filing Verified Motion of Opposition
Affidavit-direct testimony from distributor or representative office or branch.	This document needs to be notarized only, and can include information as to its organization, sales and advertisements, list of dealers or stores products or goods covered by the mark concerned.	Upon Filing Verified Motion of Opposition

## PATENT APPLICATION IN PHILIPPINES

In Philippines, patent protection is obtainable by way of either entering the national phase of a Patent Cooperation Treaty (PCT) application or filing a direct national application.

### 1. Legislation

**The Intellectual Property Code of the Philippines (Republic Act No. 8293)**

### 2. Patentable Criteria:

Any technical solution of a problem in any field of human activity which is new, involves an inventive step and is industrially applicable shall be patentable. It may be, or may relate to, a product, or process, or an improvement of any of the foregoing.

### Non- Patentable Subject Matter:

An invention is not patentable if it contains the following:-

- Discoveries, scientific theories and mathematical methods;
- Schemes, rules and methods of performing mental acts, playing games or doing business, and programs for computers;
- Methods for treatment of the human or animal body by surgery or therapy and diagnostic methods practiced on the human or animal body. This provision shall not apply to products and composition for use in any of these methods;
- Plant varieties or animal breeds or essentially biological process for the production of plants or animals. This provision shall not apply to micro-organisms and non-biological and microbiological processes.
- Provisions under this subsection shall not preclude Congress to consider the enactment of a law providing sui generis protection of plant varieties and animal breeds and a system of community intellectual rights protection:
- Aesthetic creations; and
- Anything which is contrary to public order or morality.

### 3. Utility Models:

Utility models are registrable in the Philippines. A utility model must fulfill the criteria of new and industrial applicability (but not inventiveness). The term is seven (7) years without renewal.

### 4. Membership:

- √ - Paris Convention
- √ - PCT

Philippines is a member of the Paris Convention from 1965, whereby applications from convention countries will be subject to the same priority date in Philippines. The application for priority has to be made within six months of the first application in a convention country.

Philippines is also a member of the PCT since 2001. An applicant who has made an international patent application may file and/or prosecute the patent application during its national phase entry into Philippines within 30 months from the filing date of the international application or from the earliest priority date of the application if a priority is claimed.

### 5. Rule of Priority:

“First to file” is the rule followed by Philippines in determining priority of patent.

### 6. Duration and Renewal:

A patent application once registered is valid for 20 years from the date of application.



## PHILIPPINES PATENT APPLICATION PROCEDURES

### 1. Application

Every applicant is required to an application to With Intellectual Property Office of the Philippines within 12 months of priority date.

### 2. Examination

After the assignment of a filing date the application will be examined. And a search report be submitted to the applicant.

### 3. Publication & Substantive Examination

The application will be published within 18 months from the date of filing. Request for substantive examination has to be made within 6 months from the date of publication. Letters of patent will be granted on completion of substantive examination. The invention will be published in the IPO Gazette together with other relevant information.

### 4. Opposition

Third parties are invited to oppose the applications within the stipulated publication period.

### 5.Registration

Finally on completion of objections and opposition a Certificate of Registration will be issued subject to the payment of a fee. The duration of registration could take a minimum period of 2 -3 weeks. The registration is effective from date of application.

### Information to be furnished

The following information and/or documents are required to file an application for a patent in Philippines:-

#### Direct National Application:-

1. Request for the grant of a patent:-
  - a) the name, nationality and address of the applicant;
  - b) the name, nationality and address of the inventor;
  - c) a specification comprising a description, claims and any necessary drawings; and
  - d) the country and filing particulars of basic application whose priority is claimed.
2. Appointment of Patent Agent
3. If the applicant is not the inventor, a statement explaining how the applicant derives its right to the patent from the inventor, normally by virtue of assignment or employment.
4. There is no requirement for the filing of an assignment from inventor to applicant.

#### PCT National Phase Application

1. a copy of the PCT application in English language (i.e. request form PCT/RO/101);
2. the details of the PCT application (suitably, the bibliographic page as published by WIPO);
3. one copy of the PCT specification as originally filed (in or translated to English);
4. one copy of any amendments filed in the international phase (in or translated to English);
5. an Appointment of Agent form signed by the applicant; and
6. if the applicant is not the inventor, a statement explaining how the applicant derives its right to the patent from the inventor, normally by virtue of assignment or employment.



## Documents To Be Furnished For Filing A Patent Application in Philippines

### Basic Requirements

Documents	Remarks	Time of Filing
Patent specification, claims and abstract in English	no legalisation	On filing date or within two months from the date of entry
Drawings*	If any	On filing date

\*Note:

- (a) The set of drawings must be signed by the applicant or by his attorney or agent;
- (b) The set of drawings were must be made in a Bristol board or in a paper that is flexible, strong, white, smooth, non-shiny and durable;
- (c) The set of drawings must be made in a pen or by photolithographic which give the satisfactory reproduction characteristics; shading and lines were not present in the sectional view;
- (d) The sectional view of the set of drawings must be indicated on the general view by a broken or dotted line;
- (e) The space in the heading must be reserved at the right and the signature placed on the left, one figure must be placed upon another or within the outline of another.
- (f) The drawing must show every feature of the utility model or industrial design covered by the claim(s), and the figures should be consecutively numbered.

### Additional Documents for Convention Patent Application

Documents	Remarks	Time of Filing
Priority documents	Certified copy of the basic patent application.	On filing date or 6 months from the date of entry
Power of Attorney	signed; notarization is not required	On filing date or within 2 months from the date of entry

### Additional Documents for Entry of PCT National Phase in Philippines

Documents		Time of Filing
English translation of the international application (if it is filed in a language other than English)		On filing date
A copy of the International Search Report (form PCT/ISA/210)		On filing date or within 2 months from the date of entry
A copy of Notification Concerning Submission or Transmittal of Priority Document (form PCT/IB/304)		On filing date or within 2 months from the date of entry.
Details of the PCT application (suitably, the bibliographic page as published by WIPO).		On filing date
International preliminary examination report international search report (chapter 2).		On filing date (if available) or anytime during the pendency of the examination or anytime while the examination is active
Notification of Recording of a Change; (a) Inventor (b) Name (c) Applicant		On filing date (if available) or anytime during pendency of the application
One copy of the PCT specification as originally filed (in or translated to English).		On filing date
One copy of any amendments filed in the international phase (in or translated to English).		On filing date or anytime while the application is active

## INDUSTRIAL DESIGN APPLICATION IN PHILIPPINES

### 1. Legislation:

The Intellectual Property Code of the Philippines (Republic Act No. 8293)

### 2. Definition:

An industrial design is any composition of lines or colors or any three-dimensional form, whether or not associated with lines or colors; Provided, That such composition or form gives a special appearance to and can serve as pattern for an industrial product or handicraft.

### 3. Criteria:

Only industrial designs that are new or original shall benefit from protection. Industrial designs dictated essentially by technical or functional considerations to obtain a technical result or those that are contrary to public order, health or morals shall not be protected.

### 4. Rule of Priority:

Applications for priority have to be made within six months from the earliest filing date of the corresponding foreign application.

### 5. Duration and Renewal:

A design once registered is valid for a term of 5 years from the date of filing of the application and may be renewed for not more than 2 consecutive periods of 5 years each.

**PHILIPPINES INDUSTRIAL  
DESIGN APPLICATION  
PROCEDURES**

**1. Application**

Every design application has to be filed with the Intellectual Property of Philippines.

**2.Examination**

A formalities examination will be conducted after the issuance of a filing date to ensure formalities as to the size, quality of the representation and classification are met.

**3.Objections**

If there are any amendments or deficiencies spotted in the formalities examination, the examiners will notify the applicant and the applicant would have to correct this non-compliance within a given period.

**4. Registration**

Once an application is in order, a registration certificate will be issued and the application will be published in the Designs Journal. Once published, the published designs are made available for public inspection. It takes about 2 to 3 months from the submission of the application to the successful registration of a design.

**Filing Requirements**

The following information and/or documents are required to file an application for an industrial design application in Philippines:-

1. A request for registration of the design:-
  - (a) Information identifying the applicant;
  - (b) Indication of the kind of article of manufacture of handicraft to which the design shall be applied;
  - (c) The name and address of the creator;
  - (d) where the applicant is not the creator, a statement indicating the origin of the right to the industrial design registration according to intellectual property protection in the Philippines.
2. Power of Attorney signed by the Applicant.
3. A representation of the design (drawings, photographs or other adequate graphic representation of the design).
4. Priority documents and certified English translation of the priority document.

## Documents To Be Furnished For Filing an Industrial Design Application in Philippines

### Basic Requirements

Documents	Remarks	Time of Filing
Power of Attorney	Signed; notarization is not required.  To be translated to English (if necessary)	Two months from filing date
Description of Design	A specification containing the following: (a) title; (b) brief description of the different views of the drawings; (c) characteristic-feature description of the design; and (d) claim  To be translated to English (if necessary)	On filing date
Drawings	of the different views of the design showing the complete appearance thereof including the signature of the applicant or representative  To be translated to English (if necessary)	On filing date
Deed of Assignment	(if applicable)  Notarized.  To be translated to English (if necessary).	(a) anytime during the pendency of the formality examination of the design application; or (b) anytime while the design registration is still active status.

**Additional Documents for Claiming Convention Priority**

<b>Documents</b>	<b>Remarks</b>	<b>Time of Filing</b>
Priority documents	to be translated to English language (if necessary)	Within six months from filing



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