

## PART I

### i. Exceptions Regarding Farmers' and/or Breeders' Use of Patented Inventions

Under the Philippine Intellectual Property Code, plant varieties or animal breeds, or essentially biological processes for the production of plants or animals are excluded from patent protection.<sup>1</sup> Thus, it is not within IPOPHL's mandate to provide for the exceptions regarding farmers' and breeders' use of patented inventions. The exception to this exception is when the patented invention does not fall within the statutory exclusions provided by the IP Code.

The Philippine Plant Variety Protection Act is responsible for providing protection to new plant varieties, whereas the Animal Welfare Act is responsible for the protection of animal breeds.

### ii. Study on Substantive and Procedural Requirements Regarding Voluntary Divisional Applications

The Philippine IP Code requires that the patent application shall relate to one invention only or to a group of inventions forming a single general inventive concept.<sup>2</sup>

The Director of Patents may require patent applications having multiple inventions not conforming with the Unity of Invention requirement to be restricted to a single invention. Any subsequent inventions filed as a result of the said restriction shall be afforded with the same filing date as the earlier application.<sup>3 4</sup>

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<sup>1</sup> Section 22.4 of R.A. 8293, otherwise known as Intellectual Property Code

<sup>2</sup> SEC. 38. Unity of Invention. –

38.1. The application shall relate to one invention only or to a group of inventions forming a single general inventive concept.

<sup>3</sup> 38.2. If several independent inventions which do not form a single general inventive concept are claimed in one application, the Director may require that the application be restricted to a single invention. A later application filed for an invention divided out shall be considered as having been filed on the same day as the first application: Provided, That the later application is filed within four (4) months after the requirement to divide becomes final, or within such additional time, not exceeding four (4) months, as may be granted: Provided further, That each divisional application shall not go beyond the disclosure in the initial application.

<sup>4</sup> Rule 604. Unity of Invention. –

(a) The application shall relate to one invention only or to a group of inventions forming a single general inventive concept (Sec. 38.1, IP Code).

iii. Document updating Sections V and VI of Annex to document SCP/35/7 (Artificial Intelligence (AI) and Inventorship)

- Section V: National/ Regional Legal Frameworks Regarding the Concept of Inventorship

The Philippine IP Code contemplates that an inventor must be a natural person.<sup>5</sup>

- Section VI: The “DABUS” Case

Under the Philippine IP Code, the PH does not recognize artificial intelligence as a lawful inventor of a patent application. To date, PH has not received any patent application where an AI is the designated inventor.

iv. Standard Essential Patents

The Philippine IP Code does not have specific provisions on Standard Essential Patents. As such, there is no formal SEP practice, procedure, or regulatory body. However, even without such formal structures surrounding SEP, PH recognizes essential patents per se under the Philippine IP Code. Section 97<sup>6</sup> thereof can be considered as a variant of SEP, particularly the concept of “interdependence of patents”.

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(b) If several independent inventions which do not form a single general inventive concept are claimed in one application, the Director may require that the application be restricted to a single invention. A later application filed for an invention divided out shall be considered as having been filed on the same day as the earlier application; Provided, that the later application is filed within four (4) months after the requirement to divide becomes final or within such additional time not exceeding two (2) months as may be granted under Rule 928b; Provided further, that each divisional application shall not go beyond the disclosure in the initial application. (Sec. 38.2, IP Code).

<sup>5</sup> Section 25.2. For the purposes of Subsection 25.1, "inventor" also means any person who, at the filing date of application, had the right to the patent. (n)

<sup>6</sup> SEC. 97. Compulsory License Based on Interdependence of Patents.- If the invention protected by a patent, hereafter referred to as the "second patent," within the country cannot be worked without infringing another patent, hereafter referred to as the "first patent," granted on a prior application or benefiting from an earlier priority, a compulsory license may be granted to the owner of the second patent to the extent necessary for the working of his invention, subject to the following conditions:

97.1. The invention claimed in the second patent involves an important technical advance of considerable economic significance in relation to the first patent;

This IP Code provision speaks of interdependence of patents, whereby there is a second patent that cannot be worked without infringing another (first patent). A compulsory license may be granted to the owner of the second patent to the extent necessary for such invention to work, subject to certain conditions as provided by law.

## PART II.

- i. With respect to certain aspects of the national or regional patent law, related to prior art, novelty, inventive step (non-obviousness), grace period, sufficiency of disclosure, exclusions from patentable subject matter and/or exceptions and limitations of rights

IPOPHL has no new update regarding the abovementioned topics.

- ii. With respect to national and regional laws on opposition systems and other administrative revocation and invalidation mechanisms

The IPOPHL has implemented IPOPHL Memorandum Circular No. 2022-013: Amendments to the Rules and Regulations on Inter Partes Proceedings which cover opposition, revocation, and invalidation mechanisms. Said IRR can be accessed on our website at [www.ipophil.gov.ph](http://www.ipophil.gov.ph).

- iii. With respect to international work sharing and collaborative activities for search and examination of patent applications

The IPOPHL has existing mechanisms in place in implementing various work sharing initiatives, like the Patent Prosecution Highway (PPH) and the ASEAN Patent Examination Cooperation (ASPEC).

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97.2. The owner of the first patent shall be entitled to a cross-license on reasonable terms to use the invention claimed in the second patent;

97.3. The use authorized in respect of the first patent shall be non-assignable except with the assignment of the second patent; and

97.4. The terms and conditions of Sections 95, 96 and 98 to 100 of this Act. (Sec. 34-C, R.A. No. 165a)

- iv. With regard to the compilation of laws and practices regarding the scope of client-attorney privilege and its applicability to patent advisors

The IPOPHL has recently implemented IPOPHL Memorandum Circular No. 2024-013: Establishing a Recognition System for Patent Representatives by the IPOPHL and Providing for its Implementing Rules and Regulations. This outlines the classification of Recognized Patent Representatives, and the scope of services they that each can conduct.

This issuance also provides for a Register of Recognized Patent Representatives and the establishment of a Board responsible for setting registration and application schedules, compliance with the requirements, preparation, issuance, and promulgation of necessary notices, rules, and regulations for its implementation, and overseeing of IP- related training programs specifically for this purpose.

- v. With respect to expedited examination programs

Aside from existing work sharing programs which guarantee accelerated examination process over regular patent applications, the 2022 Revised IRR on Inventions provides for an Accelerated Substantive Examination<sup>7</sup> upon request of the applicant.

The Bureau of Patents is in the process of drafting the guidelines on expedited examinations as provided in the 2022 Revised IRR.

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<sup>7</sup> Rule 804.1 Request for Accelerated Substantive Examination. - An applicant may file a request for accelerated examination with payment of the prescribed fee after the application has been published in the IPOPHL E-Gazette and the request for substantive examination has been filed, in accordance with the accelerated examination procedures which may be promulgated by the Office. Approval for accelerated examination is subject to the approval of the Director of Patents.