MONGOLIA’S EXPERIENCE WITH LEGISLATIVE ASSISTANCE PROVIDED BY WIPO IN THE AREA OF INTELLECTUAL PROPERTY

Ms. Amarmurun Amartuvshin
Legal Policy Officer
Ministry of Justice and Home Affairs of Mongolia
/Secretary of the Working Group on Drafting the Patent law/
Mongolia at a Glance

Population: 3.2 million;
GDP per capita: USD 4009;

- 86.6% of export: mineral products;
- Civil law country;
- Legislative power: the Parliament;
- MPs, the President, the Government are entitled to propose bill;
- Mongolia joined WIPO in 1979;
- Party to 16 WIPO-administered treaties.
Statistics

Number of Annual Applications
/5-year average/

- **Trademark** /3500/
  - Domestic: 1300
  - PCT: 2200

- **Industrial design** /360/
  - Domestic: 160
  - PCT: 200

- **Utility model** /210/
  - Domestic: 210

- **Invention** /220/
  - Domestic: 120
  - PCT: 100

Legend:
- Blue: Domestic
- Orange: PCT
- Grey: Hague System
- Yellow: Madrid System
Some roles of the IPOM are:

- Issuing patent, utility model and trademark certificates;
- Promote intellectual property rights;
- Inspect infringement;
- Resolve oppositions and disputes.
Legislations governing IP matters:

• Patent Law (2006);
• Law on Copyright and Related Rights (2006);
• Law on Trademarks and Geographical Indications (2010);
• Others.
Mongolia received comments by the WIPO Secretariat on:

- Draft Patent Law (2013);
- Draft Acts on Patents, Utility Models and Enforcement (2017);
Progress with the Draft Bill

• Received legislative assistance from WIPO in 2017;
• Established working group on revising the Patent Law (in the MOJHA) and prepared first draft of the Law;
• Conducted assessments according to the Law on Legislation;
• Received feedback on the Bill from government organisations, NGOs, professionals;
• Submitted the Bill to the Government;
• To submit the Patent Bill to the Parliament.
Needs to Revise the Patent Law

Legal needs:
• Eliminate conflict, gap and duplication in the law;
• Implement international treaties and agreements to which Mongolia has become party.

Practical needs:
• Describe in more detail the procedure to grant patents;
• Make patent granting timeline more accurate.
The Purpose of the Patent Bill

• “… to govern the granting of patents for inventions, utility models, industrial designs;
• to protect exclusive rights of inventors and patent holders;
• to regulate the exploitation of patented inventions, utility models and industrial designs;
• and to encourage inventive activity and the development of the industry”.
Extent of the Revision of the Patent Law:

- Current Law: 6 chapters and 30 articles;
- Draft Law: 9 chapters and 60 articles.

Newly added Chapters are:

- Search and substantial examination;
- Industrial designs;
- International applications.
Features of the Patent Bill

1. revised definitions (such as “creator”, “invention”, “utility model” and “industrial design”);
2. differentiated requirements for inventions and utility models;
3. emphasized difference between “formality examination”, “search” and “substantive examination”;
4. substantive examination subject to request by the applicant (the applicant shall decide whether or not to proceed further after receiving a search report from IPOM);
5. precisely defined timeline for the patent grant procedure;
6. separate provisions for industrial designs, inventions and utility models;
7. specific grounds for refusing to grant a patent and the procedure to appeal such a refusal;
8. possibility of amending applications and related documents during the patent grant procedure;
9. grace period and exhibition priority;
Features of the Patent Bill

10. more elaborate provisions on licensing;
11. extended terms of protection from the date of filing
   • 10 years for utility models (currently seven years),
   • 15 years for industrial designs (currently 10 years).
Mostly safeguarded by different laws:

- Law on Infringement (2017);
- Law on Infringement Procedure (2017);
- Law on State Inspection (2003);
- Criminal Code (2015);
- Law on Criminal Procedure (2015);
- Law on Civil Procedure (2002);
- Law on Customs (2008);
- Law on Competition (2010).
Included in the Bill:

- State Inspector /IPOM/
  → conduct IP inspections
- Dispute resolution Board /under IPOM/
  → resolves TM and patent disputes and oppositions
State Inspectors’ Rights and Responsibilities

- During the inspection process, to stop any actions that violate the Patent Law and other relevant regulations,
- to confiscate documents and infringing articles,
- to request citizens, legal entities and officials to stop infringements and enforce this request;
- to decide whether to prohibit the sale of infringing products, to destroy them or to use them, where appropriate, for other purposes;
- to pronounce sanctions in conformity with the Law on Infringement.
Major Problem

• Lack of coordinated efforts of customs, police, public prosecutors and the judiciary.

• IPOM acting on its own will not be able to eliminate IP infringements.

• Mongolia is therefore requesting WIPO’s further support on building respect for IP to better enforce IP rights.
Thank you.