

1. A draft reference document on the exception regarding prior use

- **The Provision on the Exception Regarding Prior Use**

- **Section 36 Paragraph 2 (2)** of the Thai Patent Act B.E. 2522 (1979), as amended by the Patent Act (No.2) B.E. 2535 (1992) and the Patent Act (No.3) B.E. 2542 (1999), provides an exception regarding prior use which states that the provision on Patentee's exclusive rights¹ shall not apply to the production of the patented product or use of the patented process, provided that the producer or user, in good faith and without knowing or having no reasonable cause to know about the patent application, has engaged in the production or has acquired the equipment thereof prior to the date of filing of the patent application in Thailand. Nevertheless, **the Section 36 Paragraph 2 (2)** is not subjected to **Section 19bis**.²

- **The criteria in determining the scope of the exception regarding prior use**

- According to **Section 36 Paragraph 2 (2)**, in order to gain the benefit from the exception, the production of the patented product or use of the patented process must:

- (1) be produced or used in good faith; and
- (2) produced or used without knowing or having no reasonable cause to know about the patent application.

¹ **Section 36** No other person except the patentee shall have following rights:

(1) Where the subject matter of a patent is a product, the right to produce, use, sell, have in the possession for sale, after for sale or import the patented product;

(2) Where the subject matter of a patent is a process, the right to use the patented process, to produce, use, sell, have in the possession for sale, offer for sale or import the product produced by patented process.

² **Section 19bis** A person under Section 14 (Applicant Qualifications) who has filed a patent application for an invention in a foreign country may claim the first foreign filing date as the filing date in the country if the application is filed in the country within twelve months following the first filing date in the foreign country.

2. A document compiling information on patent law provisions and practices that contributed to effective transfer of technology

- Provisions on Technology Transfer

- **Section 17 (3)** of the Thai Patent Act B.E. 2522 (1979), as amended by the Patent Act (No.2) B.E. 2535 (1992) and the Patent Act (No.3) B.E. 2542 (1999), requires that the application for a patent shall contain a detailed description of the invention in such full, concise and clear and exact terms as to enable any person ordinarily skilled in the art to which it pertains, or with which it is most nearly connected, to make and carry out the invention and indicate the best mode contemplated by the inventor to carry out his invention.

- **Section 41** of The Patent Act B.E. 2522 (1979), requires that the license contract and the assignment of a patent under **Section 38**³ shall be in writing and registered with the competent officer at the Patent Office, the Department of Intellectual Property.

³ **Section 38** The patentee may authorize any other person, by granting a license, to exercise the rights conferred to him under **Sections 36** and **37** (the patentee's exclusive rights and patent marking), and may assign his patent to any other person.