

# ASEAN Economic Community, Intellectual Property, and Future Directions for Patent Administration in the Region

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## I. THE ASSOCIATION OF SOUTHEAST ASIAN NATIONS

The Association of Southeast Asian Nations (ASEAN) was formed with the signing of the ASEAN Declaration (Bangkok Declaration)<sup>1</sup> by Indonesia, Malaysia, Philippines, Singapore, and Thailand on 8 August 1967.<sup>2</sup> The other Member States subsequently joined much later, starting with Brunei on 7 January 1984, Vietnam on 28 July 1995, Laos and Myanmar on 23 July 1997, and, eventually, Cambodia on 30 April 1999.<sup>3</sup>

Last year, the ASEAN marked its golden anniversary,<sup>4</sup> a significant milestone for the region. Fifty years after its establishment, the objectives of the ASEAN as envisaged by its founding fathers remain as relevant as when it was conceived. As articulated in the Bangkok Declaration, the ASEAN aims:

- (i) To accelerate the economic growth, social progress[,] and cultural development in the region through joint [endeavors] in the spirit of equality and partnership in order to strengthen the foundation for a prosperous and peaceful community of [Southeast] Asian Nations;
- (ii) To promote regional peace and stability through abiding respect for justice and the rule of law in the relationship among countries of the region and adherence to the principles of the United Nations Charter;
- (iii) To promote active collaboration and mutual assistance on matters of common interest in the economic, social, cultural, technical, scientific[,] and administrative fields;
- (iv) To provide assistance to each other in the form of training and research facilities in the educational, professional, technical[,] and administrative spheres;
- (v) To collaborate more effectively for the greater [utilization] of their agriculture and industries, the expansion of their trade, including the study of their problems of international commodity trade, the improvement of their transportation and communications facilities[,] and the raising of the living standards of their people;
- (vi) To promote [Southeast] Asian studies; [and]

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1. Declaration constituting an agreement establishing the Association of South-East Asian Nations (ASEAN) para. 8, *signed* Aug. 8, 1967, 1331 U.N.T.S. 235 [hereinafter Bangkok Declaration].

2. *Id.* n. 1.

3. Association of Southeast Asian Nations, Overview at Establishment, *available at* <http://asean.org/asean/about-asean/overview/> (last accessed May 4, 2018).

4. Association of Southeast Asian Nations, 50th Year of Being One ASEAN, *available at* <http://www.asean2017.ph/asean-50/> (last accessed May 4, 2018).

- (vii) To maintain close and beneficial cooperation with existing international and regional [organizations] with similar aims and purposes, and explore all avenues for even closer cooperation among themselves.<sup>5</sup>

This set of objectives continues to define the engagement not only within the ASEAN but, more importantly, with bilateral partners. From the vast spectrum of cooperation areas covering socio-economic to security matters, the ASEAN has maintained its steadfast commitment to promote and foster the attainment of its objectives.

Notwithstanding the social, cultural, legal, and political diversity in the region, not to mention the remarkable difference in stages of economic development,<sup>6</sup> ASEAN Member States (AMS) share the following fundamental principles as expressed in the Treaty of Amity and Cooperation in Southeast Asia<sup>7</sup>:

- (i) Mutual respect for the independence, sovereignty, equality, territorial integrity[,] and national identity of all nations;
- (ii) The right of every State to lead its national existence free from external interference, subversion[,] or coercion;
- (iii) Non-interference in the internal affairs of one another;
- (iv) Settlement of differences or disputes by peaceful means;
- (v) Renunciation of threat of use of force; [and]
- (vi) Effective cooperation among themselves.<sup>8</sup>

The principles of non-interference and non-intervention are the fundamental tenets of ASEAN diplomacy referred to as the “*ASEAN Way*.”<sup>9</sup> This approach “is premised on the principle[s] of consensus and non-

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5. Bangkok Declaration, *supra* note 1, at 236-37.

6. Department of Trade and Industry, Understanding the ASEAN Economic Community (Primer on ASEAN) at 2, available at <http://www.philembassymadrid.com/wordpress/wp-content/uploads/Forms/AEC%20Primer%20Ebook2.pdf> (last accessed May 4, 2018).

7. Treaty of Amity and Cooperation in Southeast Asia, *opened for signature* Feb. 24, 1976, 1025 U.N.T.S. 297 [hereinafter Treaty of Amity and Cooperation].

8. *Id.* art 2.

9. Elizabeth Siew-Kuan Ng, *ASEAN IP Harmonization: Striking the Delicate Balance*, 25 PACE INT’L L. REV. 129, 134 (2013) (citing Koh Kheng-Lian & Nicholas A. Robinson, *Strengthening Sustainable Development in Regional Inter-*

interference in the internal affairs of its [M]ember [S]tates.”<sup>10</sup> This distinct *ASEAN Way* characterizes how the ASEAN has conducted and will continue to conduct its affairs. This ASEAN diplomacy has dictated and will remain decisive on the manner that the ASEAN responds to internal and global issues and concerns.

It is crucial to understand the objectives and fundamental principles because they serve as the parameters on how the ASEAN will conduct its affairs.

## II. THE ASEAN AND THE WORLD ECONOMY

Since its establishment in 1967,<sup>11</sup> the ASEAN has evolved into a dynamic and vibrant community. Today, it is a major economic bloc, collectively regarded as the sixth largest economy in the world<sup>12</sup> with a combined Gross Domestic Product (GDP) of US\$2.55 trillion,<sup>13</sup> and home to around 620 million — nearly nine percent of the total world population.<sup>14</sup> The ASEAN has bright economic prospects, considering that its share in the world GDP has “doubled from 3.3% in 1967 to 6.2% in 2016.”<sup>15</sup> The ASEAN’s annual growth for 2016–2020 has been pegged at an average of 5.2% and it is predicted that, by 2030, it will become the “world’s fourth[ ] largest single market after the European Union, the United States[,] and China.”<sup>16</sup>

The post-General Agreement on Tariffs and Trade<sup>17</sup> period resulted in increasing globalization of the world economy and the emergence of a new

*Governmental Governance: Lessons from the ‘ASEAN Way’*, 6 SING J. INT’L & COMP. L. 640, 642 (2002)).

10. Siew-Kuan Ng, *supra* note 9, at 134 (citing Treaty of Amity and Cooperation, *supra* note 7, art. 2).
11. Bangkok Declaration, *supra* note 2, at 235.
12. ASEAN Secretariat, ASEAN Economic Progress, available at [http://www.aseanstats.org/wp-content/uploads/2017/08/ASEAN\\_economic\\_progress.pdf](http://www.aseanstats.org/wp-content/uploads/2017/08/ASEAN_economic_progress.pdf) (last accessed May 4, 2018).
13. *Id.*
14. ASIAN DEVELOPMENT BANK INSTITUTE, ASEAN 2030: TOWARD A BORDERLESS ECONOMIC COMMUNITY II (2014).
15. ASEAN Secretariat, *supra* note 12.
16. Lim Yan Liang, *Economics of ASEAN Community*, STRAITS TIMES, Nov. 22, 2015, available at <http://www.straitstimes.com/asia/se-asia/economics-of-asean-community> (last accessed May 4, 2018).
17. General Agreement on Tariffs and Trade, entered into force Jan. 1, 1995, 55 U.N.T.S. 187.

economic order posing significant challenges and opportunities for the ASEAN. It was imperative that ASEAN leaders establish the collective strength of AMS and chart the strategic direction of the region. The ASEAN leaders made a historic decision to “transform ASEAN into a stable, prosperous, and highly competitive region with equitable economic development, and reduced poverty and socio-economic disparities”<sup>18</sup> during their Summit in Kuala Lumpur, Malaysia in December 1997.<sup>19</sup>

### III. ASEAN ECONOMIC COMMUNITY

Subsequently, leaders of the ASEAN nations “declared that the ASEAN Economic Community (AEC) shall be the goal of regional economic integration (Bali Concord II) by 2020. In addition to the AEC, the ASEAN Security Community and the ASEAN Socio-Cultural Community are the other two integral pillars of the envisaged ASEAN Community[.]”<sup>20</sup> at the Bali Summit in October 2003. The three pillars were expected to collectively work in realizing the AEC in 2020.<sup>21</sup>

The significance of the Bali Concord II<sup>22</sup> cannot be overemphasized. It was an agreement that had profound implications not only to the region in general, but, more importantly, to the individual Member States. In fact, it was observed that the “AEC is a highly ambitious effort at deep integration which includes factors of production[.] as well as a dispute settlement mechanism.”<sup>23</sup>

Notwithstanding the immense scope of the decision, complexity, and sensitivity of the areas covered by the AEC, coupled with the dynamic international socio-economic and political conditions, the enabling

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18. ASSOCIATION OF SOUTHEAST ASIAN NATIONS, ASEAN ECONOMIC COMMUNITY BLUEPRINT 5 (2008) [hereinafter AEC BLUEPRINT 2015].

19. *Id.*

20. *Id.*

21. *Id.*

22. Declaration of ASEAN Concord II, Oct. 7, 2003, 43 I.L.M. 18 [hereinafter Bali Concord II].

23. Siow Yue Chia, The ASEAN Economic Community: Progress, Challenges and Prospects (A Working Paper for the Asian Development Bank) at 10, available at <https://www.adb.org/sites/default/files/publication/156295/adbi-wp440.pdf> (last accessed May 4, 2018).

document to carry the AEC into fruition was presented to the ASEAN Economic Ministers three years later.<sup>24</sup>

In August 2006, the ASEAN Economic Ministers Meeting held in Kuala Lumpur, Malaysia<sup>25</sup> recognized the need to develop

a single and coherent blueprint for advancing the AEC by identifying the characteristics and elements of the AEC by 2015 consistent with the Bali Concord II[,] with clear targets and timelines for implementation of various measures[,] as well as pre-agreed flexibilities to accommodate the interests of all ASEAN Member [States].<sup>26</sup>

The AEC is “based on a convergence of interests of ASEAN Member States to deepen and broaden economic integration through existing and new initiatives with clear timelines.”<sup>27</sup> In realizing AEC, the ASEAN shall be guided by the “principles of an open, outward-looking, inclusive, and market-driven economy consistent with multilateral rules[,] as well as adherence to rules-based systems for effective compliance and implementation of economic commitments.”<sup>28</sup> The mandate was to

establish ASEAN as a single market and production base[,] making ASEAN more dynamic and competitive with new mechanisms and measures to strengthen the implementation of its existing economic initiatives; accelerating regional integration in the priority sectors; facilitating movement of business persons, skilled [labor,] and talents; and strengthening the institutional mechanisms of ASEAN.<sup>29</sup>

The ASEAN leaders, understanding completely the “importance of external trade to [the] ASEAN and the need for the ASEAN Community as a whole to remain outward[-]looking,”<sup>30</sup> envisioned the AEC to be: “(a) a

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24. See generally Rafidah Aziz, Minister of International Trade and Industry of Malaysia, Address at the Opening Ceremony of the 38th ASEAN Economic Ministers Meeting, Kuala Lumpur (Aug. 22, 2006) (transcript available at [http://asean.org/?static\\_post=welcome-address-by-he-dato-seri-rafidah-aziz-minister-of-international-trade-and-industry-at-the-opening-ceremony-of-the-38th-asean-economic-ministers-meeting-kuala-lumpur-22-august-2006](http://asean.org/?static_post=welcome-address-by-he-dato-seri-rafidah-aziz-minister-of-international-trade-and-industry-at-the-opening-ceremony-of-the-38th-asean-economic-ministers-meeting-kuala-lumpur-22-august-2006) (last accessed May 4, 2018)).

25. AEC BLUEPRINT 2015, *supra* note 18, at 5.

26. *Id.*

27. *Id.*

28. *Id.*

29. *Id.*

30. *Id.* at 6.

single market and production base, (b) a highly competitive economic region, (c) a region of equitable development, and (d) a region fully integrated into the global economy.”<sup>31</sup> Through the Declaration on the ASEAN Economic Community Blueprint (AEC Blueprint 2015), the ASEAN leaders adopted the AEC Blueprint 2015, which set the commitments and strategic schedules to be implemented by the Member States on the occasion of the ASEAN’s 40th Anniversary in Singapore in November 2007.<sup>32</sup> The AEC Blueprint 2015 serves as a roadmap for the commitments for all the sectors covered, together with their corresponding schedules for incorporating a monitoring mechanism for such progress.<sup>33</sup>

In March 2009, the ASEAN leaders, through the Cha-am Hua Hin Declaration on the Roadmap for the ASEAN Community (2009-2015),<sup>34</sup> agreed “to an accelerated timetable for the realization of the AEC.”<sup>35</sup> Consequently, in April 2012, the ASEAN decided to intensify efforts and prioritize activities and concrete key actions to achieve AEC by 2015.<sup>36</sup>

The AEC was not fully realized in 2015 despite substantive gains achieved in “eliminating tariffs and facilitating trade[,] advancing the service trade [liberalization] agenda[,] [liberalizing] and facilitating investment[,] streamlining and [harmonizing] capital market regulatory framework and platforms[,] ... [and] promoting the development of regional frameworks in competition policy, and consumer protection[,] and intellectual property rights (IPRs)[,]”<sup>37</sup> among others.<sup>38</sup> Hence, the AEC Blueprint 2025 was prepared.<sup>39</sup>

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31. AEC BLUEPRINT 2015, *supra* note 18, at 6.

32. *Id.* at 5.

33. *Id.*

34. ASEAN SECRETARIAT, ROADMAP FOR AN ASEAN COMMUNITY 2009-2015 (2009).

35. Siow Yue Chia, *supra* note 23, at 11.

36. *Id.*

37. ASSOCIATION OF SOUTHEAST ASIAN NATIONS, ASEAN ECONOMIC BLUEPRINT 2025 I (2015) [hereinafter AEC BLUEPRINT 2025].

38. *Id.*

39. See AEC BLUEPRINT 2025, *supra* note 37, at 1.

The AEC Blueprint 2025 was developed with the following characteristics:

- (i) A Highly Integrated and Cohesive Economy;
- (ii) A Competitive, Innovative, and Dynamic ASEAN;
- (iii) Enhanced Connectivity and Sectoral Cooperation;
- (iv) A Resilient, Inclusive, People-Oriented and People-Centered ASEAN; and
- (v) A Global ASEAN.<sup>40</sup>

It was formulated from the gains and progress of the AEC Blueprint 2015; thus, it was critical that the AEC Blueprint 2025 prioritize the completion “of measures unfinished under the AEC Blueprint 2015 by end-2016.”<sup>41</sup>

#### IV. THE ASEAN ECONOMIC COMMUNITY AND INTELLECTUAL PROPERTY

Both the AEC Blueprints 2015 and 2025 regard intellectual property (IP) as a crucial element. This proceeds from the appreciation of the vital role of IP as a tool to achieve “national and regional socio-economic development goals[,]”<sup>42</sup> and its “linkage to other components of socio-economic development strategy, including ... poverty reduction, health, education, industrial development, and especially trade.”<sup>43</sup>

Under the sector *Intellectual Property Rights*, the AEC Blueprint 2015 recognized that “[IP] policy can serve as a powerful stimulus to (a) cultural, intellectual[,] and artistic creativity[,] and their [commercialization]; (b) efficient adoption and adaptation of more advanced technologies; and (c) continuous learning to meet the ever-rising threshold of performance expectations.”<sup>44</sup> In addition, it acknowledged that IP policy can “incubate a

40. *Id.*

41. *Id.*

42. Association of Southeast Asian Nations, ASEAN Intellectual Property Rights Action Plan 2016–2025: Meeting the Challenges of “One Vision, One Identity, One Community” Through Intellectual Property at 2, *available at* [https://www.aseanipr.org/Portals/0/ASEAN%20IPR%20ACTION%20PLAN%202016-2025%20\(for%20public%20use\).pdf?ver=2017-12-05-095916-273](https://www.aseanipr.org/Portals/0/ASEAN%20IPR%20ACTION%20PLAN%202016-2025%20(for%20public%20use).pdf?ver=2017-12-05-095916-273) (last accessed May 4, 2018) [hereinafter ASEAN IPR Action Plan 2016–2025].

43. *Id.*

44. AEC BLUEPRINT 2015, *supra* note 18, at 19.



vibrant culture of creativity and invention, and to ensure more equitable access and benefits to all stakeholders in both traditional and newer [IPR].”<sup>45</sup> Moreover, the significance of IP policy is emphasized in terms of its relation to foreign trade and technology transfer.<sup>46</sup> It is believed that “IP policy can influence both volume and quality of external trade and investment and the transfers of advanced, proprietary technologies.”<sup>47</sup>

The AEC Blueprint 2015 identified the following action plan for Member States to undertake. The States are recommended to:

- (1) fully implement the ASEAN IPR Action Plan 2004-2010;
- (2) establish ASEAN filing systems to facilitate the filings by users;
- (3) accede to the Madrid Protocol;
- (4) sustain consultations and information exchanges on enforcement; and
- (5) pursue IPR protection and promote regional cooperation on Traditional Knowledge, Genetic Resources and Cultural Traditional Expressions.<sup>48</sup>

While most of the action areas deal with the usual aspect of IPR administration and protection, it is significant to note that the AEC Blueprint 2015 covers non-traditional IP rights, such as Traditional Knowledge (TK), Genetic Resources (GR), and Cultural Traditional Expressions, which are common to AMS. This indicates a growing appreciation among the AMS of the need to preserve and to protect cultural integrity and innate resources.

The AEC Blueprint 2025 envisages that IP will assist the AMS to advance “in the technology ladder, in encouraging transfer of technology, and in stimulating innovation and creativity.”<sup>49</sup> It provides a more holistic and comprehensive approach by including the elements of *Strengthening Intellectual Property Rights Cooperation*, as well as *Productivity-Driven Growth, Innovation, Research and Development and Technology Commercialisation*.<sup>50</sup> Thus, IP is viewed not just with the limited context of regulation and protection,

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45. *Id.*

46. *Id.*

47. *Id.*

48. *Id.* at 19-20.

49. AEC BLUEPRINT 2025, *supra* note 37, at 14.

50. See AEC BLUEPRINT 2025, *supra* note 37, at 14 & 16.

but integrates the developmental dimension. The Blueprint transcends the traditional approach to IP in terms of norm-setting and regulation, and expands the role of IP in spurring innovation and development.

To ensure that the five AEC characteristics are achieved, these strategic measures are operationalized by key action lines that will be pursued by relevant ASEAN sectoral bodies through their respective work plans.<sup>51</sup> These measures are embodied in the 2025 Consolidated Strategic Action Plan (CSAP), which “seeks to complement the AEC Blueprint 2025 by serving as a single reference document intended for the public to inform stakeholders”<sup>52</sup> of strategic essential result areas to monitor progress.

To *Strengthen IPR Cooperation*, the strategic measures are to:

(i) Strengthen IP [O]ffices and build IP infrastructure, in order to ensure the development of a more robust ASEAN IP system ...[;]

...

(ii) Develop regional IP platforms and infrastructure ...[;]

...

(iii) Expand the ASEAN IP Ecosystem ...[;] [and]

...

(iv) Enhance regional mechanisms to promote asset creation and [commercialization], including the development of supporting schemes for [micro, small and medium enterprises (MSMEs)] and creative sectors[.]<sup>53</sup>

The heightened understanding and appreciation of the significance of IP is manifested in the key action lines covering the complete stages of the whole IP cycle from creation, protection, utilization, and commercialization.

The area of *Productivity-Driven Growth, Innovation, Research and Development, and Technology Commercialisation* aims to improve in “[labor]

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51. Association of Southeast Asian Nations, ASEAN Economic Community 2025 Consolidated Strategic Action Plan (Document that will Operationalize the Strategic Measures in the AEC Blueprint 2025) at 1, *available at* <http://asean.org/storage/2017/02/Consolidated-Strategic-Action-Plan.pdf> (last accessed May 4, 2018) [hereinafter AEC 2025 CSAP].

52. *Id.*

53. AEC BLUEPRINT 2025, *supra* note 37, at 14-15.

productivity and total factor productivity performance.”<sup>54</sup> The following are the strategic measures related or linked to IP:

- (1) “Promote strategic partnerships among the academia, research institutions[,] and the private sector towards developing capabilities and creating an effective channel for technology transfer, and [commercialization];”<sup>55</sup>
- (2) “Strengthen the competitiveness of the MSMEs in the ASEAN through the application of science and technology (S&T) tools and methodologies;”<sup>56</sup>
- (3) “Information sharing and networking to stimulate ideas and creativity at the universities and business-level;”<sup>57</sup>
- (4) “Place a greater focus on entrepreneurship, and development of business incubator [programs] for [commercialization];”<sup>58</sup>
- (5) “Enhance the support system and enabling environment to nurture a highly mobile, intelligent[,] and creative human resource that thrives on knowledge creation and application[;]”<sup>59</sup>
- (6) “Foster a hospitable intra-ASEAN policy environment for technology transfer, adaptation[,] and innovation, including increased level of[,] as well as supportive[,] fiscal and non-fiscal policies for [research and development (R&D)] in both local and foreign[-]owned firms in the region;”<sup>60</sup>
- (7) “Focus support on the development of research and technology parks, joint corporate, government and/or university research laboratories, R&D [centers], and similar [S&T] institutions and [centers];”<sup>61</sup>

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54. AEC 2025 CSAP, *supra* note 51, at 15.

55. AEC BLUEPRINT 2025, *supra* note 37, at 16.

56. *Id.*

57. *Id.* at 16.

58. *Id.*

59. *Id.*

60. *Id.* at 17.

61. AEC BLUEPRINT 2025, *supra* note 37, at 17.

- (8) “Develop and strengthen ASEAN linkage in global and regional R&D networks;”<sup>62</sup>
- (9) “Promote strong IPR protection in the region; and”<sup>63</sup>
- (10) “Promote [programs] that enhance ASEAN participation in global and regional value chains and production networks, including [programs] and joint promotions that attract leading technology firms to set up shop in [the] region, develop industrial clusters[,] and support industries, and improve[ ] physical and institutional connectivity within the region and with the rest of the world.”<sup>64</sup>

The 2025 CSAP outlines the general direction for the specific areas covered by the AEC,<sup>65</sup> while the specific details to carry out the identified key areas are contained in the sectoral work plans for the period 2016–2025.<sup>66</sup>

The AEC Blueprints 2015 and 2025 reflect the significant shift in the way the ASEAN view IP and its contribution to the attainment of the AEC goals. In a period where the economic order has shifted to one that is knowledge-based,<sup>67</sup> the transformative role of IP in stimulating innovation and creation, and as an enabler to national economies has become more evident.<sup>68</sup>

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62. *Id.*

63. *Id.*

64. *Id.*

65. *See generally* AEC 2025 CSAP, *supra* note 51.

66. AEC 2025 CSAP, *supra* note 51, at 1.

67. *See* Esteban Burrone & Guriqbal Singh Jaiya, Intellectual Property (IP) Rights and Innovation in Small and Medium-Sized Enterprises (A Paper Submitted to the Organisation for Economic Co-operation and Development (OECD) as a Background Document to the Second OECD Ministerial Conference for Small and Medium-sized Enterprises) at 2, *available at* [http://www.wipo.int/export/sites/www/sme/en/documents/pdf/iprs\\_innovation.pdf](http://www.wipo.int/export/sites/www/sme/en/documents/pdf/iprs_innovation.pdf) (last accessed May 4, 2018). *See also* Organisation for Economic Co-operation and Development (OECD), The Knowledge Economy at 7, *available at* <https://www.oecd.org/sti/sci-tech/1913021.pdf> (last accessed May 4, 2018).

68. *See* Organisation for Economic Co-operation and Development (OECD), *supra* note 67.

V. ASEAN INTELLECTUAL PROPERTY RIGHTS ACTION PLANS:  
ROADMAPS FOR IP ADMINISTRATION IN THE REGION

For IP, AMS have worked towards the “development of the IP system in the region through the ASEAN Working Group on [IP] Cooperation (AWGIPC).”<sup>69</sup> The AWGIPC was created in 1995 pursuant to Article 4 of the ASEAN Framework Agreement on IP Cooperation,<sup>70</sup> which established an “ASEAN mechanism comprising representatives from Member States, to review the cooperative activities ...[,] which shall meet on a regular basis to review the progress of the cooperative activities and any arrangement arising therefrom[,] and to submit its findings and recommendations to the ASEAN Senior Economic Officials Meeting.”<sup>71</sup> The AWGIPC was mandated to develop, coordinate, and implement all IP-related regional programs and activities in the ASEAN.<sup>72</sup>

The 1995 ASEAN Framework Agreement on IP Cooperation was formulated to attain the following objectives:

- (i) Member States shall strengthen their cooperation in the field of [IP] through an open and outward looking attitude[,] with a view to contributing to the promotion and growth of regional and global trade [liberalization][;]
- (ii) Member States shall promote cooperation in the field of [IP] among government agencies[,] as well as among the private sectors and professional bodies of [the] ASEAN[;]
- (iii) Member States shall explore appropriate intra-ASEAN cooperation arrangements in the field of [IP], contributing to the enhancement of ASEAN solidarity as well as to the promotion of technological innovation[,] and the transfer and dissemination of technology[;]
- (iv) Member States shall explore the possibility of setting up of an ASEAN patent system, including an ASEAN Patent Office, if feasible, to promote the region-wide protection of patent[,] bearing in mind developments on regional and international protection of patent[;]

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69. Association of Southeast Asian Nations, ASEAN Intellectual Property Rights Action Plan 2011–2015 at 1, available at <https://www.aseanip.org/Portals/0/PDF/ASEAN%20IPR%20Action%20Plan%202011-2015.pdf> (last accessed May 4, 2018) [hereinafter ASEAN IPR Action Plan 2011–2015].

70. ASEAN Framework Agreement on Intellectual Property Cooperation art. 4, Dec. 15, 1995, 35 I.L.M. 1072 [hereinafter ASEAN Framework].

71. *Id.*

72. ASEAN IPR Action Plan 2011–2015, *supra* note 69, at 1–2.

- (v) Member States shall explore the possibility of setting up of an ASEAN trademark system, including an ASEAN Trademark Office, if feasible, to promote the region-wide protection of trademark bearing in mind developments on regional and international protection of trademarks[;]
- (vi) Member States shall have consultations on the development of their [IP] regimes with a view to creating ASEAN standards and practices which are consistent with international standards.<sup>73</sup>

IP is one of the sectors where ASEAN cooperation is fairly developed, owing to the institutional mechanism that has been in place since 1995 and the constructive engagement of the AMS. Starting from 2004, “the work of the AWGIPC was based on the ASEAN IPR Action Plan 2004–2010, and the Work Plan for ASEAN Cooperation on Copyrights.”<sup>74</sup> The ASEAN IPR Action Plans serve as roadmaps that would guide the AMS in attaining the objectives of the strategic measures by identifying the specific activities and initiatives within prescribed timelines.

The ASEAN IPR Action Plan 2004–2010 was designed:

- (1) to help accelerate the pace and scope of IP asset creation[,] commercialization[,] and protection;
- (2) to improve the regional framework of policies and institutions relating to IP and [IPR], including the development and harmonization of enabling IPR registration systems;
- (3) to promote IP cooperation and dialogues within the region as well [as] with the region’s Dialogue Partners and organizations;
- (4) to strengthen IP-related human and institutional capabilities in the region, including fostering greater public awareness of issues and implications, relating to IP and [IPR].<sup>75</sup>

While the AMS were negotiating the ASEAN IPR Action Plan 2004–2010, the ASEAN leaders agreed to “extend regional cooperation to copyright enforcement and information exchange as part of the ... [Bali Concord II].”<sup>76</sup> The ASEAN Work Plan for Copyright Cooperation covered four areas, specifically: (1) enhancing and improving copyright systems of all AMS, (2) recommendations for legislative changes to facilitate access to and protection of copyright works, (3) studying new developments

73. ASEAN Framework, *supra* note 70, art. 1.

74. ASEAN IPR Action Plan 2011–2015, *supra* note 69, at 1.

75. *Id.* at 1–2.

76. Siew-Kuan Ng, *supra* note 9, at 144 (citing Bali Concord II, *supra* note 22).

and impacts on copyright law and enforcement, and (4) education, capacity building and promoting public awareness.<sup>77</sup> The Work Plan for Copyright Cooperation<sup>78</sup> was formulated to address the concerns on copyright protection and enforcement brought about by new and emerging technologies, which facilitate access to, but pose significant challenges on, copyright-protected works.<sup>79</sup> These copyright cooperation themes would likewise be incorporated in the succeeding ASEAN IPR Action Plans.<sup>80</sup>

When the ASEAN leaders decided to accelerate economic integration from 2020 to 2015, the AWGIPC consequently worked and adopted a new Work Plan forming part of the AEC Blueprint to “reflect the new objective of ASEAN.”<sup>81</sup> The ASEAN IPR Action Plan 2011-2015 significantly sustained the progress achieved by the AWGIPC. It was built on the

IPR Action Plan[ ] 2004-2010, the Work Plan on Copyrights, and the Work Plan under the AEC Blueprint[,] in order to develop an ASEAN IP System that takes into account the different levels of capacity of the Member States, balances access to IP and protection of [IPR], and responds to the current needs and anticipates future demands of the global IP system.<sup>82</sup>

Moreover, compared to the previous Action Plan 2004-2010, Action Plan 2011-2015 tasked the different country champions to lead the implementation of the different initiatives and deliverables.<sup>83</sup>

The ASEAN IPR Action Plan 2011-2015 was formulated to “meet the goals of the AEC by transforming ASEAN into an innovative and competitive region through the use of IP for their nationals and ensuring that the region remains an active player in the international IP community.”<sup>84</sup> The IPR Action Plan 2011-2015 listed the following strategic goals:

- (i) A balanced IP system that takes into account the varying levels of development of Member States and differences in institutional capacity

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77. See Siew-Kuan Ng, *supra* note 9, at 144-45.

78. ASEAN Framework, *supra* note 70.

79. *Id.* pmb1.

80. See generally ASEAN IPR Action Plan 2011-2015, *supra* note 69 & ASEAN IPR Action Plan 2016-2025, *supra* note 42.

81. ASEAN IPR Action Plan 2011-2015, *supra* note 69, at 2.

82. *Id.*

83. See ASEAN IPR Action Plan 2011-2015, *supra* note 69, at 5-10.

84. ASEAN IPR Action Plan 2011-2015, *supra* note 69, at 2.

of national IP Offices[,] to enable them to deliver timely, quality, and accessible IP services to promote the region as being conducive to the needs of users and generators of IP[;]

- (ii) Developed national or regional legal and policy infrastructures that address evolving demands of the IP landscape and [AMS' participation] in global IP systems at the appropriate time[;]
- (iii) [Advancement of the interests of the region] through systematic promotion for IP creation, awareness, and utilization to ensure that IP becomes a tool for innovation and development; support for the transfer of technology to promote access to knowledge; and [ ] considerations for the preservation and protection of indigenous products and services and the works of their creative peoples in the region[;]
- (iv) Active regional participation in the international IP community and with closer relationships with dialogue partners and institutions to develop the capacity of Member States and to address the needs of stakeholders in the region[;] [and]
- (v) Intensified cooperation among [AMS] and increased level of collaboration among them to enhance human and institutional capacity of IP Offices in the region.<sup>85</sup>

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85. *Id.* at 3-4.



These strategic goals make the ASEAN IPR Action Plan 2011–2015 focused and comprehensive with 28 initiatives and 107 concrete, measurable deliverables. It is a substantive document that sets the following areas of IP with their respective country champions:

AREA	COUNTRY CHAMPION <sup>86</sup>
Patent Administration	Malaysia
Trademark Administration	Philippines and Brunei
Industrial Design Administration	Vietnam and Philippines
Copyright and Creatives	Thailand
Patent Information	Philippines and Cambodia
Traditional Knowledge, Traditional Cultural Expressions, and Genetic Resources	Indonesia
Geographic Indication	Thailand and Vietnam
Innovation, Technology Transfer and IP Commercialization	ASEAN Secretariat (ASEC)
Office Infrastructure Modernization/ Automation and Quality Management	Philippines and Vietnam
Plant Variety Protection	Vietnam
IP Education, Awareness, and Marketing	Thailand and ASEC
IP Enforcement	Philippines <sup>87</sup>

The designation of country leads and champions was largely determined by the AMS expertise, institutional capacity, resources, priorities, inclination, and areas of interest. In some cases, a deliverable is the collaboration between two AMS. This clearly demonstrates the spirit of cooperation and constructive engagement between and among Member States. It is equally important to cite that, while the different IPR, such as patent, trademark, copyright, and plant variety protection, are covered, non-traditional IP like TK and GR, and, cross-cutting areas, such as enforcement and office

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86. *Id.* at 5–10. The ASEAN IPR Action Plan 2011–2015 designates a lead country for each project or activity tasked with the timely completion of the activity and delivery of the agreed outputs. “The Country Champion/s for the area identified will work in close coordination with the Lead Country. The Country Champion/s for an area may also act as Lead for certain activities that they propose.” *Id.* at 19.

87. *Id.* at 19.

modernization, have also been included. This structure reflects the evolution of how AMS have embraced IP into its developmental goals and aspirations. It is significant to mention that the same architecture was used in the ASEAN IPR Action Plan 2016-2025.<sup>88</sup>

The ASEAN IPR Action Plan 2016-2025 starts from the gains of the ASEAN IPR Action Plan 2011-2015. It proceeds from the premise that “[AMS] will have made significant progress in aligning the national laws and policies on IP to cater to the AEC framework.”<sup>89</sup> The Plan envisages that in the post-2015 period, “[n]ational IP regimes will have achieved technical and procedural convergence, and IP Offices will have adopted modern business models and practices that enable provision of efficient and effective ‘world class’ services to the clients.”<sup>90</sup> This is consistent with the AEC Blueprint that envisions a more competitive ASEAN.

The current IPR Action Plan identifies the following four strategic goals:

- (i) A more robust ASEAN IP System is developed by strengthening IP Offices and building IP infrastructures in the region;
- (ii) Regional IP platforms and infrastructures are developed to contribute to enhancing the [AEC];
- (iii) An expanded and inclusive ASEAN IP Ecosystem is developed; and
- (iv) Regional mechanisms to promote asset creation and [commercialization], particularly geographical indications and [TK] are enhanced.<sup>91</sup>

Similar to the ASEAN IPR Action Plan 2010-2015, these strategic goals are impressed with clear regional dimension reflecting the progress of the IP sector towards the attainment of AEC goals.<sup>92</sup> The current Action Plan has 19 initiatives and 57 measurable deliverables.<sup>93</sup>

From the ASEAN IPR Action Plan 2004-2010 to Action Plan 2016-2025, there has been a significant paradigm shift from improving the regional policy framework, promoting IP cooperation, and strengthening human and institutional capabilities to create regional platforms and infrastructures;

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88. See generally ASEAN IPR Action Plan 2016-2025, *supra* note 42.

89. ASEAN IPR Action Plan 2016-2025, *supra* note 42, at 2.

90. *Id.*

91. *Id.*

92. See ASEAN IPR Action Plan 2016-2025, *supra* note 42.

93. ASEAN IPR Action Plan 2016-2025, *supra* note 42, at 3-8.

expand regional IP ecosystem, platforms, or infrastructures; and establish regional mechanisms for the promotion of asset creation and commercialization. Moreover, the post-2010 Action Plans contain very specific and time-bound results that are subject to monitoring and evaluation through the ASEAN Scorecard.<sup>94</sup> The transformation of the individual national IP systems into an integrated regional IP system will significantly increase the competitiveness in the region because of the resulting stability and the predictability in the protection and enforcement of IPR as observed in other jurisdictions, specifically the region and countries covered by the European Patent Office (EPO).<sup>95</sup>

One of the challenges in drafting the ASEAN IPR Action Plans is the need to abide by the principles of consensus and non-interference, considering the different levels of socio-economic development as well as the state of the IP system in the AMS. While strategic goals may be collectively shared, it would require some substantial discussions to agree on the levels of commitment to the measures, key action lines, and activities from the AMS. Nevertheless, the existence of the AWGIPC, which is the regional institutional mechanism, has established a considerable degree of trust and cooperation between the AMS.

## VI. FUTURE DIRECTIONS FOR PATENT ADMINISTRATION IN SOUTHEAST ASIA

Since IP is considered a crucial element in attaining a competitive, innovative, and dynamic economy, it is imperative that the IPR Action Plan 2016-2025 contributes positively to a competitive region. Competitiveness is largely a function of business-friendly conditions as well as an environment characterized by predictability, certainty, and stability.<sup>96</sup> These elements are vital to an IP system where IPR holders are able to protect and enforce their rights.

The shift from the traditional regulation-centered to a more development-oriented and innovation-focused approach to IP clearly

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94. *Id.* at 7.

95. See generally European Patent Office, The history of the EPO, available at <https://www.epo.org/about-us/timeline.html> (last accessed May 4, 2018).

96. See, e.g., Antonio Tajani, Vice-President of the European Commission, *The Path to Growth: For a Business Friendly Public Administration*, Address at the Directorate-General Enterprise and Industry Conference (Oct. 29, 2013) (transcript available at <https://ec.europa.eu/docsroom/documents/4675/attachments/1/translations/en/renditions/native> (last accessed May 4, 2018)).

illustrates the commitment of the AMS to achieving development goals. “In an interlinked, knowledge-based global economy, creators and innovators are increasingly relying on [IP] to promote and protect their competitive edge around the world,”<sup>97</sup> and at the core of innovation and technology transfer is the patent system. Innovation has become the key element that drives industries and economies,<sup>98</sup> and the importance of seeking patent protection for products, technologies, and processes cannot be overemphasized.<sup>99</sup>

AMS are strategically located within Asia, which has become a major hub of innovation.<sup>100</sup> The World Intellectual Property Organization (WIPO) reported that Asia has accounted for the greatest number of patent filings in the world, more than the United States and Europe, largely due to innovation and research from China, Japan, and Korea,<sup>101</sup> and this trend is expected to continue in the years to come.<sup>102</sup>

Under this background, patent administration in the region must respond to the demands of the international patent system and the dynamic economic and technological developments.

#### *A. ASEAN Common Guidelines on Patent Examination*

Given the diversity in legal systems, the different levels of social, cultural, and economic development among the AMS,<sup>103</sup> and the core principle of non-interference,<sup>104</sup> it is extremely difficult to adopt a regional patent system and establish an ASEAN Patent Office as envisioned in the 1995 ASEAN Framework on IP Cooperation.<sup>105</sup> This concept was inspired by the

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97. World Intellectual Property Organization, Record Year for International Patent Applications in 2016; Strong Demand Also for Trademark and Industrial Design Protection, *available at* [http://www.wipo.int/pressroom/en/articles/2017/article\\_0002.html](http://www.wipo.int/pressroom/en/articles/2017/article_0002.html) (last accessed May 4, 2018).

98. *See generally* Organization for Economic Development, Innovation and Growth: Rationale for an Innovation Strategy, *available at* <http://www.oecd.org/sti/inno/39374789.pdf> (last accessed May 4, 2018).

99. *Id.*

100. Department of Trade and Industry, *supra* note 6, at 2.

101. WORLD INTELLECTUAL PROPERTY ORGANIZATION, WORLD INTELLECTUAL PROPERTY INDICATORS 2017 37(2017).

102. *Id.*

103. Department of Trade and Industry, *supra* note 6, at 2.

104. Siew-Kuan Ng, *supra* note 9, at 134.

105. ASEAN Framework, *supra* note 70.

adoption of the European Patent Convention (EPC) in 1973 in Munich which created the EPO.<sup>106</sup> Nevertheless, there is full recognition of the importance of providing an environment where there is predictability and stability in the ASEAN patent system. Thus, one of the deliverables in the ASEAN IPR Action Plan 2016–2025 is the development of the ASEAN Common Guidelines on Patent Examination, with Malaysia as the country champion.<sup>107</sup> This is quite an ambitious undertaking not only because the AMS have their own set of examination practices based on individual national laws, but likewise because of the divergence in their level of development and the state of their patent systems.

Among the AMS, Singapore's and the Philippines' IP Offices have been designated as International Searching and Preliminary Authorities under the Patent Cooperation Treaty (PCT),<sup>108</sup> while Brunei, Cambodia, Laos, and Myanmar do not conduct substantive patent examination. Moreover, Myanmar has yet to become a Contracting Party to the Patent Cooperation Treaty.<sup>109</sup>

Nonetheless, this initiative is highly significant because it will result in a common understanding between the ASEAN patent examiners of the fundamental substantive examination concepts such as novelty, inventive step, industrial applicability, unity of invention, and clarity, among others. It envisions that ASEAN patent examiners will be guided by a single common reference in conducting examination, as well as provide applicants with transparency and stability in the prosecution of their patent applications.<sup>110</sup>

It is important to mention that ASEAN Focal Points for Drafting the Common Guidelines on Patent Examination met last 21–23 November 2017 in Manila to discuss the content and structure of the common patent

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106. Christian H. Nguyen, *A Unitary ASEAN Patent Law in the Aftermath of TRIPS*, 8 PAC. RIM L. & POL'Y J. ASS'N 453, 468 (1999). The European Patent Convention enables an applicant to file an "application with the European Patent Office [ ] in one of the three official languages — English, French, and German — to obtain patent protection in any or all designated member countries." *Id.*

107. ASEAN IPR Action Plan 2016–2025, *supra* note 42.

108. Patent Cooperation Treaty, as amended, June 19, 1970, 9 I.L.M. 978 [hereinafter PCT].

109. See World Intellectual Property Office, Patent Cooperation Treaty, *available at* [http://www.wipo.int/treaties/en/ShowResults.jsp?treaty\\_id=6](http://www.wipo.int/treaties/en/ShowResults.jsp?treaty_id=6) (last accessed May 4, 2018).

110. See PCT, *supra* note 108.

examination guidelines as well as the tasks and timeline pursuant to the IPR Action Plan 2016–2025. Once completed, the ASEAN Common Guidelines on Patent Examination will clearly result in a stable and predictable patent prosecution in the region.

*B. Increased Work-Sharing Between ASEAN Patent Offices and Other IP Offices*

The ASEAN Patent Examination Cooperation (ASPEC) Programme is the regional patent-work sharing among the nine participating AMS.<sup>111</sup> It facilitates the processing of a similar patent application that has been searched or examined by another ASPEC participant, with at least one claim determined to be allowable or where there is a corresponding patent application for the same invention in any other participating AMS, and the applications are linked by a Paris Convention priority claim.<sup>112</sup> However, the final decision on the application rests on the patent examiner applying national laws, with the external work product serving as reference material. This program is one of the deliverables in both the ASEAN IPR Action Plans 2011–2015 and 2016–2025, with Singapore as the country champion.<sup>113</sup>

Launched on 15 June 2009, it was designed to expedite the processing of patent application by reducing duplication in search and examination work and, thus, making operations more efficient.<sup>114</sup> The ASPEC Programme seeks to facilitate the processing of intra-ASEAN patent application filings in an effort to improve the patent processing and make it more business-facilitative and, consequently, attract more patent applications.<sup>115</sup> While the ASPEC Programme has been implemented for more than eight years, there is a limited number of requests for this mechanism. Thus, a more aggressive campaign to promote this program to applicants and stakeholders is being pursued by the AMS.

Over the years, there has been an increasing recognition by AMS of the need to enhance operational efficiency. ASEAN IP Offices share the same profile of patent application filings in developing countries, which are

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111. ASEAN Intellectual Property Portal, What is ASPEC, available at <https://www.aseanip.org/Services/ASEAN-Patent-Examination-Co-operation-ASPEC/What-is-ASPEC> (last accessed May 4, 2018) [hereinafter ASEAN-ASPEC].

112. *Id.*

113. ASEAN IPR Action Plan 2011–2015, *supra* note 69, at 5 & ASEAN IPR Action Plan 2016–2025, *supra* note 42, at 3.

114. ASEAN-ASPEC, *supra* note 111.

115. *Id.*

predominantly foreign applications filed through the PCT system. While ASPEC addresses intra-ASEAN applications, other work-sharing arrangements such as the Patent Prosecution Highway (PPH)<sup>116</sup> cover bilateral arrangements with non-ASEAN patent offices. The PPH enables patent applicants to request accelerated processing in the national phase allowing patent examiners to use the work products from other IP Offices.<sup>117</sup> While patent examiners can reuse foreign search and examination results, the determination of the patentability of an application remains with the patent examiner pursuant to the national or regional law.<sup>118</sup>

Among the AMS, Brunei, Indonesia, Malaysia, the Philippines, Singapore, Thailand, and Vietnam have bilateral PPH Agreements, with Singapore being part of the Global PPH. The ASPEC and PPH platforms manifest the AMS' willingness and openness to engage and partner with the rest of the international patent community, and serve its applicants more efficiently. AMS continue to study and consider expansion of various work-sharing agreements.

### *C. Enhanced Competency and Organizational Capacity*

As innovation pushes the frontiers of technology, the technical competency of patent examiners must likewise be enhanced to ensure speedy processing and grant of quality patents. AMS fully recognize the need to continually upgrade, not only the competencies of patent examiners, but likewise the organizational capacity of patent offices, particularly in IP administration. Capacity-building is an indispensable component in improving patent administration. In this regard, AMS continue to implement the initiative on Capacity-building for Patent Examiners in the IPR Action Plan 2011-2015, with Malaysia and Singapore as country champions.<sup>119</sup>

With the designation of Singapore and the Philippines as international authorities under the PCT system, they are in a position to assist other AMS,

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116. *See, e.g.*, Intellectual Property Office of the Philippines, Implementation of the Patent Prosecution Highway (PPH) Pilot Programme Between the Intellectual Property Office of the Philippines and the European Patent Office, Memorandum Circular No. 17-007 [IPOPIL Memo. Circ. No. 17-007] (June 20, 2017).

117. World Intellectual Property Office, PCT-Patent Prosecution Highway Pilot (PCT-PPH and Global PPH) *available at* [http://www.wipo.int/pct/en/filing/pct\\_pph.html](http://www.wipo.int/pct/en/filing/pct_pph.html) (last accessed May 4, 2018).

118. *Id.*

119. ASEAN IPR Action Plan 2011-2015, *supra* note 69, at 17.

particularly the smaller patent offices in training patent examiners on technical competencies, as well as in IP administration and quality management system. There is great potential for intra-ASEAN cooperation in these areas.

While individual IP Offices implement their own training programs, there are regional programs that seek to develop patent examiners' skills. IP Australia's Regional Patent Examination Training (RPET)<sup>120</sup> implemented under the AEC's ASEAN-Australia-New Zealand Free Trade Agreement Economic Support Program<sup>121</sup> delivers competency-based patent examination training programs to ASEAN IP Offices that perform substantive examinations covering patent search and examination according to international PCT standards.<sup>122</sup> Patent examiners from Malaysia, the Philippines, Indonesia, Thailand, and Vietnam were trained under the RPET which yielded positive results in enhanced competencies for the participants.<sup>123</sup>

Regional cooperation with partner IP Offices, such as the United States Patent and Trademark Office (USPTO), Japan Patent Office (JPO), EPO, and State IP Office of China (SIPO), has provided, and will continue to provide, capacity-building activities for ASEAN patent examiners, ranging from basic courses to advanced and technology-specific search and examination programs, as well as managerial and supervisory competencies, to further improve organizational capacity. In addition, these dialogue partners have bilateral cooperation agreements with individual AMS that also cover capacity-building activities for patent examiners. These activities not only enhance ASEAN patent examiners and competencies, but also serve as avenues for sharing of best practices that are relevant for AMS IP Offices.

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120. See generally ASEAN-Australia-New Zealand FTA Economic Cooperation Work Program & World Intellectual Property Office, Regional Patent Examination Training (RPET): Program Overview and Syllabus, available at [http://www.wipo.int/edocs/mdocs/pct/en/pct\\_mia\\_21/pct\\_mia\\_21\\_www\\_267898.pdf](http://www.wipo.int/edocs/mdocs/pct/en/pct_mia_21/pct_mia_21_www_267898.pdf) (last accessed May 4, 2018).

121. Agreement Establishing the ASEAN-Australia-New Zealand Free Trade Area, entered into force Jan. 1, 2010, 2672 U.N.T.S. 3.

122. AANZFTA Economic Cooperation Support Program, How Regional Patent Examination Training for ASEAN Member States contributes to the ASEAN Economic Community (A Fact Sheet by the ASEAN-Australia-New Zealand Free Trade Area), available at [http://aanzfta.asean.org/wp-content/uploads/2016/09/AECSP\\_Fact\\_Sheet\\_RPET\\_May15.pdf](http://aanzfta.asean.org/wp-content/uploads/2016/09/AECSP_Fact_Sheet_RPET_May15.pdf) (last accessed May 4, 2018).

123. *Id.*



*D. Improved Quality and Efficiency in Delivery of Services*

AMS IP Offices are guided by the present AEC Blueprint<sup>124</sup> that aims to improve competitiveness.<sup>125</sup> To implement this, the IPR Action Plan 2016–2025 includes the adoption of modern information technologies to improve quality of regional services, online filing, and sharing of patent information through the establishment of regional patent databases, among others.<sup>126</sup> Specifically, AMS are tasked to ensure that their IP Offices' patent databases are easily accessible to customers, partners, and industries, with Singapore as lead for patent database and the Philippines for information technology (IT).<sup>127</sup>

The regional IT platform for patents, ASEAN Patentscope,<sup>128</sup> was launched in August 2017, and is accessible to applicants, agents, and other stakeholders. The ASEAN Patentscope, which was developed in close cooperation with the WIPO, fosters innovation capacities in the region and enables stakeholders to access quality technology resources contributed by the AMS.<sup>129</sup> Considering that patents in ASEAN have increased more than 40% in the last three years while PCT filings increased four times in the last 10 years,<sup>130</sup> this regional patent infrastructure addresses the urgent need of applicants, agents, and stakeholders to obtain timely patent information.

At the national level, the AMS continue to implement programs on their own or in collaboration with bilateral partners in office modernization, automation, and online filing systems, as well as in streamlining procedures

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124. AEC BLUEPRINT 2025, *supra* note 37.

125. *Id.* at 6.

126. ASEAN IPR Action Plan 2016–2025, *supra* note 42.

127. *Id.* at 5.

128. See Association of Southeast Asian Nation, ASEAN Patentscope (A Database of Patents of ASEAN), available at <http://ipsearch.aseanip.org/> (last accessed May 4, 2018). “The ASEAN [Patentscope] project was initiated by the ASEAN Patent Examination Cooperation [ ] Task Force in 2012[,] and endorsed by the ASEAN Working Group on Intellectual Property Cooperation [ ] in 2015[,] in order to enhance regional collaboration on research and development [ ] activities and to encourage technological development among ASEAN countries.” ASEAN Intellectual Property Portal, Public Rollout of ASEAN PATENTSCOPE Service, available at <https://www.aseanip.org/News-Events/Latest-News-Events/ctl/Details/mid/1956/aid/52> (last accessed May 4, 2018).

129. *Id.*

130. *Id.*

and processes designed to improve the delivery and accessibility of IP services. The other deliverables in this area, such as electronic correspondence with applicants and agents, are expected to be completed within the AEC timeline. Indeed, the post-2004 ASEAN has gone a long way in ensuring that the AMS are providing IP services in a more business-friendly and client-oriented manner consistent with the AEC competitiveness goal.

*E. Greater Intra-ASEAN and International Cooperation with Dialogue Partners*

While the AWGIPC institutional mechanism was able to achieve significant gains, there is still potential for greater intra-ASEAN cooperation. The AMS, with bigger and more mature IP systems like Singapore, Philippines, Malaysia, Indonesia, Thailand, and Vietnam, can assist the smaller and younger IP Offices such as those of Brunei, Laos, Cambodia, and Myanmar. ASEAN integration should usher opportunities for patent cooperation. Intra-ASEAN capacity-building on non-patent areas, such as in IT, the Madrid System, technology transfer, and copyright, were conducted in the past.

Within the existing ASEAN structure, the AWGIPC created the ASPEC Task Force mandated to implement the ASPEC Programme.<sup>131</sup> A Community of Practice (CoP) for patent examiners was organized in August 2013 to promote understanding and work-sharing among the AMS.<sup>132</sup> The CoP has become an excellent avenue for ASEAN patent examiners to interact and share office practices and procedures, and has significantly fostered the spirit of community and partnership among the AMS.

As the IP Offices of Singapore and the Philippines take on bigger roles in the PCT system, they are in a position to extend assistance to other AMS, particularly in capacity-building in patent search and examination and patent administration.

Since its formation, the AWGIPC has developed strong bilateral relations with dialogue partners such as Australia and New Zealand, EPO, European IP Office, JPO, SIPO, USPTO, WIPO, etc. These are covered by bilateral cooperation agreements which encompass a wide range of cooperation areas, such as capacity-building, automation and IT, technical

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131. See ASEAN-ASPEC, *supra* note 111.

132. Eric Toh, Progress of the ASEAN Patent Examination Cooperation (ASPEC) Programme for ASEAN Work Sharing and Development of Community of Practice in ASEAN, available at [http://www.wipo.int/edocs/mdocs/globalinfra/en/wipo\\_aspec\\_asean\\_ip\\_sin\\_14/wipo\\_aspec\\_asean\\_ip\\_sin\\_14\\_www\\_281808.pdf](http://www.wipo.int/edocs/mdocs/globalinfra/en/wipo_aspec_asean_ip_sin_14/wipo_aspec_asean_ip_sin_14_www_281808.pdf) (last accessed May 4, 2018).

assistance on studies and researches, and IP education and enforcement, among others, which immensely benefitted the AMS over the years. While international cooperation within the ASEAN achieved modest gains, it is perceived that, with the ASEAN Integration, the regional bloc will open further engagements on account of the increase in foreign trade. Along this line, ASEAN is now negotiating the Regional Comprehensive Economic Partnership (RCEP) with Japan, Korea, China, India, Australia, and New Zealand. Alongside the substantive commitments, technical cooperation is essential to equip the Parties with the capacity to comply with their commitments. Hence, it is expected that certain levels of cooperation will be part of the final RCEP Agreement.

## VII. CONCLUSION

In a global knowledge-based economy, the AEC sets the strategic direction to make the region a competitive, innovative, and dynamic economy by 2025. IP is a critical component of the AEC Blueprint 2025. The AMS, through the AWGIPC, have significantly contributed to the attainment of regional goals by implementing programs and activities set in the ASEAN IPR Action Plans. ASEAN has fully recognized the important role of IP to promote innovation and creation, not only in the region, but also globally. ASEAN IP Offices have made significant progress in promoting the use of the patent system to enhance innovation. In the context of ASEAN Integration, ASEAN IP Offices have remarkably shifted from the traditional regulatory framework into a more development-oriented approach in patent administration. Towards 2025, the ASEAN patent administration will be characterized by common guidelines on patent examination practice, increased work-sharing between ASEAN IP Offices and other IP Offices, enhanced competency and organizational capacity on patent administration, improved quality and efficiency in delivery of services, and greater intra-ASEAN and international cooperation with dialogue partners. These are all aligned with the AEC's objective to make ASEAN a competitive, innovative, and dynamic region.