

ELUCIDATION
OF
LAW OF THE REPUBLIC OF INDONESIA
NUMBER 13 OF 2016
ON
PATENT

I. GENERAL

For Indonesia as a country with great number of population and abundant natural resources, the role of technology is essential to enhance added value and competitiveness in taking advantage from those resources. Such fact is not questionable. However, the development of technology has not reached desired result, meaning that the technological development has not been effectively utilized in performing economy, social and cultural activities. Consequently, it has not strengthened Indonesia's capacity in facing global competition.

The development of technology aims to improve the quality of acquiring and utilizing technology in order to encourage the transformation of national economy into competitive excellence based economy. In order to ensure that support of technological development for national development is sustainable and consistent, national innovation system needs to be supported by establishing public or private research institution, exploitation of natural resources, empowerment of human resources, and information technology network system, civilizing research, development and application of technology in strategic fields in scientific publication, and technology entrepreneurship.

The role of technology becomes the main concern of developed countries to answer the problems in nation building and increase economic growth. In many developed countries, economic and technology

policies are more integrated and synchronized to enhance national competitiveness. Consequently, one of the policy aims to improve the technology utilization in productive sector to support national economy and recognition of national technology.

Indonesia is a country of which genetic resources and traditional knowledge is frequently exploited by national or foreign Inventor to create new Invention. Therefore, this Law provides provisions on mentioning clearly and truthfully the materials used in the Invention if it is related to and/or comes from genetic resources and/or traditional knowledge in the description.

Despite the fact that by Law Number 14 of 2001 on Patent implementation of Patent has performed, yet some substantial matters are no longer suitable to the legal development of the society, whether nationally or internationally and are not regulated in accordance to the standard of the Agreement on Trade-Related Aspects of Intellectual Property Rights, hereinafter referred to as TRIPs; thus needs to be replaced. The following approaches are used in the amendment of Law on Patent:

1. optimizing the role of the State in providing government best service in the field of intellectual property;
2. favouring the interest of Indonesia without contravene international principles;
3. achieving economy independency by moving the strategic sectors to domestic economic by encouraging national invention in the field of technology to establish technology enhancement; and
4. building the foundation of national Patent through systemic pragmatic Legal Realism approach.

Urgency for amendment of Law of Patent:

1. adjustment to the intellectual property automation system due to the mechanism of Patent registration to be filed electronically;
2. refinement in the provisions of Patent implementation by the Government;
3. exemption to criminal and civil prosecution for parallel import and bolar provision;
4. prohibition to invention in second use or second medical use over expired Patent (public domain);

5. Remuneration for Civil State Apparatus researcher as inventor in official relation from his/her result of Patent commercialization;
6. refinement in the provisions related to new Invention and inventive step for publication in Universities or national scientific institution;
7. Patent may be used as collateral object of fiducia;
8. extending authorities of the Patent Appeal Commission in examining application for correction of description, claim, or drawings after an application is granted a Patent;
9. Patent may be transferred by waqf;
10. provisions on appointing and dismissal of experts by the Minister as the Examiner;
11. providing grace period mechanism in relation to Patent annual fee;
12. regulation on *force majeure* in administrative and substantive examination of Application;
13. regulation on export and import related to Compulsory Licensing;
14. availability of mediation mechanism preceding criminal prosecution;
15. broadening access and opportunities to national industries to utilize Patents of which protection have been expired and regardless of prosecution and obligation in paying royalty; and
16. granting a Compulsory License upon request from developing country or least developed country requiring pharmaceutical products granted a Patent in Indonesia for medication of endemic diseases, and pharmaceutical products is feasible to be manufactured in Indonesia to be exported to concerned country. On the other hand, granting a Compulsory License to import supply of pharmaceutical product granted a Patent in Indonesia but it is not yet feasible to be manufactured in Indonesia for medication of endemic diseases.

II. ARTICLE BY ARTICLE

Article 1

Sufficiently clear.

Article 2

Sufficiently clear.

Article 3

Section (1)

Sufficiently clear.

Section (2)

Simple Patent is only granted for an Invention in the form of a product which is not only distinctive in terms of technical features, but also retains more practical functions than previous invention as a result from its shape, configuration, construction, or components comprising of tools, goods, machine, composition, formula, substance, or system.

Simple Patent is also granted for an Invention in the form of new process or method.

Article 4

Point a

Sufficiently clear.

Point b

Sufficiently clear.

Point c

Point 1

Sufficiently clear.

Point 2

The term “games” means rules or method related to human physical acts or activities to play.

Point 3

The term “business” means method of business which does not have character and technical effect.

Point d

The term “rules and methods containing only computer program” means computer program that only contains program without character, technical effect and problem solving; however, if the computer program has characters (instructions) having technical effects and function to produce problem solving whether tangible or intangible constitutes patentable Inventions.

Examples of patentable Inventions:

1. Algorithm means an effective method expressed as a restricted series of instructions from well defined instructions to calculate a function. Started from a pre

condition and initial input (might be zero), the instructions define a computation that if executed, processed through a definite number of a well defined states, which eventually produce “output” and terminate at final state. The transition from one state to next one is not necessarily deterministic; some algorithms known as randomized algorithm, incorporate random input.

2. Encrypting information by coding and decoding to shuffle information so that cannot be read by other party.

Point e

Sufficiently clear.

Point f

Point 1

The term “existing and/or known product” comprises of tools, goods, machine, composition, formula, method, usage, substance, and system whether its Patent protected or has already falls in the public domain.

Point 2

The term “significantly” is generally used in the field of pharmaceutical, which means the difference in relevant substance chemical structure, such as Invention on antibiotics of phenicyline, amphyciline, and amoxiciline. Differences in one of the H (hydrogen) cluster in amphyciline and cluster OH (hydroxile) in amoxiciline have caused efficacy in exterminate microbes with extensive spectrum of anti-microbes and higher level of stability in comparison to amphyciline, thus it can be said that amoxiciline has meaningful improved efficacy compared to amphyciline.

Article 5

Section (1)

The term “not similar” does not only mean different, but also it must be viewed similar or not similar from the function of technical features of the Invention in comparison with the function of technical features of existing Invention.

Equivalent terms for disclosed technology are state of the art or prior art, which covers Patent literature and non Patent literature.

Section (2)

In this Law, provisions on verbal description or simulation or other ways are not only performed in Indonesia but also abroad provided that written evidence must also be submitted.

Priority right of Application comes into effect provided that all administrative and substantive requirements are fulfilled. For substantive requirement if claimed element in the application is disclosed in the priority document.

Section (3)

The term “substantive examination” in this section and in proceeding articles excluding articles regulating simple Patent means examination to an Invention stated in the Application to determine the compliance of requirements: novelty, inventive steps and industrially applicable, as well as unity of invention, clearly disclosed, and not categorized as unpatentable Invention. This provision is intended to solve rising problems from the same Invention applied by different applicants in inflecting time (conflicting application).

The Application has priority date if it is filed using Priority Right.

Article 6

Section (1)

Point a

The term “official exhibition” means exhibition organized by the Government.

The term “officially recognized exhibition” means exhibition organized by public but recognized and acquired government approval.

Point b

Sufficiently clear.

Point c

Sufficiently clear.

Section (2)

Sufficiently clear.

Article 7

Section (1)

The term “non-obvious” such as Patent Application of toothbrush with a detachable head brush that can be replaced

with head of razor to be functioned to shave. Such invention is not obvious to a person of such expertise.

Section (2)

The term “first Application was filed using Priority Right” means an Application which has been filed for the first time in other country which is a member of Paris Convention for the Protection of Industrial Property or a member of World Trade Organization. Priority Right on application comes into effect if all administrative and substantive requirements have been satisfied. For substantive requirement if claimed element in the Application is disclosed in priority document.

Article 8

Invention in the form of product that is industrially applicable must be able to be produced continuously (mass production) with the equal quality, whereas if an Invention is a process then the process must be able to be performed or used in practice.

Article 9

Point a

Sufficiently clear.

Point b

The term “method of examination” means method of diagnose.

The term “method of treatment” means treatment method in medical circumstances.

In the event that examination, treatment, medication, and surgery used health equipment, this provision is only effective to Invention of method, whereas health equipment including tools, materials, drugs, are excluded in this provision.

Point c

Sufficiently clear.

Point d

Living organisms include human, animal, or plant, whereas microorganisms are tiny organism and not visible to human eyes unless using microscope, such as amoeba, fungus, virus, and bacteria.

Point e

The term “biological process which is essential to produce plant or animal” means conventional or natural propagation process, such techniques as cuttings, layering, or natural pollination.

The term “non-biological process or microbiological process to produce plant or animal” means process in producing plant or animal which is usually transgenic/genetic engineering by including chemical, physics, microorganism or other forms of genetic engineering.

Article 10

Section (1)

The term “Person who gets the Inventor’s assigns” such as children of the Patent Holder through inheritance.

Section (2)

Sufficiently clear.

Article 11

Sufficiently clear.

Article 12

Section (1)

Sufficiently clear.

Section (2)

Sufficiently clear.

Section (3)

Sufficiently clear.

Section (4)

Sufficiently clear.

Section (5)

Sufficiently clear.

Section (6)

Mentioning name of the Inventor in the certificate is basically common. Such matter is known as moral rights.

Section (7)

Sufficiently clear.

Article 13

Section (1)

The term “Inventor in an official relation” means Civil State Apparatus (*Aparatur Sipil Negara*, ASN).

The term “government institution” means central and local government institutions.

Section (2)

Sufficiently clear.

Section (3)

Sufficiently clear.

Section (4)

Sufficiently clear.

Section (5)

Sufficiently clear.

Article 14

Section (1)

This provision is intended to provide protection to previous user who has good faith but did not apply for an Application.

Section (2)

Sufficiently clear.

Section (3)

An Invention must be genuinely a result of activity carried out in good faith by the first person who uses the Invention.

Article 15

Sufficiently clear.

Article 16

Section (1)

Sufficiently clear.

Section (2)

Sufficiently clear.

Section (3)

Prior user is not an exclusive right holder.

Article 17

Sufficiently clear.

Article 18

Sufficiently clear.

Article 19

Section (1)

The term “exclusive rights” means a right which is only granted to a Patent Holder for a definite period to personally implement commercially or authorize further right to other person. In doing so, exclude other person from implementing the Patent without authorization from the Patent Holder.

The term “product” includes tools, machine, composition, formula, product by process, system et cetera. For example stationary, eraser, drug composition, and ink.

The term “process” includes process, method or usage. For example: process in making ink, and process in making tissue paper.

The term “party” means a person or persons collectively or legal entities in accordance with context of respective case.

Section (2)

In the event that a product is imported to Indonesia and the process to make such product has been Patented, the relevant Holder of patent-process is entitled to seek legal remedies against imported products, provided that the product has been produced in Indonesia using Patented process.

Section (3)

This provision is intended to provide opportunity for parties really in need to use the invention merely for the sake of research and education.

The term “of educational, research, experimental, or analytical purposes” covers act of bioequivalence test or other forms of test. The term “does not prejudice the proper interests of the Patent Holder” means the implementation or usage of Invention does not lead to commercial exploitation that could damage or even become competitor for Patent Holder.

Article 20

Sufficiently clear.

Article 21

The term “annual fee” means fee that is payable by Patent Holder periodically each year. This term is also known in several countries as maintenance fee.

Article 22

Section (1)

Sufficiently clear.

Section (2)

Sufficiently clear.

Section (3)

The term “recorded” means recorded in the Patent database.

The term “electronic media” means any media use electronic or mechanical electronic energy to access its content, such as internet sites.

The term “non-electronic media” means portion in the Patent gazette published periodically by the Minister, portion in special media that can be easily and clearly seen by the public, such as periodical publication by the Directorate General of Intellectual Property and/or publication board in the Minister’s office.

Article 23

Section (1)

Generally protected product or equipment obtained in a relatively short time, in simple manner and relatively low cost and technologically simple; thereby, protection period for 10 (ten) years is regarded to be sufficient to acquire reasonable economic benefits.

Section (2)

Sufficiently clear.

Section (3)

Sufficiently clear.

Article 24

Section (1)

Sufficiently clear.

Section (2)

Patent application from small medium enterprise, educational institution, and government research and development may apply for registration through intellectual property clinic or intellectual property center.

Section (3)

The term “linked each other” means several new Inventions and has strong related inventive steps such as an Invention of new pen with new ink. In mentioned example it is clear that ink is a unity of Invention to use the stationary which is a new invention thereby pen and ink may be filed in one Application.

Another example, an Invention of a new product and a process to produce the product.

Section (4)

Electronic application uses IPAS System (Industrial Property Automation System).

Article 25

Section (1)

Sufficiently clear.

Section (2)

Point a

Sufficiently clear.

Point b

Sufficiently clear.

Point c

Claim is part of Application describing the subject matter of Invention sought legal protection that needs to clearly elaborated and supported by description.

Point d

The term “abstract of Invention” means summary of description describing the subject matter of an Invention.

Point e

The term “drawing” means technical drawing.

Point f

Sufficiently clear.

Point g

Sufficiently clear.

Point h

Sufficiently clear.

Point i

Sufficiently clear.

Section (3)

Sufficiently clear.

Section (4)

Sufficiently clear.

Article 26

Section (1)

Reason to mention the origin of which the genetic resources and/or traditional knowledge in the description to ensure that the genetic resources and/or traditional knowledge are not claimed by other country and to encourage Access Benefit Sharing (ABS).

Section (2)

Sufficiently clear.

Section (3)

The term “International Agreement” means ratified international agreement.

Article 27

Sufficiently clear.

Article 28

This provision is intended to facilitate the process of filing Application from Inventor or entitled person who domicile outside the territory of the Republic of Indonesia due to the compliance of language and fulfillment of required requirements.

Article 29

Sufficiently clear.

Article 30

Section (1)

Sufficiently clear.

Section (2)

Priority document means application document which was first filed in a country which is a member of Paris Convention or World Trade Organization which is used to claim for priority date of an application to designated country which is also a member of those agreements and authorized by official of Patent office where the Patent application was first filed. Authorized party authorizing the copy of application for the first time is the official of Patent Office in the country where the Patent application is first filed. If the application is filed through Patent Cooperation Treaty (PCT), authorized party is the official of World Intellectual Property Organization (WIPO) which is a body of the United Nation administering international agreement regarding intellectual property.

Section (3)

Sufficiently clear.

Section (4)

Sufficiently clear.

Article 31

Sufficiently clear.

Article 32

Sufficiently clear.

Article 33

Section (1)

Traktat kerjasama Paten is a translation of Patent Cooperation Treaty (PCT). This provision is intended to provide convenience and rapidity for an Applicant in Indonesia to apply Patent Application to several other countries (which are also members of Patent Cooperation Treaty (PCT)), and on the contrary, Applicant from other country which is also a member of PCT may easily and rapidly apply his/her Application to Indonesia.

Indonesia has ratified PCT by the Presidential Decree Number 16 of 1997.

Section (2)

Sufficiently clear.

Section (3)

Subject matters which will be covered in the Ministerial Regulation among others:

- a. additional administrative requirement that needs to be fulfilled by Applicant such as: possible use of foreign language, appointing Patent office in charge of international search authority and international preliminary examination authority by Applicant, and so forth;
- b. obligation of Directorate General as receiving office or designated office of the system, and so forth.

Article 34

Section (1)

This provision is intended to facilitate Applicant in obtaining Filing Date which is very important for the status of Application because of the system used is first to file. Furthermore, it is also intended to give certainty on Filing Date.

It is also intended to improve the service and convenience to the public by taking cautious and confirming the minimum requirement of Filing Date for Application filed using Patent Cooperation Treaty.

For an invention that has been filed and had Filing Date, the Applicant may produce concerned Invention but the Invention has not obtained legal protection until the Application is granted a Patent.

Section (2)

Sufficiently clear.

Section (3)

The term “description” means written explanation on how to implement Invention to be understood by a person having expertise in the field of Invention.

Section (4)

Sufficiently clear.

Article 35

Section (1)

Sufficiently clear.

Section (2)

Sufficiently clear.

Section (3)

Cost being charged is fine for the overdue of Applicant in completing requirements and formalities.

Section (4)

Sufficiently clear.

Section (5)

The term “emergency” means *force majeure* such as condition of war, revolution, riot, strike, natural disaster, or other emergencies preventing Applicant to submit the application requirement and formalities.

Section (6)

Sufficiently clear.

Article 36

Sufficiently clear.

Article 37

Sufficiently clear.

Article 38

Sufficiently clear.

Article 39

Section (1)

Sufficiently clear.

Section (2)

The term “extend the scope of invention” means adding essence/subject, new information or taking off technical feature of Invention, either in the description, drawing, or claim which cause the extension of the scope of Invention.

Section (3)

Sufficiently clear.

Section (4)

Sufficiently clear.

Article 40

Sufficiently clear.

Article 41

Section (1)

The term “which are not linked” means invention or inventions other than one received invention.

For example:

If one application contains 15 claims consisting of:

1. Invention A mentioned in claim 1 until 5 comprised of one invention;
2. Invention B mentioned in claim 6 to 10 is not a unity of Invention A;
3. Invention C mentioned in claim 11 to 15 which is not a unity of Invention A and Invention B.

Out of three inventions, rejected invention is Invention B and Invention C.

Section (2)

Sufficiently clear.

Section (3)

Sufficiently clear.

Section (4)

Sufficiently clear.

Article 42

Sufficiently clear.

Article 43

Sufficiently clear.

Article 44

Sufficiently clear.

Article 45

Section (1)

Sufficiently clear.

Section (2)

Sufficiently clear.

Section (3)

Sufficiently clear.

Section (4)

The term “sufficient evidence” means convincing evidence to the Minister that the Person is an Inventor of an Invention, for example: affidavit of an agreement between Applicant and the Person claimed to be an Inventor.

This provision is intended to protect Inventor from damaging possibilities.

Article 46

Section (1)

Sufficiently clear.

Section (2)

Sufficiently clear.

Section (3)

This provision is made to give chance to the Applicant due to his/her interest, an Application is desired to be published earlier.

The term “certain circumstances” means to fulfill the requirements of credit point for researcher as an Inventor or as a requirement to place a bid in a tender.

Article 47

Section (1)

The term “electronic media” means any media use electronic or mechanical electronic energy to access its content, such as internet sites.

The term “non-electronic media” means portion in the Patent Gazette published periodically by the Minister, portion in special media that can be easily and clearly seen by the public, such as periodical publication by the Directorate General of Intellectual Property and/or announcement board in the Minister’s office.

Section (2)

Sufficiently clear.

Section (3)

Sufficiently clear.

Article 48

Section (1)

During the period, the announcement is carried out continuously.

Section (2)

Point a

Sufficiently clear.

Point b

Sufficiently clear.

Point c

Sufficiently clear.

Point d

Sufficiently clear.

Point e

Sufficiently clear.

Point f

Classification of Invention is intended to categorize Invention in application in accordance to relevant field of technology. In doing so, search for required similar invention (to find comparative document) in substantive examination will be easier and fast. Eventhough Indonesia has not ratified International Patent Classification, in practice Indonesian uses IPC as applied by numerous countries.

Point g

Sufficiently clear.

Point h

Sufficiently clear.

Point i

Sufficiently clear.

Article 49

Section (1)

The term “opinion” means any information from a person

without any request. Information may be in the form of written evidence from verbal elaboration or simulation or other ways taken place in Indonesia and/or abroad.

The term “opposition” means any information conveyed by a person following a request not to grant a Patent or Simple Patent on a relevant announced Invention.

Section (2)

Sufficiently clear.

Section (3)

Sufficiently clear.

Section (4)

Sufficiently clear.

Section (5)

Sufficiently clear.

Article 50

Section (1)

The term “invention concerns to the interest of security and defense of the State” means inventions constitute inventions in the main equipment of defense system, firearms, ammunition, military explosives, interception, wiretapping, surveillance, and/or encryption.

Section (2)

Sufficiently clear.

Section (3)

Sufficiently clear.

Section (4)

Sufficiently clear.

Article 51

Sufficiently clear.

Article 52

Sufficiently clear.

Article 53

Sufficiently clear.

Article 54

Sufficiently clear.

Article 55

Section (1)

Point a

Sufficiently clear.

Point b

Document under this provision is required to facilitate the assessment that the Invention being requested for a Patent constitutes as a new Invention and really contain inventive steps and is susceptible to industrial application.

Point c

Sufficiently clear.

Point d

Sufficiently clear.

Point e

The term “other prescribed document” such as comparative document, search report, correspondence regarding the result of examination conducted in the country of origin of Priority Rights or in other countries that conducting prior examination.

Section (2)

The term “additional explanation” may be information on the amendment by Applicant to Patent application document based on search result or preliminary examination and serves as additional information that might be necessary for examination.

Section (3)

Sufficiently clear.

Article 56

Sufficiently clear.

Article 57

The Decision is issued not later than 30 (thirty) months since examination needs to be communicated several times with the Applicant.

Article 58

Sufficiently clear.

Article 59

Sufficiently clear.

Article 60

Sufficiently clear.

Article 61

Section (1)

Attachment on Patent certificate is an integral part of a Patent certificate.

The term "data" means data in certificate and attachment.

Section (2)

Sufficiently clear.

Section (3)

Sufficiently clear.

Section (4)

Sufficiently clear.

Section (5)

Sufficiently clear.

Article 62

Section (1)

Sufficiently clear.

Section (2)

Sufficiently clear.

Section (3)

Sufficiently clear.

Section (4)

Sufficiently clear.

Section (5)

Fee Payable is a fine for late submission of response and/or fulfilling requirements as mentioned in the notification.

Section (6)

Sufficiently clear.

Section (7)

The term “emergencies” means *force majeure*, such as in war, revolution, riot, strike, natural disaster or other similar emergencies that disable the Applicant to provide response and/or fulfilling requirements as mentioned in the notification for the results of substantive examination.

Section (8)

Sufficiently clear.

Section (9)

Sufficiently clear.

Section (10)

Sufficiently clear.

Article 63

Sufficiently clear.

Article 64

Sufficiently clear.

Article 65

Section (1)

Sufficiently clear.

Section (2)

The provision is intended to secure independency of the results of examination from the board conducting appeal petition.

Section (3)

If the board consists of 3 (three) persons, it will comprise of 1 (one) examiner and 2 (two) experts. If the board consists of 5 (five) persons, it will comprise of 2 (two) examiners and 3 (three) experts.

Article 66

Sufficiently clear.

Article 67

Sufficiently clear.

Article 68

Sufficiently clear.

Article 69

Sufficiently clear.

Article 70

Sufficiently clear.

Article 71

Sufficiently clear.

Article 72

Sufficiently clear.

Article 73

Sufficiently clear.

Article 74

Section (1)

As an exclusive right, a Patent may be transferred by the Inventor or an authorized person to a person or entities.

The term “may transfer or be transferred” is only for economic rights, whereas moral rights remain intact to the Inventor. Transfer of rights over a Patent must be conducted before the notary (authentic deed).

Point a

Sufficiently clear.

Point b

Sufficiently clear.

Point c

Sufficiently clear.

Point d

Sufficiently clear.

Point e

Sufficiently clear.

Point f

The term “other recognized reasons in accordance with the prevailing legislation” is such as Patent ownership because of dismissal of legal entity as a previous Patent Holder.

Section (2)

Sufficiently clear.

Section (3)

Sufficiently clear.

Section (4)

Sufficiently clear.

Section (5)

Sufficiently clear.

Article 75

The term “right” means moral rights.

Article 76

Section (1)

Unlike Patent transfer of which ownership of rights is also transferred, Licensing on the basis of an agreement is basically giving rights to enjoy economic benefits from a Patent within a definite period and under certain circumstances.

The term “exclusive Licensing agreement” means an agreement to give a license to only one Licensee, and/or in certain territory.

The term “non-exclusive Licensing agreement” means an agreement that can be given to several Licensees and/or in several territories.

Section (2)

Sufficiently clear.

Section (3)

Sufficiently clear.

Article 77

Sufficiently clear.

Article 78

The term “national interest” means certain matter or act concerning ideology, politic, economy, social, and culture, defense and security,

energy, technology and other interests to achieve Indonesian national goals as mentioned in the 1945 Constitution of the Republic of Indonesia.

Article 79

Sufficiently clear.

Article 80

Sufficiently clear.

Article 81

The term “non-exclusive” means Licensing an exploitation of a Patent to one particular Licensee, nonetheless it will not prevent from giving the same License to other parties.

Article 82

Section (1)

Point a

Sufficiently clear.

Point b

Sufficiently clear.

Point c

Such circumstance is usually taken place during the implementation of a Patent as a result of improvement or development of existing protected Invention. Therefore, the implementation of that new Patent means implementation of partial or entire protected Invention owned by other parties.

If previous Patent Holder issues a License to the next Patent Holder enabling the implementation of that Patent, then it does not constitute Patent infringement.

However, if a License is not issued, this Law should provide solution.

This provision is intended to enable the implementation of the later Patent without infringing earlier Patent by issuing a compulsory License by the Minister.

Section (2)

Sufficiently clear.

Article 83

Sufficiently clear.

Article 84

Section (1)

Point a

Sufficiently clear.

Point b

Sufficiently clear.

Point c

The term “feasible economic scale” means that the Patent being manufactured can be sold in reasonable price for the public without disregarding the rights of Patent Holder.

Section (2)

The term “competent institution” means an institution which is competent in terms of relevant field of Patent being requested for a compulsory License.

Article 85

Point a

The term “mutual Licensing” means a Patent Holder of Invention A gives a License to a Licensee who has a Patent over Invention A+1, and the Licensee gives a license to a Patent Holder of Invention A to use a Patent of Invention A+1.

Point b

Sufficiently clear.

Article 86

Section (1)

Sufficiently clear.

Section (2)

The invitation aims to hear opinion from Patent Holder including the reason not to give a License to the Applicant of compulsory License.

Section (3)

Sufficiently clear.

Section (4)

Sufficiently clear.

Article 87

Sufficiently clear.

Article 88

Sufficiently clear.

Article 89

Sufficiently clear.

Article 90

Sufficiently clear.

Article 91

Sufficiently clear.

Article 92

Section (1)

The term “Remuneration” may be money or other forms agreed on by all parties.

Section (2)

Sufficiently clear.

Article 93

Section (1)

The term “pharmaceutical products” comprises of ingredients or equipment to diagnose diseases.

Section (2)

Sufficiently clear.

Section (3)

Sufficiently clear.

Article 94

Sufficiently clear.

Article 95

Sufficiently clear.

Article 96

Sufficiently clear.

Article 97

Sufficiently clear.

Article 98

Sufficiently clear.

Article 99

Sufficiently clear.

Article 100

Point a

Sufficiently clear.

Point b

The term “relevant agency” means an agency which is established and assigned to supervise business competition as regulated in the legislation.

Article 101

Sufficiently clear.

Article 102

Sufficiently clear.

Article 103

Sufficiently clear.

Article 104

Sufficiently clear.

Article 105

Sufficiently clear.

Article 106

Sufficiently clear.

Article 107

Sufficiently clear.

Article 108

Sufficiently clear.

Article 109

Section (1)

Point a

Examples of Invention related to defense and security of the State, such as explosives, firearms, and ammunition.

Point b

The term “extreme urgency for the interest of the public” among others in the health sector such as Patented medicines in Indonesia that are necessary to treat endemic diseases, in agriculture sector such as pesticide that is required to prevent crop failure nationally due to pests, any process and/or products to handle natural disaster and/or environmental disaster.

Section (2)

Sufficiently clear.

Section (3)

Sufficiently clear.

Section (4)

The term “relevant ministers or heads of relevant institutions” means the minister or heads of institutions of which their duties and authorities related to Government use of Patent. Such as in pharmaceutical Patent, then the relevant minister would be the minister of which his/her duties and authorities are in health sector.

Article 110

Point a

Sufficiently clear.

Point b

Sufficiently clear.

Point c

Sufficiently clear.

Point d

The term “interception” means turning, altering, and/or obstructing transmission of electronic information and/or unpublished electronic document, whether through wire or wireless communication network, such as electromagnetic emission or radio frequency wave.

Point e

The term “wiretapping” means Patent related to equipment to tap or process in manufacturing equipment for tapping used to listen and record unpublished electronic information transmission and/or electronic document, both using communication cable network or wireless network, such as electromagnetic emission or radio frequency wave.

Point f

The term “surveillance” means activity to obtain information, data, or image on meteorology characteristics, hydrography, and/or geografic of certain area, whether through visual observation or other method of sensing.

Point g

The term “encrypting devices” means any device used to conducting alteration, scrambling, and/or hiding information into irreadable or illogical format.

The term “encryption analysis device” means any device used to obtain meaning from encrypted information by applying concept, theory, art or any technique systematically, methodologically, and consistently.

Point h

Sufficiently clear.

Article 111

Sufficiently clear.

Article 112

Sufficiently clear.

Article 113

Sufficiently clear.

Article 114

Section (1)

Sufficiently clear.

Section (2)

Sufficiently clear.

Section (3)

Sufficiently clear.

Section (4)

The term “final” means that Government decision to use a Patent cannot be pursued further legal action of civil, criminal, State administration, or others.

The term “binding” means the Government decision to use a Patent by the Government is applicable to all parties.

Article 115

Section (1)

The term “reasonable Remuneration” means the balance between economic benefit that is possibly obtained by a Patent Holder and the capability of State finance to pay.

Section (2)

Sufficiently clear.

Article 116

Sufficiently clear.

Article 117

Sufficiently clear.

Article 118

Section (1)

Patent Holder cannot exercise his/her exclusive rights; thus, he/she is exempted from the obligation to pay annual fees for his/her Patent that is used by the Government.

Section (2)

Government use of Patent does not diminish his/her exclusive rights as a Patent Holder; the Patent Holder remains holding his/her obligation to pay annual fees.

Article 119

Sufficiently clear.

Article 120

Sufficiently clear.

Article 121

Sufficiently clear.

Article 122

Section (1)

The term “one Invention” means a simple Patent is filed only for one independent product claim or one independent process claim, yet it may consist of several dependent claims.

Section (2)

Sufficiently clear.

Section (3)

Sufficiently clear.

Article 123

Sufficiently clear.

Article 124

Sufficiently clear.

Article 125

Section (1)

The term “documentation” means compilation of archives of history of Patent from Application to final decision to grant a Patent, Application refusal, or Application abandonment in electronic and/or non-electronic document.

Section (2)

Establishment of a national system of documentation and Patent information network is to provide extensive information to the public regarding Patent related technology to enable the public to utilize technology development.

Article 126

Section (1)

Date of Patent certificate is the granting date of a Patent.

Example of how to calculate annual fee:

An application filed on 1 April 2010 and granted a Patent on 5 January 2013. The obligation of Patent Holder to pay first annual fee falls on 4 July 2013 at the latest.

Section (2)

The amount of annual fees to pay for the first time will be as follows:

Year	Period	Fees (rupiah)
I	(1 April 2010 – 31 March 2011)	A
II	(1 April 2011 – 31 March 2012)	B
III	(1 April 2012 – 31 March 2013)	C
IV	(1 April 2013 – 31 March 2014)	D
V	(1 April 2014 – 31 March 2015)	E
VI	(1 April 2015 – 31 March 2016)	F

5 January 2013 is in Year III period 1 April 2012 – 31 March 2013. First payment method is: annual fee for the first year since the Filing Date to the year a Patent is granted plus annual fee for the following year. So the total payment of first year Patent annual fee is: A+B+C+D should be paid not later than 4 July 2013.

Section (3)

Second payment of annual fee is made not later than 1 (one) month before the same date with the Filing Date within the protection period of subsequent year. In the example the obligation to second payment of annual fee (E) falls on 2 March 2014.

Section (4)

Sufficiently clear.

Article 127

Section (1)

For a Patent Holder residing or having permanent domicile in the territory of the Unitary State of the Republic of Indonesia, annual fee payment may be carried out by the Patent Holder or his/her Proxy who in this case is the Intellectual Property Consultant.

Section (2)

Sufficiently clear.

Section (3)

Sufficiently clear.

Article 128

Sufficiently clear.

Article 129

Sufficiently clear.

Article 130

Sufficiently clear.

Article 131

Sufficiently clear.

Article 132

Section (1)

Point a

Sufficiently clear.

Point b

Sufficiently clear.

Point c

Sufficiently clear.

Point d

The term “incapable to prevent the exploitation of a Patent in a form and way that harm the public interest” means although a compulsory License has been issued, it is not followed by its implementation or the compulsory License is implemented ineffectively that the products required by the public are not fulfilled and the aim of issuing compulsory License cannot be achieved, such as compulsory Licensing to produce medicines that is not implemented effectively that the number of products remains insufficient and the price of medicines continues to be expensive.

Point e

Sufficiently clear.

Section (2)

The term “third party” means a party who holds interest in the Patent which is being claimed for invalidation and must be proven in the Commercial Court.

Section (3)

Sufficiently clear.

Section (4)

The term “other parties representing national interest” means any persons filing a lawsuit merely for the interest of the public and/or the Unitary State of the Republic of Indonesia.

Article 133

Sufficiently clear.

Article 134

Sufficiently clear.

Article 135

Sufficiently clear.

Article 136

Sufficiently clear.

Article 137

Exclusive rights of Patent Holder are removed since the decision of the Commercial Court has legal binding to invalidate a Patent owned by the Patent Holder.

If a Patent has been licensed by a Patent Holder to other parties, Licensee is not obligated to pay royalty to the Patent Holder whose Patent has been invalidated.

Article 138

Section (1)

Sufficiently clear.

Section (2)

A Patent Holder whose his/her claim(s) has been invalidated partially upon request or court order with legal binding will have to file a request to the Minister to have his/her partial valid claim(s) adjusted.

Adjustment of claim(s) to partial invalidated claim(s) is carried out by re-tracing the number of Patent claim(s) that is not invalidated. The re-tracing that number of Patent claim(s) does not extend the scope of the claim(s).

Article 139

Section (1)

Licensee of invalid Patent, basically may remain to implement his/her rights. That License becomes a License for another Patent which is not invalidated.

Section (2)

Sufficiently clear.

Section (3)

Sufficiently clear.

Article 140

Sufficiently clear.

Article 141

Sufficiently clear.

Article 142

Sufficiently clear.

Article 143

Sufficiently clear.

Article 144

Section (1)

Sufficiently clear.

Section (2)

Sufficiently clear.

Section (3)

The term “days” means calendar days.

Section (4)

The term “days” means calendar days.

Section (5)

The term “days” means calendar days.

Article 145

Section (1)

Reversed vindication is applied considering the difficulty in handling disputes in Patented process.

Point a

Definition of patented Process or Patent for process, basically refers to similar term, which is process patent.

Point b

Sufficiently clear.

Section (2)

In order to keep the equality of reasonable interests between parties, judge remains to be authorized to order Patent holder to submit affidavit of copy of Patent Certificate of respected process beforehand, and preliminary evidence corroborating that allegation. More over, judge is also required to consider the interest of defendant to obtain protection on confidentiality of the process elaborated for the sake of vindication before court.

Section (3)

Sufficiently clear.

Section (4)

Protection to the confidentiality is very important considering the nature of a process which is generally very easy to be manipulated or improved by an ordinary-skilled person in engineering or certain technology. Thus, upon request of the parties, the judge may decide that the court is declared closed for public.

Article 146

Section (1)

The term “days” means calendar days.

Section (2)

Sufficiently clear.

Section (3)

The term “days” means calendar days.

Section (4)

The term “days” means calendar days.

Section (5)

Sufficiently clear.

Section (6)

Sufficiently clear.

Article 147

Sufficiently clear.

Article 148

Sufficiently clear.

Article 149

Section (1)

The term “days” means calendar days.

Section (2)

Sufficiently clear.

Article 150

Section (1)

The term “days” means calendar days.

Section (2)

The term “days” means calendar days.

Section (3)

The term “days” means calendar days.

Section (4)

The term “days” means calendar days.

Article 151

Section (1)

The term “documents” in this Article means a request for an appeal to the supreme court, brief for an appeal to the supreme court, and/or counter against the brief for an appeal to the supreme court along with other documents.

The term “days” means calendar days.

Section (2)

Sufficiently clear.

Section (3)

Sufficiently clear.

Article 152

Section (1)

The term “days” means calendar days.

Section (2)

Sufficiently clear.

Section (3)

The term “days” means calendar days.

Section (4)

The term “days” means calendar days.

Point a

Sufficiently clear.

Point b

Sufficiently clear.

Point c

Particularly for lawsuit for Patent invalidation, even though the Minister does not constitute as the Parties in the lawsuit, copy of court decision which has legal binding must be submitted to the Minister by the Commercial Court.

Section (5)

Sufficiently clear.

Article 153

Section (1)

The term “alternative dispute resolution” constitutes negotiation, mediation, consiliation, and other methods chosen by all parties.

Section (2)

Sufficiently clear.

Article 154

Sufficiently clear.

Article 155

Sufficiently clear.

Article 156

Sufficiently clear.

Article 157

Section (1)

Sufficiently clear.

Section (2)

The term “days” means calendar days.

Section (3)

The term “days” means calendar days.

Section (4)

Sufficiently clear.

Section (5)

Sufficiently clear.

Section (6)

Sufficiently clear.

Article 158

Section (1)

The term “days” means calendar days.

Section (2)

The term “days” means calendar days.

Section (3)

The term “days” means calendar days.

Section (4)

Sufficiently clear.

Section (5)

Sufficiently clear.

Article 159

Section (1)

The term “certain civil servant investigators in a ministry administering government affairs in the legal field” means civil servant investigators of Intellectual Property.

Section (2)

Point a

Sufficiently clear.

Point b

Sufficiently clear.

Point c

Sufficiently clear.

Point d

Sufficiently clear.

Point e

Sufficiently clear.

Point f

Confiscating materials used to manufacture infringing goods which can be used as evidence in criminal acts in Patent. Being confiscated by the Investigators, the materials cannot be used by the suspect to manufacture infringing goods.

Confiscating infringing goods for evidence does not include confiscate the machine to produce the goods provided that

the Suspect can prove that the machine can be used to produce other goods that do not constitute as infringing goods.

Point g

Sufficiently clear.

Point h

Civil servant investigator is entitled to arrest, detent, set a wanted list, prohibited exit and entry against criminal acts of Patent by requesting assistance from the Police including Interpol, Immigration, Detention center, and other relevant institutions.

Point i

Sufficiently clear.

Section (3)

Sufficiently clear.

Section (4)

Sufficiently clear.

Section (5)

Sufficiently clear.

Article 160

Sufficiently clear.

Article 161

Sufficiently clear.

Article 162

Sufficiently clear.

Article 163

Sufficiently clear.

Article 164

Sufficiently clear.

Article 165

Sufficiently clear.

Article 166

Sufficiently clear.

Article 167

Action of parallel import and bolar provision are exempted from criminal provisions and civil lawsuit so that no hesitation for the parties that are going to commit such action.

Point a

Exception of importation of pharmaceutical products as referred to in point a in this Article is to ensure reasonable price and satisfy equality of pharmaceutical products that are essential for human health. This provision may be used when the price of a product in Indonesia is more expensive than official price circulated in international market.

Point b

Exception as referred to in point b in this Article is to guarantee the availability of pharmaceutical products by other parties after the expiry of the Patent protection period. In doing so, reasonable price of pharmaceutical products may be achieved. The term “permit process” means the process to process a marketing authorization and production permit of certain pharmaceutical product in related institution.

Article 168

Sufficiently clear.

Article 169

Sufficiently clear.

Article 170

Sufficiently clear.

Article 171

Sufficiently clear.

Article 172

Sufficiently clear.

Article 173

Sufficiently clear.

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