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Protection to Mandatory Licensee in State and Society Matters under the New Patent Law

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ABSTRACT
The development of patents has now come to a massive stage. These developments make the development of the economy to grow because it involves the use of patents and other economic benefits. Therefore, we need a form of protection, especially the patent licensee holder. Any act proven to match violations of intellectual property rules should be punished in accordance with the provisions in the field of intellectual property. This paper uses qualitative deskriftive methods that propose common phenomena regarding the new rules of patent. This method is enriched by interview approach. The data used is the primary data in the form of sharper-invitation around intellectual property and secondary data in the form of books about intellectual property. Writing purpose : The purpose of this paper is to analyze any issues in the case of protection of patent holders whose rights would be subtracted by the new Patent law. The new Patent Law should provide a solution for patent holders not to be harmed. The finding of this study is that patent licensee holders are not yet protected and should be protected through improvement of the 93rd incident with a deadline of 3 months

INTRODUCTION

In modern times today is characterized by developments in various technologies that have been more advanced. Everyone can utilize the existing technology with ease to do business to meet the needs of his life. In addition, technological developments have caused the world to be without limit. Technological developments also cause rapid social change in society.

There are countries that strongly protect strictly controlled technology. Technology is an important element in the development of a country. Technology contributes greatly to fundamental changes in various aspects. So that all society both from the top, and bottom must have knowledge in the field of technology.

Technology needs to be developed by granting patents. A patent is an exclusive right granted by the state to the inventor of his invention in the field of technology for a certain period of time carrying on

the invention himself or giving approval to another party to exercise it. One way of transferring technology is by way of a transfer of rights or licenses. The license agreement is closely related to the field of intellectual property rights, particularly in the case of patents.

License Agreement as permission granted by patent holder to other party pursuant to the right granting agreement to enjoy economic benefit from a patent. Licenses provide protection within certain periods and conditions for a patent utilization. The existence of such patent license makes a person or legal entity under an agreement has the right to enjoy the economic benefits of a patent which has been granted legal protection within a period of time and under certain conditions.

Law Number 13 Year 2016 on Patents has corrected the weaknesses in Law Number 14 Year 2001 regarding Patents. At least some points are included to fix the old regulatory weaknesses. One of the things that is improved is that patent examiners may be recruited from outside the Directorate General KI. The examiner may come from both universities and research institutes who understand the basic technology transfer. It will speed up the process of patent registration by inventors or inventors in case of examination.

The fourth point in Law No. 13 of 2016 on Patents also regulates provisions concerning the implementation of patents by the Government with considerations relating to the defense and security of the state and the urgent need for the benefit of the public. The government's patent implementation is conducted on a limited basis to meet domestic and non-commercial needs, including firearms, ammunition, military explosives, interception, tapping, reconnaissance, coding devices and password analysis tools, and other state defense and security equipment .

One of the issues in the field of patents protected by the Act is the issue of Licensed Patent Removal. The issue of the abolition of this patent is governed by Articles 130 to Article 141 of the Patent Law. As a result of the removal of such patents is of course very harmful to the patent holder. Therefore, the enforcement or legal protection against the abolition of patents must be supported by the Government and the community itself. Examples of problems in patent licensing include the hijacking or falsification of a patent invention resulting in the filing of a lawsuit to the Commercial Court from the patent holder and there is already a permanent legal decision that would result in the abolition of the patent.

Based on the description of the above background, it can be formulated problems in this study as follows:

1. How is the legal protection of the Patent License under Law No. 13 of 2016 linked to the Patent Period?
2. How does the form of state guidance for the community related to the implementation of compulsory license is associated with Law Number 13 Year 2016?

Usefulness Research

The usefulness of research obtained from the results of this study are as follows:

1. Theoretically, the results of this study are expected to be a contribution to the development of legal science, especially in the field of Intellectual Property Rights.
2. Practically, the results of this study may serve as a material and reference in the study of patents, in particular the Compulsory License and agreements in the Compulsory License.

METHOD

In this thesis research, the author uses the research method as follows: The nature of research in this scientific paper is descriptive analytical, ie research that describes the events being researched and then analyzed based on facts in the form of secondary data obtained from primary, secondary, and tertiary. Approach method used is approach of law and conceptual approach. The approach goes from the views and doctrines that develop in the science of law. the data used in this research is literature search in the form of literature and documents that exist, relating to the object of research. Therefore, the source of this study is secondary data, which includes primary law, secondary law materials and tertiary legal materials. In order to obtain good results that are objective scientific, accurate and reliable data will be required truthfulness of the results, then in this case the researchers obtain data by using data collection tool literature study, that is data collection from legislation, theories, opinions

relating to the problem under investigation. From these data then analyzed and formulated as supporting data in this research.

The author prepares literature studies on the types of data and legal sources listed in number 2 (two) above. After the data collected, the authors will analyze the data and arrange it into a conclusion. Data analysis techniques used in this legal research using qualitative analysis. The qualitative approach is the approach that discusses the ways of analyzing the data collected by means or known legal analysis or interpretation, as an authentic interpretation, grammatical interpretation, interpretation based on the history of legislation, systematic interpretation, interpretation of sociology, teleological interpretation, or functional interpretation.

RESULTS AND DISCUSSIONS

A. Intellectual Property Rights

Intellectual Property Rights (hereinafter referred to as IPRs) or Intellectual Property Rights are equivalent words used for Intellectual Property Rights (IPR) or Geistiges Eigentum, in German. The term or terminology of Intellectual Property Rights (IPR) was used for the first time in 1790.

The laws on patents were then adopted by the British Empire in the TUDOR era of the 1500s and later was born the law of the first patent in the United Kingdom namely the Statute of Monopolies (1623). The United States has a patent law in 1791. The harmonization effort in the field of IPR first occurred in 1883 with the birth of the Paris Convention for patent, trademark and design issues. Then Berne Convention 1886 for copyright or copyright issues.

The objectives of the conventions are standardization, discussion of new issues, information exchange, minimum protection and right acquisition procedures. Wealth is an abstraction that can be owned, transferred, bought, or sold. The intellectual property is a wealth of all the production of intelligence power of thought such as technology, knowledge, art, literature, composition songs, papers, caricatures, and others that are useful to humans.

So it can be concluded that IPR is a right derived from the results of a cretive activity capabilities of human thinking that express to the general public in various forms, which have benefits and useful in supporting human life, also has economic value that protects human intellectual works .

IPR system is a private right (private rights). A person is free to apply or register his intellectual work or not. The exclusive rights granted by the state to individuals of IPR perpetrators (inventors, creators, designers, etc.) are intended not to appreciate the work (creativity) and to stimulate others to further develop it, so that with the IPR system the public interest is determined through market mechanism.

In addition, the HKI system supports the establishment of a good documentation system of all forms of human creativity so that the possibility of generating the same technology or other works can be avoided or prevented. With the support of good documentation, it is expected that the community can use it maximally for their life purpose or develop it further to provide higher added value again.

Scope of Intellectual Property Rights

According to the World Intellectual Property Organization (WIPO), Intellectual Property Rights are usually divided into two parts:

a. Copyright

Copyright is an exclusive right of the Creator which arises automatically on the basis of a declarative principle after a work is manifested in its tangible form without prejudice to restrictions in accordance with the provisions of legislation under Article 1 of Law No. 28 of 2014 on Copyright. Parties other than the creator are prohibited from exercising such rights unless obtaining permission from the creator or the person who owns the copyrights.

Copyright consists of economic rights is the right to obtain economic benefits over the creation and related rights products and moral rights is an inherent right of the creator or the perpetrator who can not be eliminated or removed for no reason whatsoever.

Copyright is considered a moving object. Copyright may be transferred because of inheritance, grant, testament, written agreement, or other reasons justified by laws and regulations.

b. Industrial Property Rights

One form of Industrial Property rights is patents.

Article 1 of Law no. 13 of 2016 on Patents states that a patent is an exclusive right granted by the state to the inventor of his invention in the field of technology for a certain period of time to carry out the invention himself or to give consent to the other party to carry it out. The definition of the patent renews the understanding of the patent in Law no. 14 Year 2001 regarding Patent (hereinafter referred to as the old Patent Law).

The old Patent Law defines a patent as an exclusive right granted by the State to the Inventor or his invention in the technology field, for a certain period of time to exercise the invention himself or to give consent or permission to the other party to carry out the invention.

Pursuant to the Patent's definition that a Patent is an exclusive right granted by the state to the inventor for a specified period of time, the Patent is held by the inventor (patent holder) so that one or other party shall not do anything to the patentable invention without the permission of the patent holder. Patents become exclusive because of this special right at first Patents as well as Copyright are often regarded as part of individualism.

Patents According to Positive Law in Indonesia

Patents or octants have existed since the XIV and XV centuries. For example in Italy and the UK. But the nature of the granting of this right at that time was not aimed at a finding or invention but preferably to attract experts from abroad. It means that the experts will stay in the countries that invite them to develop their respective expertise in the country of the inviter and aim to promote the citizens of the country concerned. So, the patent or oktroi is a kind of "resident permit".

It was not until the sixteenth century that patent / octogenation was granted to findings in Venetian, British, Dutch, German, Australian and other countries. Then through the development of time and technological advancement, especially in the twentieth century, the nature of the patent / octogen is no longer as a gift, but rather the giving of a right to a finding it obtains. Such developments occur in the countries of North America and South America. Later in the United States, a Patent Act which expressly changes the nature of the patent / octet. Then followed by countries like England, France, Netherlands, and Russia. Now in the twentieth century patent law regulations almost cover all countries including Asia.

In Indonesia this patent arrangement commences from the date of the understanding of the Patent by Octroiwet 1910. "A patent is a special right granted to a person upon his or her application to that person who creates a new product, new way of work or new improvement of the product or of the workings."

While the definition of Patents according to Indonesian General Dictionary written by W.J.S Poewadarminta mention:

"The word Patent comes from the European language (patent / ocktroi) which means a commercial letter or permit from the government stating that a person or company may make his own income (others may not make it)."

From the understanding according to the law and the above understanding can be concluded that the patent is the right for someone who has got a new discovery or new way of working and improvement. The whole term is covered in a single word, the "invention" in technology provided by the government; and to the right holder allowed to use his or her own permission to transfer the use of that right to others.

1. Patent Objects

Patent has object to invention or invention or also called invention in technology which practically can be used in industrial field. Understanding the industry here not only to certain industries but in the broadest sense including the results of technological developments in the agricultural industry, industrial fields of animal husbandry technology, and even industry in the field of educational technology.

R.M. Suryodiningrat in his book entitled "Multifarious Ownership of Industry" states that the object of patent in accordance with the content of the agreement of Strasbourg (1971). The Agreement divides the patent object into eight sections. The seven sections of which are as follows: Section A (Human Needs); Section B (Works); Section C (Chemistry and perlogaman); Section D (Textile and

Percentage); Section E (Fixed Construction); Section F (Machinery); Section G (Physics); Section H (Electricity).

2. Patent Subject

The subject of patent is governed by Article 10 of the Patent Law. 13 of 2016 stating that the patent subject is:

1) The person who created, innovated or further accepted the right of the inventor concerned.
2) A collection of persons who jointly create, innovate or further receive the relevant inventor's right.
3) A person or persons who are for the first time declared as inventors in the application (pursuant to Article 11 of the Patent Law).

Here we see the nature of the material rights attached to the patent. There is a "droit de suite" nature. While the meaning of the product includes tools, machines, composition, formula, product by process, system and others. Examples are stationery, eraser, drug composition and ink. Referred to as process includes process, method or usage.

Patent License

In the practice of patent application in Indonesia quantitatively it can be explained that there are few domestic patent applications, besides the largest number from abroad. This shows that the ability of Indonesians to produce new inventions that can obtain patents has not shown an encouraging figure.

In such circumstances, to support and accelerate the pace of industrialization, licensing agreements are very important. The entry of patents and the birth of various licensing agreements is a logical consequence of the enactment of patent law, moreover, it is part of the globalization of the world economy. The state of Indonesia is ambitious to become an industrial country should have this license agreement as much as possible. In Patent Law Number 13 Year 2016 this license agreement is stipulated in Articles 76 through Article 80.

In the case of a government licensing agreement it should involve economic and political experts, especially international economic and political experts. The choice for the license agreement is not solely on the consideration of a momentary national economic interest, but for a long period of time, as well as making this country authoritative in the eyes of the world. Thus for the long term will attract foreign inventors to invest in this country.

Mandatory License

Compulsory License shall be regulated in Article 81 through Article 107 of Law no. 13 of 2016. In Article 82 paragraph (1) of Law no. 13 of 2016, the Compulsory License is a License to carry out the Patent granted based on the Minister's Decree on the basis of the petition for the following reasons:

a. The Patent Holder shall not perform the obligation to manufacture the product or use the process in Indonesia as referred to in Article 19 paragraph (1) within 36 months of being granted a Patent;
b. The patent has been executed by the Patent Holder or the licensee in the form and in a manner that harms the public interest; or
c. Patent of the development of a previously awarded Patent shall not be executed without the use of another patent on protection.

Legal Protection Against Patents

The national laws governing the protection of patents and their ratification shall be conducted by the People's Legislative Assembly of the Republic of Indonesia (hereinafter referred to as the DPR). Legalization of the House has important symbolic meaning. Ratification of the People's Legislative Assembly means the granting of juridical certainty to a law. Legalization of the House also contains a record of legal development in various fields that developed in the community. Therefore, the Protection of inventors and patent holders also need to be ratified in the form of legislation.

Patent protection is important to inventors and current patent holders. This is because patent protection can motivate inventors to improve their work in quantity and quality. Patent Protection encourages the welfare of the nation and creates a healthy business climate. The endorsement states that all inventors and patent holders require a national patent protection system regulated in a law.

One of the matters governed by the Patent protection is the validity of the Patent. The regulation of the validity of patents in each country varies depending on the provisions of the applicable law in the

country concerned. Some countries provide patent protection for 5 years, 10 years, 15 years to 20 years under the positive laws of each country.
The duration of protection for different types of patents. The protection period for the regular patent type is 20 years. The period for a simple patent type is 10 years. The protection time for these types of patents can not be extended. Therefore, patent protection ends in the absence of payment of patent application fees for three consecutive years. Patent holder who does not pay patent application fee; the patent shall be declared null and void as of the date of expiration of the payment obligation.
The number of good applications filed, the patent application granted by the Directorate General of Intellectual Property (DJKI) is indeed increasing year by year. The number of applicants for Patents currently amounts to more than 7000 applicants. The largest number of Petitioners is foreigners at this time. Applicants from local industries, research institutes, universities, and individuals still can not reach one-tenth of the total. The number of local patent applicants (industry, research institutes, universities, individuals) is still a bit proof of technological developments in Indonesia still in the stage of using and enjoying.
Technological developments do not seem to really take advantage of patent intellectual property as well. Patent management by the Directorate General of Intellectual Property (DJKI) has not been well inventoried and coordinated between the institutions with each other. This, when associated with the patent authority abroad (individual countries), is still not very well connected. Patent development through technology mapping (tracking patent information system in network) has not been realized.
Searching for patent information systems in the network (online) is a step further in order to answer the needs of better technological developments. The national patent protection system owned must be continuously improved.

Basic Principles of Patent Protection

Legal protection of inventions through patent protection is a very strategic step for further inventive inventiveness in trade activities, therefore Indonesia adopts a first to file system, which is a patent with the mechanism that a person first filed for registration, will first be filled with his petition.
The patent registration system in Indonesia uses the first to file system, which causes an invention or invention has been filed for patent will get legal protection since the receipt of the patent application, since the first to file system states that the date of receipt of the patent is the date the Directorate General of IPR receives the patent application letter which has met the minimum requirements, namely in the form of compliance with administrative requirements. It is intended to facilitate the applicant in obtaining the acceptance date which is very important for the status of the application as it will determine since when the invention gets legal protection.
Regarding the filing date of filing of the patent application is regulated in articles 30 and 31 of Law no. 13 of 2016 stating that the date of receipt of the patent is the date on which the Directorate General of IPR receives a letter of application that meets the minimum requirements and after the payment of the patent application fee by the person concerned. This is intended to facilitate the applicant to obtain a date of acceptance which is very important for the status of the application because the system used is first to file.

Patent Protection Protection System

Article 24 of the Patent Law states that a Patent is granted upon request. The application as referred to is submitted by the Applicant or his proxy to the Minister in writing in Bahasa Indonesia by paying a fee. Each Application shall be submitted for one invention or several inventions which constitute a unified entity of invention. Such applications may be filed either electronically or non-electronically. The description of the invention as mentioned above should clearly and fully disclose how the invention may be carried out by a person skilled in the art.

Patent Granting Process

Announcement of the grant of the patent shall be made within 18 months from the date of receipt, while in the case of a simple patent shall be made within a period of 3 months from the date of receipt. Announcements may be made earlier upon the request of the applicant at an additional cost. Announcement is made for 6 months commencing from the date of announcement of ordinary patent

application or for 3 months commencing from the date of announcement of a simple patent application.
Announcement shall be made by placing it in the Official Patent Gazette published periodically by the Directorate General and / or assigning it to a special facility provided by the Director General which is easily and clearly visible to the public.
The public may view the announcement and may lodge in writing their views and objections to the request concerned by stating the reasons.

Administrative Examination and Substantive Examination

Once the application file is received, the next procedure is an administrative check. If the administrative requirements have deficiencies, then the applicant is required to complete them. In case the administrative requirements are declared complete or have been deficient in a period of three months, the Directorate General of Intellectual Property Rights will give an announcement of an opposition opportunity within six months.
The next procedure is the request for a substantive examination, if the applicant does not submit a request for a substantive examination to the Directorate General of IPR, then the application for patent registration shall be deemed withdrawn. Whereas if the applicant submits a request for a substantive examination, then the party from the Director General of IPR will conduct a substantive examination of the application for the patent application. Substantive examination is done with a period of maximum 36 months.
After substantive examination, found that there is a requirement that is not fulfilled by the applicant to be granted a patent on the invention, then the application for patent registration will be rejected by the Directorate General of Intellectual Property Rights and the applicant may make other legal efforts to obtain patent approval for his invention. Meanwhile, if after substantive examination and declared to have fulfilled the requirement for the granting of patent, the HKI Director General will approve the application for the patent registration which is stated by the granting of the patent certificate on the invention.

A. Patent Proprietary Legal Protection In a Compulsory License

Requests for compulsory licenses may be filed by each party to the Directorate General of Intellectual Property (DJKI) after 36 months from the date of grant of the patent. The application for a license shall be made on the grounds that the patent is not implemented or implemented not fully in Indonesia. It is intended that the invention is not stored and utilized and keeping the patent not degenerated into an import controlling device without stimulating the economic and industrial development of the patenting country.
A compulsory license may be executed if it meets the following conditions and conditions:
1) The patent within 3 years from the date of grant of patent is not executed in Indonesia by the patent holder, whereas the opportunity to conduct itself commercially should be taken.
2) The person making the request may show convincing evidence that:
a. Ability to carry out the relevant patent in full;
b. Have its own facility to carry out the relevant patent as soon as possible;
c. Has taken steps within a sufficient period of time to obtain a license from the patent holder on the basis of reasonable conditions but not obtain results.
According to Article 83 of Law No. 13 of 2016 on Patents, the request for compulsory licensing may be made by the patent holder itself on the ground that the exercise of his patent may not be possible without infringing on another existing patent. The decision on the granting of a compulsory license from the Directorate General of Intellectual Property shall contain the following provisions:
1) Non-exclusive compulsory license;
2) Reasons for granting compulsory licenses;
3) Evidence, including explanations or explanations that are believed to be compulsory licensing;
4) Mandatory license period;
5) The amount of royalty fee to be paid by the licensee to the holder of the patent and the payment method;
6) The compulsory license is primarily used to meet the needs of the domestic market;
7) Others necessary to safeguard the interests of the parties concerned fairly.

Patent Proprietary Legal Protection In a Compulsory License

Article 1 number 11 of the Patent Law defines a license as a permit granted by the patent holder to another party under a rights granting agreement to enjoy the economic benefits of a patent granted protection within a certain time and condition. In addition to the licensing agreements, the transfer of patents may be made through an appropriate compulsory license under Article 81 of the Patent Law as a license to carry out a Patent granted under the decision of the Directorate General KI on the basis of an application to carry out a patent that has been protected.

The exclusive right of patent for the license holder shall be limited to the period stipulated by the Directorate General of KI. This exclusive right is non-transferable, except due to inheritance which remains bound by the terms of its grant and other provisions, especially regarding the period of time, and must be reported to the Directorate General of KI to be recorded in the General Register of Patents and published in the Patent Official Gazette.

License shall be executed on the basis of the decision of the Directorate General KI on the basis of a request from each party to exercise the relevant patent after a 36 month period commencing from the date of grant of the patent by paying the fee, on the grounds that the relevant Patent is not executed or executed not fully in Indonesia by the Holder Patent. Requests for Compulsory License may also be filed at any time on the grounds that the Patent has been executed by the patent holder or licensee in the form and in a way that harms the public interest.

Legal protection of exclusive rights of patent holders against compulsory licenses in the provisions of the Patent Law is affirmed that compulsory licenses may be terminated pursuant to Article 103 due to the completion of the stipulated time period or due to cancellation. With the termination of compulsory license, then Article 106 results in the recovering of the rights of the holder to the patent as of the date of its registration. In addition, in the event that the patent holder's license does not agree to the amount of remuneration stipulated by the Government, the patent holder may file a lawsuit to the Commercial Court.

In order to protect the patent holder, strict action by the government in preventing the occurrence of patent infringement may be a compensation for the patent holder that has been used by another party without the permission of the patent holder, and ordering the offender to stop the activities of producing the patented goods, and the government shall immediately issue a Government Regulation as a regulation on the implementation of patent licenses. Subsequently, the parties to the transfer of the patent shall be laid down in the notarial deed, then for the sake of perfection of the treaty should be made before the notary public as the general official of the authentic deed deed.

Governance by the Government by Positive Law in Indonesia

According Sahardjo, Minister of Justice in President Soekarno's Cabinet the meaning of this auxiliary theory is (Bachsan Mustafa, 2003: 64):

"That the law functions to protect or protect people in society and nation and state, both soul and body as well as their personal rights, namely their human rights, material rights and individual rights and give prisoners in prison during their sentence, they are returned to society to be a useful person, having been provided with the knowledge and skills to be able to do practical work in society. "

In the perspective of Intellectual Property, the objective of law based on the ideology of Pancasila is to manifest human protection by passively protecting human beings by preventing arbitrary and active actions by creating humane conditions of society that enable the process of society to take place fairly so that every human being equally a broad and equal opportunity to develop all of its human potential as a whole.

The legal objective according to Suhardjo is to actively safeguard the interests of human beings (obtaining socially human conditions in a fairly natural process) and passively (seeking the prevention of arbitrary acts and misuse of rights). They include: realizing order and order; realizing true peace; realizing justice; and realizing the social welfare and social justice as long as it does not violate the rights and harms others without fear of freely doing what is right; freely can develop talents and interests; and freely feel always treated fairly.

Legal protection is an essential element in the formation of the state. Any formation of a state requires laws to regulate citizens. Article 1 Paragraph (3) of the 1945 Constitution states: Indonesia establishes itself as a state law. Legal protection is an essential element within the state. Legal protection also emerges as a consequence in the rule of law. Legal protection requires forms and formulations to

enforce the law. Therefore, it takes a place and a container in the implementation called the means of legal protection.

There are two kinds of legal protection. The legal protection facilities are means of preventive legal protection and repressive law protection facilities. Preventive legal protection is a form of protection in the form of legal subjects given the opportunity to file an objection or opinion before a government decision gets a definitive form. The purpose of preventive law protection is to prevent the occurrence of disputes.

The provision of Article 1 point 8 of Law Number 31 Year 2014 concerning the Protection of Witnesses and Victims determines that repressive legal protection is any effort to fulfill the right and provide assistance to provide a sense of security to witnesses or victims conducted by LPSK or or other institutions in accordance with the provisions of this law. Repressive legal protection is a form of final protection in the form of penalties, imprisonment, and additional punishment given in the event of a dispute or an offense has been committed. On means of repressive protection aims to resolve disputes.

The embodiment of preventive legal protection means is contained in the rules on Intellectual Property (KI), for example Law No. 13 of 2016 on Patents. These legal protections relate to the exercise of the rights and obligations of patented technology discovery. The existence of legal protection, the inventor can carry out his findings with a feeling of security. On the other hand, the inventor shall perform the obligations with regard to its findings in accordance with applicable laws and regulations.

Protection against invention is provided by request. The inventor submits a patent application for the findings. How to apply for a patent is as contained in Article 24 of the Patent Act No. 13 of 2016. The law provides for the requirements to be fulfilled when registering its findings. Patented inventions where they meet the following conditions:

1) The new discovery is not the same as the previous technology.

2) Technology which is a technology announced in Indonesia or outside Indonesia to enable an expert to carry out the invention.

3) The technology submitted in Indonesia after the date of receipt of the substantive examination of the findings is underway.

The terms of the patent application are preventive protection under the Patent law. Patent preventive protection not only arises from the rules, but also caused by the legal culture of society. The legal culture of society raises legal awareness. Because when a law has been passed, then the public is considered to know the existence of the law. The inventors should be aware of the benefits that the law provides for its findings.

Legal Protection Against Patent License under Law Number 13 Year 2016 is associated with Patent Period

Legal protection is an effort regulated by law to prevent abuse and abuse. A violation of the rule of law must be prosecuted. In the opinion of the author, patent protection is important to inventors and patent holders at this time. This is because patent protection can motivate inventors to improve their work in quantity and quality. Patent Protection encourages the welfare of the nation and creates a healthy business climate. Patent protection is one form of legal protection.

The author may state in this article that patents are laws composed of a combination of sub-systems of law. The sub-systems in question are as follows:

1. Subject of protection

The subject of patent is governed by Article 10 of the Patent Law. 13 of 2016 stating that a patent subject is a person who creates, innovates or receives further the rights of the relevant inventor or collection of persons who collectively create, innovate or further receive the relevant inventor's right.

2. The object of protection

Patent has object to invention or invention or also called invention in technology which practically can be used in industrial field.

3. Registration of intellectual property protection

The patent registration system in Indonesia uses a first to file system, which causes an invention or invention has been filed for patent to obtain legal protection upon receipt of the patent application.

4. Duration of protection

The duration of protection for different types of patents. The protection period for the regular patent type is 20 years. The period for a simple patent type is 10 years. The protection time for these types of patents can not be extended.

5. Legal protection measures

Patent protection ends in the absence of payment of patent application fee for three consecutive years. Patent holder who does not pay patent application fee; the patent shall be declared null and void as of the date of expiration of the payment obligation.

The Patent Law contains a patent protection system in national law. The Patent Law is the result of the Indonesian adaptation to the legal protection system agreed upon in international conventions. This form of legal adaptation is a form of adjustment of national law by arrangement in international convention. The same legal protection between countries signing international conventions will occur in the field of intellectual property.

Patent protection may be granted to an invention after registration. Patent registration becomes the primary basis for the laying of legal protection for patent holders. The provisions of the Patent Law state that every invention must be registered. Registration that meets the requirements of the law is an acknowledgment of the justification of a person's intellectual property as evidenced by a registration certificate so as to obtain legal protection.

Forms of State Protection for Communities Related to Compulsory License

The TRIPs Agreement as the main legal basis for the enforcement of International Cooperation Agreement shall determine the guidance on the enforcement of KI in each country of ratification. The authors' opinion in this regard, the implementation of patents by the government is based on the consideration of the existence of an urgent need for the community of a patent in the field of pharmaceutical products necessary to tackle widely spread diseases, agricultural chemicals, and veterinary medicines to cope with animal pests and diseases widely spread. This need requires quick response from the government. This necessity urges the government to open a "monopoly right" over a patent KI. Patents must not be maintained "monopoly rights" so that greater needs can be met. A recent example of the use of such Patents is in government action against antiviral and antiretroviral drugs.

The government's patent is also in the field of defense and security. The implementation of patent by the government in the field of defense and security has occurred in Indonesia is the implementation of patent in the field of rocket and ALUTSISTA development. The development will be used to develop weapons healed within the framework of national defense.

The author's opinion in the foregoing description indicates that, even though the TRIPs agreement provides protection in the form of exclusive rights of the Patent Holder. However, if the demands of the needs of the community are urgent it will enable the patent to be implemented by the Government in Indonesia. As a follow-up of the provisions in Indonesia has set a set of provisions governing the implementation of patents by the government.

CONCLUSION AND SUGGESTION

Conclusion

1. Patent protection may be granted to an invention after registration. The patentable inventions shall have novelty and applicable properties in the industrial world. Inventions that have been patent protected may expire due to the expiration of the patent protection period, the removal of patents, and the implementation of patents by the government. The form of protection granted by the Law to the licensee if the patent is removed is the holder / recipient of the license is not obliged to forward the royalty payments that should still be made to the rightful patent holder.
2. Possible implementation of patents by the government as a follow-up of the national provisions that open the opportunity of national provisions governing the patent itself. Indonesia has established a series of provisions governing the implementation of patents by the government. However, until now the implementation of patents by the government has not been optimal because since the promulgation of TRIPs patent agreement implemented by the new government is limited to antiviral and antiretroviral drugs.

Suggestion

1. Licensee shall pay royalty fees in the event that the patent holder has received at the same time the royalties from the license holder / receiver.
2. Inventor or patent holder to register his invention or findings to the Directorate General KI to obtain patent protection upon his findings.

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