RESTRICTED OF PATENT

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Abstract

This article aimed at studying provisions in TRIPs Agreement and Law Number 14 of 2001 regarding Patent, particularly provisions reflecting criteria of public interest. The approach used is statutory and conceptual approaches by analysing TRIPs Agreement and Law Number 14 of 2001. It is concluded that public interest has been stipulated generally in TRIPs Agreement and Law Number 14 of 2001 in their provisions regarding kind and scope of the use of limitation and exception of patent holder's exclusive rights. Law Number 14 of 2001 basically has implemented limitation and exception provisions stipulated in TRIPs Agreement. However, it does not provide further and clearer elaborations on some provisions that need to be elaborated further.

Keywords: public interest, criteria, exception, limitation, patent.

A. INTRODUCTION

The term "patent" we often hear is widely used by the public; and even sometimes misunderstood as the equivalent of the term "intellectual property rights" itself. But actually, patents are just one of many forms of IPR protection. Patents are protection of IPRs for intellectual works that are technological in nature, also known as inventions, and contain technical solutions / solutions to problems found in existing technologies. For example, the small nail found by Levi Strauss to

be installed at the ends of a jeans pocket, for example, which was later awarded a patent in the United States in 1873, contained a technical solution to the problem of loose-fitting pocket denim pants at the time, considering the usage outdoor with a high enough intensity. Patent inventions can be products or processes. For example, combustion on a motorized vehicle engine that aims to produce exhaust emissions that are more environmentally friendly. Both the method and the process of how the

combustion is carried out, and the machine that applies the combustion method and process, both of which can be patented respectively as process patents and product patents. WHAT CAN AND CANNOT BE PASSED? To be able to obtain a patent (patentable), an invention must meet the substantive requirements, namely:

NEW: An invention must not have been revealed / published in any media - patent / non-patent, national / international - before the patent application is submitted and obtains an Acceptance Date. If an invention is submitted for an application and gets an Admission Date on January 2, 2014, the publication of the invention on January 1, 2014 will frustrate the invention to obtain a patent because it is no longer new

INVENTIVE STEPS: Patents will only be given for inventions that are unpredictable, or not obvious, for people who have expertise in related fields (person skilled in the art). For example, if the technical problem faced is a pen cap that is often lost when removed, then simply connecting the lid and body of a pen with a rope will not be considered to contain inventive steps. But the solution is a ballpoint pen that can enter and exit the inside of the body using a spring mechanism, containing an invention

CAN BE APPLIED INDUSTRIALLY:

an invention must be carried out repeatedly while producing consistent and unchanging functions. The formula to ward off flu with the composition of the juice of a lime stirred together with one teaspoon of

honey cannot be categorized as industrial application, but the chemical composition must be described first, because between lime of different sizes, varieties or origin of planting can produce effects or different properties.

THE RIGHT TO OBTAIN PATENT

The person who produces an invention, both alone and several people together, is called the inventor. It is this inventor who is the first to be entitled to obtain patent rights for the invention he produces. Anyone outside the inventor who wants to have patent rights over the invention must first obtain a written transfer of rights from the inventor. Both Inventor and other parties that receive the transfer of rights from the inventor are Patentee Owners / Holders, who have exclusive rights to carry out the patented invention for 20 years calculated from the Receipt Date. After these 20 years, the intended invention will become public property and can be used by anyone without the need to ask permission from the patent holder.

TIME OF INVENTION PASSED

In the patent, the principle of first to file applies, where patents will only be granted to the first time submitting a patent application, which at least has the minimum requirements for submission, so that it is entitled to receive a filing date. Thus, patents are very time-sensitive so that the time of filing an application becomes a very crucial factor. It is said that in history, Alexander Graham Bell was recognized as an inventor of the phone only because he submitted a patent

application half an hour earlier than his competitors.

Moreover, patent substantive terms from the side of novelty make an invention not be patented when the invention has already been revealed to the public before the date of receipt of the application. Thus, it is reasonable if many people / institutions / companies choose to immediately submit a patent application for their invention, even though they have not seriously ascertained whether the invention has commercial value. For many parties, the patent registration fee wasted for a number of non-commercial inventions is nothing compared to the loss of not having a patent right on an invention of high commercial value.

PATENT MAINTENANCE

The Patent Rights Holder is also obliged to pay the annual cost of patent maintenance until the last year of the protection period. If the Patent Rights Holder does not pay maintenance fees for three consecutive years, then the patent will be deemed null and void. The amount of Patent maintenance fees that must be paid annually by the Patent Rights Holder is stipulated in Government Regulations related to Non-Tax State Revenues (PNBP) within the Ministry of Law and Human Rights. The cost component consists of basic costs and costs per claim. The deadline for making annual maintenance costs is on the same date as the date the patent was granted. If the patent is given on February 2, 2019, then every February 2, the Patent Applicant must pay the

maintenance fee until the patent protection period ends.

B. CONCLUSION

The term "patent" we often hear is widely used by the public; and even sometimes misunderstood as the equivalent of the term "intellectual property rights" itself. But actually, patents are just one of many forms of IPR protection. Patents are protection of IPRs for intellectual works that are technological in nature, also known as inventions, and contain technical solutions / solutions to problems found in existing technologies. For example, the small nail found by Levi Strauss to be installed at the ends of a jeans pocket, for example, which was later awarded a patent in the United States in 1873, contained a technical solution to the problem of loose-fitting pocket denim pants at the time, considering the usage outdoor with a high enough intensity. The person who produces an invention, both alone and several people together, is called the inventor. It is this inventor who is the first to be entitled to obtain patent rights for the invention he produces.

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