DEFINITION OF THE PATENT AND THE PERIOD OF PROTECTION

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Abstract

Patent is a special right granted by the State to the inventor for the results of his invention in the field of technology, for a certain period of time implementing the invention himself or giving his approval to others to carry it out, types of patents namely patents and simple patents. Patents are exclusive rights granted by the state to inventors for the results of their inventions in the field of technology which for a certain period of time carry out their own or give approval to other parties to implement them while Simple Patents are any inventions in the form of new products or tools and practical utility the form, configuration, construction, or component can obtain legal protection in the form of a simple patent

Patent Protection Period As known in Article 8 paragraph 1 of Law No. 14 of 2001 concerning Patents, the patent is granted for a period of 20 (twenty years) from the date of receipt and the period cannot be extended, whereas for a simple patent given for a period of 10 (ten years) from the date of receipt and the period cannot be extended. If the patent protection period has expired, an event will become a public domain so that other parties can freely produce and sell it. The rules regarding the validity period of the patent are intended so that no party can continuously control the entire industry so that it is feared that it can harm the community and the trading system.

Keywords: Types of patents, time period

A. INTRODUCTION

Patent is a special right granted by the State to the Inventor for the results of his invention in the field of technology, for a certain period of time implementing the invention himself or giving his consent to others to implement it (Article 1 paragraph 1 of the Law on Patents).

And, based on Article 1 paragraph 2 of Law Number 14 Year 2001 states that, "invention is an inventor's idea that is poured into a specific problem-solving activity in the field of technology can be a product or process or a product or process improvement and development."

Based on the meaning of the invention, it can be seen that the characteristic that can be patented is a systematic content that can be communicated applied to solve human problems or needs that arise in industry, agriculture, or trade.

1. Types of Patents

In Law Number 14 of 2001, patents can be divided into 2 (two) types, namely:

1. Patent is an exclusive right granted by the state to the inventor for the results of his

invention in the field of technology which for a certain period of time implements himself or gives approval to other parties to implement it (Article 1 number 1 of Act Number 14 of 2001); and

2. A Simple Patent is any invention in the form of a new product or tool and has practical utility value due to its shape, configuration, construction, or component, which can obtain legal protection in the form of a simple patent (Article 6 of Act No. 14 of 2001).

Between the two types of patents have several differences including:

If, Patent:

1. Complex technology;
2. Product and process inventions;
3. Material requirements that must be new, there are inventive steps and applied in the industry and not including inventions in Article 7;
4. The substantive examination is said to have passed, if the invention complies with Article 2, 3, 5, 7 UUP;
5. To conduct a substantive examination must submit a request for substantive examination;

6. A compulsory license can be requested;
7. Protection period of 20 years from the date of receipt.

Whereas Simple Patents:

1. Simpler technology emphasizes practical functions;
2. Products / visible products (products);
3. Simple patent material conditions are new and can be applied in industry;
4. Substantive examination only covers the value of renewal and can be applied in industry;
5. To carry out a substantive examination, it can be done simultaneously with the submission of the application or at the latest 6 months from the date of receipt;
6. A compulsory license cannot be requested; and
7. The tenure of 10 years from the date of receipt.

2. Patent Protection Period

As known in Article 8 paragraph 1 of Law No. 14 of 2001 concerning Patents, the patent is granted for a period of 20 (twenty years) from the date of receipt and the period cannot be extended, whereas for a simple patent it is given for a period of 10 (Ten years) from the date of receipt and the period cannot be extended,

If the patent protection period has ended, an event will become a public domain so that other parties can produce and sell it freely. The rules regarding the validity period of the patent are intended so that no party can continuously control the entire industry so that it is feared that it can harm the community and the trading system.

3. Definition of Inventor and Patent Holder

Inventor is the inventor or one of the subject of patents, in this case, which can be used as an inventor of only people, either individuals or more than people, namely together. In the law the definition of an inventor is a person who or some person who jointly implements the ideas poured into activities that produce inventions.

On the other hand it is also known that there are rights holders, namely the patent holder is the inventor as the patent owner or the party who receives further rights, which is registered in the general list of patents.

In reality inventors do not have the ability to carry out patents or find an invention considering the need for costs that are not small in carrying out patents or research to produce an invention, so to anticipate this the law provides

a way out in the form of patent transfer.

4. Subject of Patent and Patent Object (Process Patent and Product Patent)

Discussing the provisions of a patent subject means reviewing inventors who are inventors or one of the subject of patents, in this case those who can be used as inventors are only people, individuals or more than people, namely together. In the law the definition of an inventor is a person who or some person who jointly implements the ideas poured into activities that produce inventions.

On the other hand it is also known that there are rights holders, namely the patent holder is the inventor as the patent owner or the party who receives further rights, which is registered in the general list of patents.

While the so-called object patent consists of two types, namely process patents and product patents. Process patents are claims to processes from inventions made by inventor. Patent process includes process or use. For example, the process of making ink, and so on. Whereas, production patents are claims against inventions in the form of products made by inventor. Product patents include tools, machines,

compositions, product formulations for processes, systems, etc. For example, stationery erasers, drug compositions, and so on.

5. Rights and Obligations of Patent Rights Holders

Patent and inventor rights holders still have the right to exploit their patents, in addition to having moral rights that remain inherent in inventor. The rights of patent holders include:

1. Moral rights, namely the transfer of rights does not erase the right of the inventor to keep the name and identity included in the relevant patent (Article 68);

2. Economic rights, namely inventors still obtain economic rights (economic benefits) in return. These benefits are known as royalties (Article 12 paragraph 3 and 4);

3. Right holders have exclusive rights to carry out patents held and prohibit other parties without consent, for example making, using and selling (Article 16 paragraph 1);

4. Transfer rights and give their rights (Article 16 paragraph 1).

On the other hand, rights holders still have their obligations, namely:

1. Based on Article 17 states that, "without prejudice to the provisions of Article 16 paragraph 1, the patent holder is obliged to implement the product or use a process that is granted a patent in Indonesia."
2. Under Article 18 states that, "patent holders or licensees are required to pay an annual fee to manage the continued validity of patents and registration of licenses."

B. CONCLUSION

Patent is a special right granted by the State to the Inventor for the results of his invention in the field of technology, for a certain period of time implementing the invention himself or giving his consent to others to implement it (Article 1 paragraph 1 of the Law on Patents).

In Law No. 14 of 2001, patents can be divided into 2 (two) types, namely simple patents and patents

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If the patent protection period has ended, an event will become a public domain so that other parties can produce and sell it freely. The rules regarding the validity period of the patent are intended so that no party can continuously control the entire industry so that it is feared that it can harm the community and the trading system.

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