

Legal Review of Patent Rights with the License Agreement on Civil Law

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Keywords: Agreement, Invention, License, Patent, and Profits.

Abstract: Patent is a part of intellectual property. The object of patent shall be 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. In this case the patent is very encouraging for patents to be transferred or either because of inheritance, grant, will, written agreement, or other reasons under the applicable laws and regulations. Licenses are granted by the Patent Holder, either exclusively or non-exclusively, to a licensee under a written agreement to use a Patent that is still protected within a certain time period and conditions. The transfer of a Patent whose ownership of the rights also switched, the License through an agreement is essentially a grant of the right to enjoy the economic benefits of a Patent within a certain time and condition. The License Agreement may include all or part of the action. The Patent Holder in this case shall still be entitled to exercise on own Patent, unless otherwise agreed. The license constitutes a contractual agreement of two business entities granted to a person who holds a license for patents, marks and other property rights in an exchange of fees or royalties. According to them licenses can also allow for skills, profits, capital, or other capacity.

1 INTRODUCTION

The advancement of technology and science has affected many aspects of human life that had never been imagined before (Ramli 2018, p. 27). In this case the Patent is a special right under the law granted to the inventor or by the law of the party entitled to it, (the Indonesian Patent Law refers to it by the term Inventor and the term invention is referred to as Invention the authorities, for new findings in the field of technology, improvements to existing findings, new ways of working, or finding new improvements in the workings, for a certain period of time that can be applied in the field of industry.

One of the best works on simple community law is the result of Broinslaw Malinowski's research of Trobian and Melanesian islands which he later wrote in a book entitled Crime and Custom in Savage Society. The analysis of Malinowski can be interpreted as follows, because thanks to his research he has proved that the law not only plays a role in circumstances filled with violence and contradiction, but the law also plays a role in daily activities. In other

words, Malinowski seeks to diminish the impression that law is merely compulsion by proposing a vast system of social control.

It can be concluded that the patent awarded for ideas in technology as essentially an idea (immaterial) that can be applied in industrial processes. Technology is basically born of intellectual initiative, as the work of human intellectuals. Because the birth has involved energy, time, and cost then technology has a economic value, which can be the object of property. In the science of law, which is widely embraced by other nations, the right to intellectual thought in the field of technology is recognized as an intangible property right. These rights are known as "Patents". To accelerate and increase sales quickly then by looking at the rapid development of information technology can take advantage on-line service in the form of e-Commerce. Many ways that companies do in the use of information technology. Many companies use information technology as a competitive advantage that differentiates it from other companies in a single market.

According to Law No. 13 of 2016, there are two types of patents: patents and simple patents. An ordinary patent is a patent that passes through in-depth research or development with more than one claim. Simple patents are patents that do not require in-depth research or development and contain only one claim.

Initially, the inception of patents occurred at the time of the ten original participating countries and the seven countries (Denmark, Japan, Luxemburg, Monaco, Montenegro, Norway, and Sweden) who participated by signing the original manuscript of the Bern Convention. The background to the convention as set out in the original Manuscript Preface of Konveksi Bern is: "... to be equally animated by the desire to protect, in as effective and uniform a manner as possible, the right of authors in their literary and artistic works". Based on the manuscript, it can be interpreted as a body that has the same life based on the desire to protect, and the success and uniformity with attitudes or ways that support by literary and artistic writers. After the entry into force of the Bern Convention, which is classified as the Law-Making Treaty, is open to all non-member countries, participation as a new member country shall be conducted by ratifying it and submitting the ratification texts to the Director General of WIPO.

The license agreement is between the licensor and the licensee where the licensor grants licensee permission to use licensor's intellectual property rights. Licenses granted by licensor to licensee to use the licensor's HKI accompanied by payment of remuneration in the form of royalty to licensor. According to Article 1 paragraph (13) of Law No.14 of 2001 on Patents (hereinafter referred to as the Patent Law of 2001) provides the definition of a license as a permit granted to another party under an agreement granting the right to enjoy the economic benefits of a Patent granted in a period of time and certain conditions. In this research the problems is:

- 1 How is the Patent relation in general in the field of Information Technology?
- 2 Is there a Patent Redirect process and what is the difference in general with Patent License?

2 MATERIALS AND METHODS

Method approach used in this paper is the juridical approach of normative and juridical comparative. Normative juridical is research by explaining the provisions in the applicable laws and regulations. Definition of juridical comparative that is based on comparison of law. Comparative law with developing

countries, as well as to compare national and international legal instruments in the field of legal protection (Soekanto 1986).

3 DISCUSSION

In line with the dynamic human development, the law should be able to include human development in all aspects including development in technological aspects. The presence of the media as a form of development of human technology in the field of information technology bring various impacts to the parties concerned. Entering the 21st century, communication technology plays an important role in various sectors of society around the world. The more developed and the more complex the activities of the world community, it becomes a line for the development of technology in the field of communication (Soekanto 1986). Based on this, communication technology is demanded and leads to efficiency and can penetrate boundaries of territory by state borders, without time constraints. One technology that successfully need the Internet can be interpreted as a large worldwide computer network (Lindsey 2006, p. 161), connecting computer users from one country to another around the world, in which there are various information resources from static to dynamic and interactive (Mochtar 2001).

3.1 Differences in Patent Redemption and Patent License

The existence of a license is an absolute requirement of a license 18. The grant of a Patent is regulated in Article 69 of Law No.14 Year 2001 on Patents. Article 69 Paragraph (1) stipulates that the holder of a Patent is entitled to grant a License to another party under a License Agreement to perform the acts as referred to in Article 16. However, Article 71 Paragraph (1) provides that the License Agreement shall not contain provisions, directly or indirectly, which may harm the Indonesian economy or contain restrictions on mastering and developing technology in general and relating to the patented invention in particular. So, it is clear that the permission of the party entitled and authorized to grant a Patent is an absolute must be met in order to avoid criminal sanctions. In this case, this research is aimed to know the limits of invention that can be listed in Indonesia and to know the interconnection between inventors in a finding. Patents as regulated in Article 74 paragraph 1 of Law Number 13 of 2016 concerning

Patents may be transferred or transferred in whole or in part:

- a. inheritance;
- b. grant;
- c. will;
- d. waqf;
- e. written agreement; or
- f. other reasons justified under the terms of legislation.

The transfer of rights to a Patent must be accompanied by an original document of Patent and any other rights relating to the Patent. Any transfer of rights to a Patent shall be recorded and announced for a fee. License means a license granted by the Patent Holder, whether exclusive or non-exclusive, to a licensee under a written agreement to use a Patent that is still protected within a specified time period and condition, in any other case what is meant by an exclusive License Agreement constitutes an agreement only provided to one Licensee, and / or within a certain territory. Meanwhile, a non-exclusive License Agreement is an agreement that may be granted to some Licensee and / or in some areas. The Patent Holder is entitled to grant a License to another party under either the exclusive or non-exclusive License Agreement to execute:

1. in the case of Patent-product: make, use, sell, import, rent, deliver, or provide for sale or lease or submitted Patented products;
2. in the case of a process Patent: using a Patented production process to make the goods or other actions as referred to in part a.

3.2 Patent Relations and Civil Law

The general licensing arrangements in the Patent Law are contained in the provisions of Articles 69 to 73 of the Patent Law. The following are the main points of the arrangement. Article 69 of the Patent Law stipulates that the patent holder is entitled to grant licenses to other parties under a license agreement to perform the act of making, using, selling, importing, leasing, handing, or providing for sale or lease or patent product patent. In the case of a process patent, it uses a patented production process to produce goods and other measures. Unless otherwise agreed, the scope of the license covers all the above acts, during the period of License granted and applies to the entire territory of the Republic of Indonesia. The Patent Holder may still exercise his own or grant licenses to other third parties to perform such acts, unless otherwise agreed by the parties.

with a patent, the difference between the two is a form of copyright by law in principle recognized from the

In addition, there are other rules, that the patent holder may license the permission to others to use the ideas expressed in the patent, in whole or in part. With the transfer or transfer of patents to others, the transfer or transfer of power over the patent. Here the switch or submitted is only the economic rights alone, while the moral rights do not participate in the switch or submitted, because it remains attached to the Inventornya. A patent as a right granted to a person on an invention that inverts the step (inevitably) may be transferred to another person. Understanding the transfer of rights is the handover of power / power (over things) to legal entities, people, state (other parties).

According to the Civil Code, the meaning of submission is, "the submission of an object by the owner or on his behalf to another so that the other person obtains possession of the thing." That surrender can be distinguished from "real surrender and juridical surrender". Submission is a clear transfer of power over a material in a real way, whereas juridical submission is a legal act in which or due to which property rights are transferred. The difference between the two is evident in the submission of immovable and moving objects. On the registration of immovable property must be through registration on a deed in the general register, on the contrary the handover of the moving objects, meaning that the surrender of the real and juridical handover is done.

4 CONCLUSION

The other transfer of a Patent whose ownership of the rights also transfers, the License through an agreement is essentially grant of the right to enjoy the economic benefit of the Patent within a certain time and condition. intellectual property products such as copyrights and brands, patents are essentially private immaterial rights arising from human intellectual abilities. As a proprietary right, patents may also be transferred or submitted by the Inventor or by those entitled to the Invention to an individual or legal entity. The ideal principle of patent protection is the same as that of other intellectual property protections as long as they all intend to protect someone who finds something for his or her own thoughts and work not to be used by others and enjoys the results by forgetting the labor of those who have worked hard, thinking and spending to get it . When compared to copyright beginning, and the law regulates in its protection. While the patent is a right granted by the state to a

person who discovers something in the field of technology that can be applied in the field of industry, to the sole exclusive person who finds it through the work or fruit of the work, and others are prohibited from using it, except with the permission of the patent owner.

ACKNOWLEDGEMENT

This paper is based on research granted by Universitas Padjadjaran, of Academic Leadership Grant, under the facilitation of Faculty of Law and supervised by Department of Technologi Information Communication and Intellectual Property.

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