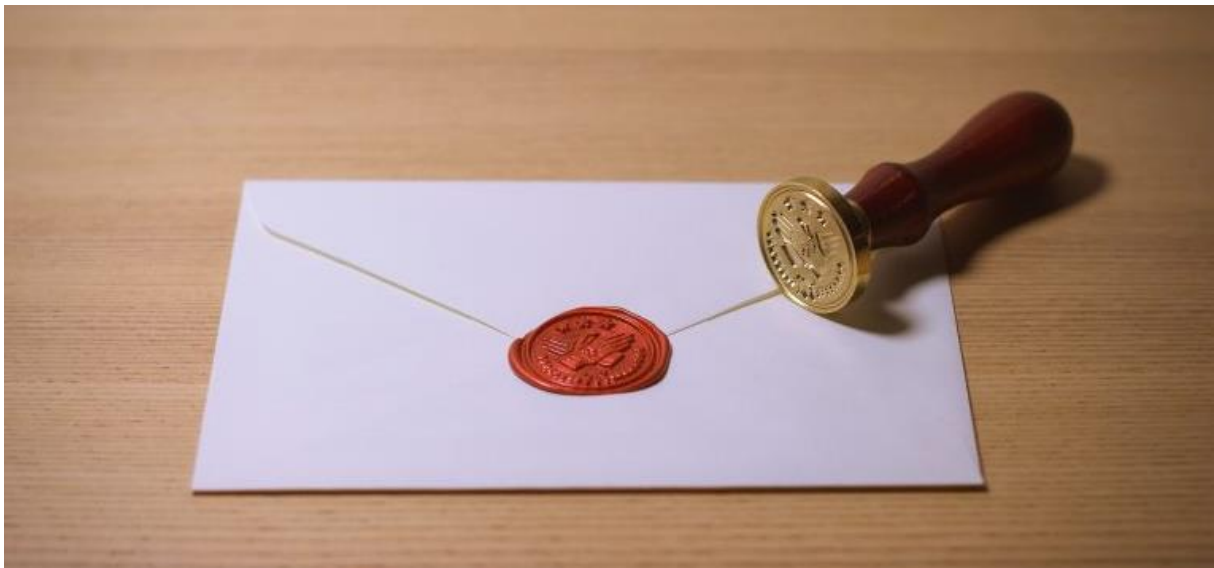


CIRCULAR LETTER

CLIENT UPDATE: INDONESIA

November, 2024

Indonesia New Patent Law No. 65 of 2024 Towards Strengthen Patent Protection



The most recent amendment of Patent Law No. 13 Year 2016 was enacted to the public on October 28, 2024 which contains mainly 18 (eighteen) newly articles and revisions. This amendment towards to strengthen and aligning with international patent framework. Some major changes concerning Patent are as follows:

1. Definition and Scope of Patent Protection

- *Article 1 Number (2): Invention means an idea of an inventor embodied into a specific **problem-solving activity in the field of technology in the form of product or process, or refining and developing product or process, as well as systems, methods and uses.***
- *Article 4 Letter (d): Invention shall not include computer program, **excludes computer implemented invention.***

The new patent law has broad the scope of patent protection especially on the patentability of problem-solving, system, methods and uses of patent. Some additional categories of patentable inventions such as, computer program which generate technology solution, technical effect, technical character, driven hardware and problem solving shall be patented.

The new patent law also allowing patent protection for **second medical use**. Invention shall include discovery in the form of: new use of existing and/or known product; and or new forms from existing compound.

- Article 4 Letter (g): Invention shall not include theories and methods in the fields of science and mathematics.

2. Patent Application Process and Grace Period

- Article 6: The invention is not deemed to have been published within period of **12 (twelve) months prior to the application date.**

Indonesia New Patent Law has extended for the inventor **disclosure/publish the novelty** of their invention at official exhibitions in Indonesia or abroad from 6 (six) **months to 12 (twelve) months**.

- Article 1 Number (18): **Traditional Knowledge** refers to all ideas and concepts within a community containing local values derived from real experiences in interacting with the environment, continuously developed, and passed on to the next generation.
- Article 1 Number (19): **Genetic resources** refer to genetic material derived from plants, animals, or microorganisms that contain functional units of heredity with actual or potential value.

Statement of origin or the source of genetic and or traditional knowledge should be provided. There is no requirement that the statement should be made by official institutions recognized by the Government. This purpose for an accessible patent database regarding genetic resources and/or traditional knowledge in Indonesia.

- Article 19 Number (1) Letter (c): Patent Holder has the exclusive right to implement the patent, grants permission to implement the patent to other parties and to prohibit others who without the permission to implement the patent: **In terms of Method Patent, System and The Use: to use the method, system and the use which is patented or other acts as stipulated in point a.**

The new patent law **aside from process and patent product**, also protect **patent-method, System and the use of patent**.

- Article 30 Number (5): In the event that the application with **Priority Right** has not been filed in Indonesia **within 12 (twelve) months, the application can still be filed at latest 4 (four) months as of the deadline of said Priority Right with subjected fee.**

The 12 months of **claim priority can now be extended to 16 (sixteen) months** from the priority date.

- Article 34 Number (3) Letter (a): To acquire Filing Date, **the minimum requirement** has to be fulfilled. In the event the description is made in foreign language,
a. If the description is written in a foreign language other than English, the description must be accompanied by translations into English and Indonesian, or

*b. if the description is written in English, the description must be accompanied by a translation in Indonesia. **the translation must be submitted within 30 (thirty) days as of Application Date.***

Translation in Bahasa **must be submitted within 30 (thirty) days from the patent application date without any extension.**

- *Article 36 Number:*
 - (1) If the applicant did not fulfil the formality requirements, the application shall be considered withdrawn;*
 - (2) If the application has been considered withdrawn, the applicant can still **re-file the application, which subject fee;***
 - (3) **The re-filing of application can be filed at the latest of 6 (six) months from Notification Date of Application considered Withdrawn. The re-filing can be filed only to fulfil the formality requirement.***

The applications which have lapsed due to non-compliance of formality requirement are allows to **request of re-filing within 6 (six) months from notification date of considered withdrawn notice.**

- *Article 46: **Accelerated Publication can be requested at the earliest of 3 (three) months as of the Filing Date upon a request from the Applicant and subjected fee.***

The new patent law allowing applicant to expedite application on the stage of **early publication within 3 (three) months from the filing date.**

- *Article 55 Letter (a): **Substantive examination can be conducted earlier should formality requirements of the application deemed completed***

The Applicant may request for an **early substantive examination that formalities requirements completed, and should be filed latest before the publication takes place.**

- *Article 63 Letter (a): **Substantive Re-examination can be requested to the Patent Office and subjected fee. Substantive Re-examination may be requested upon:***
 - a. Rejection;*
 - b. Correction on description, claims and/or drawings;*
 - c. Decision of Granted;*
 - d. Withdrawal of Application;*
 - e. Decision of Deemed to be Withdrawn.*

The new patent law now applicable **to request re-examination for decision** of rejection, correction, decision of deemed to be withdrawn application within **9 (nine) months from the notification.**

The request of **re-examination also eligible for the withdrawal application within 2 (two) months from the notification.**

- *Article 68 Number (1): **Request for an Appeal can be filed at the latest of 3 (three) months as of the date of the notification of rejection or the date of the rejection of the re-examination.***

- Article 126 Number (4): If the annuity fee payment exceeds the deadline as referred to in Paragraph (3), a grace period of **6 (six) months shall be provided which subjected to 100% penalty.**

The new patent law has simplified the process on the stage of annuity payment, there is no postponements upon request. This regulation may certainly affect individual inventor or small entities for maintaining their patent protection.

3. Used of The Patent

- Article 20 Letter (a): patent holder as stipulated in Article 20 shall **submit a declaration on implementation of the patent to the Ministry at latest end of each year.**

The new patent law stipulates that the holder of a granted patent should provide a **statement of patent implementation** in Indonesia and submit it to the Patent office by the end of each year. We need further update regarding implementation of this new regulation, whether any consequences of the failure to submit this statement with the Patent Office.

4. Compulsory Licensing and Bolar Provision

- Article 84 Letter (a): The provisions for granting a compulsory license are exempted in cases where there is a final and binding decision from the Business Competition Supervisory Commission stating that the implementation of the Patent has been proven to result in or cause monopolistic practices and unfair business competition.
- Article 167 Letter (b): Exempted from the criminal provisions as referred to in Chapter XVII and civil lawsuit against: Production of Patented pharmaceutical product in Indonesia prior the protection period ends for the purpose to process the permit and to do marketing after the termination of concerned Patent protection.

The new patent law allowing researchers to utilize the inventions without the time restriction. This arrangement encourages academic and local companies utilizes the patent without infringing patent right and may provide benefit on the principles of **usefulness for the consumer**, especially generic medicine after the patent expires.

On the patent holder point of view, Bolar Provision Regulation may affect to the exclusivity of the invention. The researcher can free to use, develop and compete new product.

Compulsory Licensing also related on the market import or export activity of patented pharmaceutical products which its implementation by the government.

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