

PATENT CANCELLATION AS AN EFFORT TO PROTECT PATENTS REGISTERED IN INTELLECTUAL PROPERTY RIGHTS

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ABSTRACT

Patents give the owner exclusive rights in an effort to prevent or stop other parties from making, using, offering for sale, selling or importing a product or a process, based on a patented invention, without the permission of the patent owner. Patents are a "powerful business tool" for companies to gain exclusivity rights to new products or processes, establish strong market positions and generate additional revenue through licensing. A product that is complex (such as a camera, mobile phone, or a car) combines a number of inventions which include several patents, which may be owned by different patent holders, but these patents can be canceled by several things, one of which is if there is no the novelty value of the idea that was initiated.

Keywords : Cancellation, Protection, Patent Rights

1. BACKGROUND

A human being who lives in a natural environment that constantly defends and develops his life. This effort in maintaining and developing oneself is what can make humans creative beings compared to other creatures. The power possessed by every human mind is often referred to as imaginary power, and it is with this imaginary power that man can achieve his high will and ability to find all things. According to Cropley, A. J. (2001) imaginary power can be divided into 2 (two), namely synthesis imaginary power and creative imaginary power. The imaginary power of synthesis is not to

create something new, but to form and compose the old in the form of a new combination. Meanwhile, creative imagination is to create new things commonly called Innovation. Innovation is a practical way of applying creative ideas. Innovation is created because in a person there is high creativity. Creativity is the ability to bring something new into life.

Humans who have a high creative development power will be able to overhaul and encourage in the development of their business to be successful. Because with creativity one can:

1. Improve work efficiency,

2. Increase initiative,
3. Improve appearance,
4. Improve product quality, and
5. Increase profits

The above benefits characterize the preciousness of a creation in the form of an idea, idea, even a concept, guaranteed in the form of a patent.

The State of Indonesia is a state of law, so everything that exists in this State of Indonesia must be based on law. The government as a representative of the people must be able to accommodate the needs of intellectual property rights of every people, namely a sense of security, peace and security, both self, property, and family, so that injustice can be avoided in the life of the nation and state. Do not let someone who painstakingly creates an intellectual property then easily take and recognize it as his own property, and then as he pleases disseminates it without any communication or permission from the owner of the intellectual property, which is accommodated in the rule of law.

The patent system in Indonesia was first known and enacted in 1910 by the Dutch colonial government known as *Octrooiwet* (patent law) which serves to accept registration of patent applications, Indonesia's involvement in, TRIPs (Trade Related Aspects of Intellectual Property Right) agreement which means "Trade Aspects Related to Intellectual Property

Right" which means "Trade Aspects Related to Intellectual Property Rights" on January 1, 2000 gave hope for protection for various intellectual products from attempts to infringe the rights to products produced by both individuals and corporate parties in the field of industry and trade in an effort to maintain infringement of rights to the authenticity of copyrighted works concerning Copyrights, Trademarks, Patents, Product Designs, Trade Secrets and Layout Design of Integrated Circuits, which are contained in Law Number 14 of 2001 concerning Patents.

Patents grant exclusive rights to their owners in an effort to prevent or stop others from making, using, offering for sale, selling or importing a product or a process, based on a patented invention, without the permission of the patent owner. Patents are a "powerful business tool" for companies to acquire exclusivity rights to new products or processes, firmly establish a position in the market and generate additional revenue through licensing. A complex product (such as a camera, mobile phone, or a car) combines a number of findings that include several patents, which may be owned by different patent holders, but this patent can be invalidated by several things, one of which is if there is no novelty value of the idea initiated

2. PROBLEMS

Based on the background described above, the problems in this study are as follows:

1. What are the prerequisite conditions for registration of a work in a new patent?
2. How is patent claim a basis for determining the scope of patent protection?

3. RESEARCH METHODS

This research is "descriptive, that is, describing a situation or phenomenon related to the problem to be studied". Descriptive analytics will be reviewed the applicable regulations related to legal theories and implementation practices related to the problems that have been identified.

The method of approach carried out is to use a normative juridical approach. The normative juridical approach method is used to study laws and regulations related to the use of counterfeit money in buying and selling transactions, so that it can be known whether the existing legal basis is sufficient to complement this research.

The data types of this study are primary and secondary. Primary data is yang data obtained directly from respondents. Secondary data in this study is sourced from:

- a. Primary legal material, namely legal material in the form of laws and regulations regarding the protection of copyrighted works, namely Law Number 13 of 2016 concerning Patents.
- b. Secondary legal materials are materials that are closely related to prime r legal materials in the form of books related to the object under study
- c. Tertiary legal materials, namely those that provide legal information regarding primary legal materials and secondary legal materials such as legal dictionaries and the internet.

The data collection tool is the main basis in compiling this thesis which is based on: *Library research*, with this method the author intends to be able to collect library materials, in the form of books, magazines, documents, and other theoretical sources as a basis for solving the subject matter in this writing.

The collected data will be analyzed and compiled systematically using qualitative analysis and then the substance is analyzed juridically to obtain an overview of the subject matter.

4. DISCUSSION

1. Legal Protection of Patents in Intellectual Property Rights

Every form of IPR must be registered registration that meets the requirements of the law is an

acknowledgment and justification of the IPR that a person has can be proven by a registration certificate, so as to obtain legal protection. Registration is a form of legal protection that can provide legal certainty. The legal protection of IPR that begins with registration is in line with the constitutive system (*First to File*). According to the constitutive system, a person's IPR can only be protected by law if it has been registered. Not being registered means no protection and no recognition of the constitutive system among others embraced by the Patents Act.

The change that started from a declarative system (first to use) was changed to a constitutive system (first to file) was carried out because the constitutive system guarantees more legal certainty than the declarative system. The declarative system that is fundamental to legal protection for those who use its invention first occurs in the use of brands, this does not guarantee legal certainty and creates problems and obstacles in the business world, so the system in Intellectual Property Rights is changed to be constitutive. In the explanation of the Patent Act, it is stated that patents are granted by the state when requested by the inventor, either an individual or a legal entity entitled to the invention. It is further stated that a patent is a technological

invention born of human intellectual work. Involving energy and time and costs, technology has economic value or benefits. Therefore such technological findings should be given legal protection. In order to get legal protection by the State the inventor of the patent needs to register its invention registered and registered.

A work that meets the protection of Copyright will automatically be protected for a period of time. The provisions of the Intellectual Property Rights law, each registered intellectual work is determined by the protection period, which of course during the protection period, the intellectual work must not be used by other parties who do not have permission from the licensee of the intellectual work, for Patent Rights according to Law Number 14 of 2001 *neg ara* regulates its protection period to be limited to 20 years, starting from the date of receipt of the patent request (filling date), the date of which is stated in the patent letter granted by the Directorate General of Intellectual Property Rights (IPR) to the licensee.

Law Number 14 of 2001 specifies that if the patent protection period has exceeded 20 years, the invention has officially become public domain, anyone is allowed to use the invention without the need to *lisensi* or pay royalties to the previous patent holder concerned.

The period of time given by the State according to the Law is relatively short for commercialization of the patent product. If the Patent is not implemented immediately, the commercialization of the patent will not be optimal, when compared to the cost of filing and patent maintenance costs which are quite expensive.

2. Patent Cancellation as an Effort to Protect Registered Patents

The Patent Law explains that there are 3 (three) kinds of stages that can be taken in the cancellation of a registered patent, namely First, because it is null and void, Second, it is void because of the application of the patent holder himself, and Third, it is void because of a lawsuit. A patent that can be declared null and void if the patent holder does not fulfill the obligation to pay the fee within the period prescribed by law, which will be notified in writing by the Directorate General of Intellectual Property Rights to the patent holder and licensee and enter into force from the date of such notification. Patent declared null and void will then be recorded and announced.

For patent cancellation of the patent holder's application, it is carried out by the Directorate General of Intellectual Property Rights for all or part of the patent application submitted. Cancellation of this patent cannot be done if the licensee does

not give the written consent attached to the cancellation application. Furthermore, the decision to annul the patent is notified in writing by the Directorate General of Intellectual Property Rights as it is null and void. As for the cancellation of a patent due to a lawsuit filed by a third party to the patent holder through the Commercial Court in the event that the patent has similarities with other patents that have been granted to other parties for the same invention under the law. A cancellation lawsuit may also be made by the Prosecutor against the patent holder or licensee in the event that the compulsory-license grant is found to be unable to prevent the implementation of the patent within 2 (two) years from the date of granting the compulsory-license concerned or from the date of the first compulsory-license grant in the event of being granted several compulsory-licenses. The legal consequences that can arise from the cancellation of a patent are:

- 1) Can abolish all legal consequences that may arise relating to patents and other matters derived from such patents;
- 2) The licensee party remains entitled to execute the license in its possession until the expiration of the period stipulated in the license agreement i.e. the licensee

party that is cancelled for the reason that the patent being sued for cancellation is the same as another patent that has been granted to another party for invention that has something in common under the law;

- 3) The License Acceptance Party is not obligated to forward royalty payments that would otherwise still be mandatory to the patent holder whose patent is cancelled, but may transfer the royalty payment for the remainder of the term of the license in his possession to the rightful patent holder. If the patent holder has received a royalty from the licensee at once, the patent holder must return the royalty amount in accordance with the remaining term of the license user to the patent holder who is in charge.

Provisions on Patent Cancellation are contained in Article 91 of Law Number 14 of 2001, namely:

- (1) A patent cancellation lawsuit can be made if:
 - a. The patent according to the provisions referred to in Article 2, Article 6, or Article 7 should not be granted;
 - b. Such Patent is the same as any other Patent which has been

granted to another party for the same Invention under this Act;

c. the granting of compulsory-licenses is apparently unable to prevent the implementation of patents in a form that harms the interests of the community within a period of 2 (two) years from the date of granting the compulsory-license concerned or from the date of granting the first mandatory license in the event of being granted several compulsory-licenses.

- (2) The suit for cancellation for the reasons referred to in paragraph (1) point a is filed by a third party to the Patent Holder through the Commercial Court.
- (3) A suit for cancellation for the reasons referred to in paragraph (1) point b may be filed by the Patent Holder or licensee to the Commercial Court in order for another Patent equal to the Patent to be cancelled.
- (4) A cancellation suit as referred to in paragraph (1) point c may be filed by the prosecutor against the Patent Holder or the compulsory licensee to the Commercial Court

5. COVER

Law Number 14 of 2001 specifies that if the patent protection period has exceeded 20 years, the invention has officially become public domain, anyone is allowed to use the invention without the need for a license or pay royalties to the previous patent holder concerned. The period of time stipulated by the State according to the Act is relatively short for commercialization of the patent product. If the Patent is not implemented immediately, the commercialization of the patent will not be optimal, when compared to the registration fee and patent maintenance fee which is quite expensive.

For patent cancellation of the patent holder's application, it is carried out by the Directorate General of Intellectual Property Rights for all or part of the patent application submitted. Cancellation of this patent cannot be done if the licensee does not give the written consent attached to the cancellation application. Furthermore, the decision to cancel the patent is notified in writing by the Directorate General of Intellectual Property Rights as if it were null and void. As for the cancellation of a patent due to a lawsuit filed by a third party to the patent holder through the Commercial Court in the event that the patent has similarities with other patents that have been granted to other parties for

the same invention under the law. A cancellation lawsuit may also be made by the Prosecutor against the patent holder or licensee in the event that the compulsory-license grant is found to be unable to prevent the implementation of the patent within 2 (two) years from the date of granting the compulsory-license concerned or from the date of the first compulsory-license grant in the event of being granted some compulsory-license.

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