

INDONESIAN PATENT SYSTEM: AN OVERVIEW

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REVIEW ARTICLE

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ABSTRACT

Intellectual property protection is a one type of protection to the innovator from their creative efforts. On November 1, 1991, the Indonesian Parliament passed Law No. 6/1989 on Patents. The new law came into effect on August 1, 1991. The patenting system in Indonesia is discussed using some recent statistics and their fees, patent exclusivity, litigation, grace period. As of 1989, there have been over 13,000 applications for temporary patent registration, 96% of which were of foreign origins. None of the applications were denied, were ever granted because no patent Law existed. In this paper discussed brief introduction about Indonesia patent system.

Keywords: Indonesia; Patent filing; New Patent law; Compulsory license; Residential and non-residential requirements.

INTRODUCTION

Indonesia's first patent law came into effect on August 1, 1991. Indonesia Become a member of PCT. The Indonesian Patent Office underwent significant changes in 1997. Effective on September 5, 1997. The patent term was changed to 20 years (as opposed to 14 years). Indonesia has a "simple patent" process for inventions that are new but not necessarily non-obvious. The term for "simple patents" increased from 5 years to 10 years from the grant date in 1997. In addition, in 1997, specific prohibitions on the patentability of plant and animal varieties were repealed. Structure of Indonesian IPR/patent system department of laws and human rights Minister of Laws and Human Rights directorate general of intellectual property rights (DGIP).

In the year of 2003 within the efforts to encourage the employment of the IPR system by the native candidates together with, Minister of Law and Human Rights issued a Decree No. M.11.PR.07.06 that permits candidates to lodge scientific discipline applications at the Provincial Offices of Ministry of Law and Human Rights. (1)

PATENT IN INDONESIA:

A patent is a right accorded to an inventor to commercially exploit his invention to the exclusion of others. It can be obtained for a raw or improved machine or process, article of manufacture, or Chemical composition. It is industrially applicable.

Patents Cases recognized in Indonesia:

In Indonesia following two cases of patents are:

1. Standard Patents
2. Simple Patents

Standard patent for product and process, whereas Simple patent for product only. Indonesia has a "simple patent" process for inventions that are new but not necessarily non-obvious. The term for "simple patents" increased from 5 years to 10 years from the grant date in 1997. In addition, in 1997, specific prohibitions on the patentability of plant and animal varieties were repealed.

The process is easy for getting a Simple Patent is supposed to be shorter; however, there is a reduced term of protection, for all the applicant need to explain the scope of invention and how is work.

Grace Period:

A Standard Patent is last for 20 years from the date of filing.

A Simple Patent lasts for 10 years from the date of filing.

PATENT LAWS AND GRANTING PROCESS IN INDONESIA:

Law Number 14 of 2001 regarding the Patent Minister of Law and Human Rights Decree. Number M. 09- PR.07.10 of 2007 regarding Ministers of Law and Human Rights Structural Organization.

Minister of Law and Human Rights Decree Number M.07-HC.02.10 of 1991 regarding, Formation and Requirement of Patent Substantive Examination Request.

1. Searching:

This is the foremost step before an application is prepared to register a patent. Although a prior search is optional it helps in finding the existence of filing patents.(2)

2. Application:

Every applicant application containing the accompanying data:

Power of Attorney no legalisation

Appointment of Invention no legalisation

Specification claims and abstract related to patent must be in English to be translated into Indonesian Language.

Priority Documents if convention priority is claim.

Documents Required for Application:**Table 1: Basic requirements for Application (3)**

Sr. no	Documents	Legalization/ Notarization	Time of Filing
1.	Power of Attorney	No	Within 1 month from filing date
2.	Assignment of Invention	No	Within 1 month from filing date
3.	Priority Document (If claiming priority)	No	Within 2 month from filing date

3. Publication:

A patent application will be issued within 18 months from the date of filing.

4. Opposition:

During the publication period of 6 month, opposition is invited from interested parties.

The announcement of confrontation and counter statement will be regarded in the examination phase.

5. Examination:

A petition for examination has to be registered within 36 months after the filing date of the application else could result in automatic withdrawal of the application. Besides a simple patent is examined solely for novelty

6. Registration:

The patent office is bound to award or reject a patent within 36 months after the receipt of an examination date. After completion of all formalities patent certificate will be granted by the patent office of Indonesia and the invention will be listed in the general register of patent.

Registration can be filed with:

Directorate General of Intellectual Property Rights

Administrative of the Directorate of Patent

Building B, 3rd Floor, Jalan Daan Mogot Km. 24, Tangerang, Banten, INDONESIA.

PATENT GRANTING PROCESS (4):

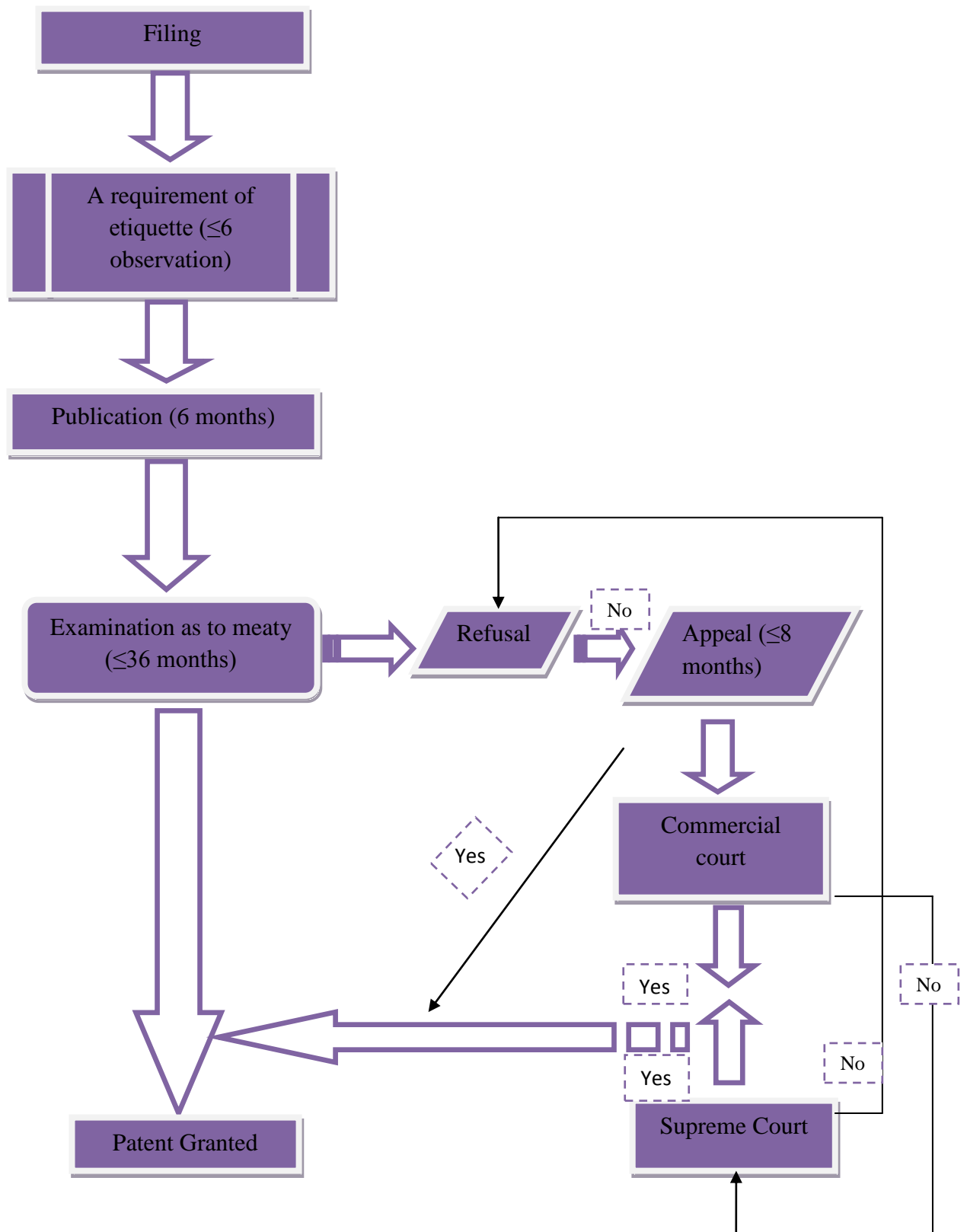


Figure 1: Patent Granting Process

Following documents are required to obtain filing date are as follows:

- Patent specification (in English).
- Application Form
- Power of Attorney and patent agency no legalisation.
- Declaration of Ownership, if the application is filed by the attorney.
- Assignment of Invention, to be accomplished by the inventor.

Legalisation or notarization of these documents is not necessary.

ENFORCEABILITY:

Indonesian intellectual Property compliant in practice is not yet matched by an efficient criminal enforcement protection system.

In Indonesia there are two IP routs:

- Civil enforcement
- Criminal enforcement

Criminal enforcement:

Criminal enforcement is difficult due Two various factors such as a certain lack of transparency in police operations.

Although a new enforcement agency has recently been set up, it is Still early days to discover if this agency can resolve the piracy problems At the current resource level of officers at the Directorate of Investigation (PPNS), which is part of the Directorate General Intellectual Property Rights.

Civil enforcement:

Compulsory licensing:

The patent law also carries provisions for Compulsory Licensing.

Article 82 allows any person to apply for the implementation of a patent after thirty-six months from the date the patent was first issued, if the said “Had not been implemented in Indonesia by the Patent Holder even though in that respect has been opportunity for commercial implementation of the patent which should have been applied”. (5)

The government shall have the authority to grant compulsory license if the applicant:

- He/she is capable of enforcing The patent himself and
- Have the facilities to fully put the patent to use.

The Compulsory License is valid only for the period necessary to work the patent.

The Compulsory License Holder shall pay the Patent Holder royalties, the amount of which will .be determined by the District Court. The District Court determines that the infestation is executable and will “afford benefits for a large portion of the society” the Compulsory License will be issued.

Prosecution: Penalties for criminal 7b year’s imprisonment or fine up to EUR 350,000.

Civil Enforcement:

As compared to criminal, civil litigation is more expensive. It is mostly preferred option when dealing with trade mark and copyright.

Implementation in Indonesia:

The greatest success to protect the patent law in Indonesia, early there is no enforcement of the patent law. The government is not oblivious to this fact. Hence, it has undertaken several measures to prepare for the implementation stage.

The government knows that high quality patent consultants make a big difference to the system. A better prepared patent application helps accelerate the application process. The government knows that high quality patent consultants make a big difference to the system. Knowledge about the patent laws; their government knows that high quality patent consultants make a big difference to the system. Government Regulation No. 33/1991 dated June 11, 1991, President Suharto specified a Special Registration for Patent Consultants. The Elucidation of GR 33/1991 states that “among others the Law emphasizes that patent applications by the discoverer or the one entitled to it who is dwelling outside the dominion of the Republic of Indonesia must be

submitted through Patent Consultants.” The Elucidation of GR 33/1991 states that “among others the Law emphasizes that patent applications by the discoverer or the one entitled to it who is dwelling outside the dominion of the Republic of Indonesia must be submitted through Patent Consultants.”

Knowledge about the patent laws, their objectives and the economic consequences of the violation of these laws will give the Indonesian public a better awareness of the significance of patents in their society.(6)

CONCLUSION

There are many changes with introduced with respect to current law in Indonesia related to patent requirements, patentability, grace period, compulsory licensing, certain provisions comparable with international intellectual property. Recently many foreign investors are looking to invest in Indonesia because the government of Indonesia taking significant steps at the right direction. Many foreign countries are looking towards Indonesia is like a world worst intellectual property protectors it is the time that Indonesia demolish her unsightly image.

However Indonesia patent system opens new investors to entering and run their business in the Indonesia.

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CONFLICT OF INTEREST

Authors declares that there are no conflicts of interest.

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