

The New Issuance of the Minister Regulation No. 15 of 2018 concerning the Implementation of Patents by Patent Holders.

Article 20(1) of the current patent law provides that a patent holder is obligated to manufacture the granted product or use the granted process in Indonesia. It is further stipulated in Article 20(2) that such product manufacturing or use of such a process must encourage the technology transfer, attracting investment and/or creating new job opportunities. Failing to conform to this provision, the granted patent will potentially be invalidated before the Commercial Court filed by public prosecutor or any party representing national interest (any individual who launch the lawsuit voluntarily for the sake of the society or the country), or compulsory-licensee [Article 132(1)(e) jo (4)].

The existence of said articles have considered discriminatory by business actors, especially foreign ones, It has encourage the government try create some solutions so that the implementation of the mandate in Article 20 of Law Number 13 of 2016 concerning Patents can be implemented. Article 20 itself has been in line with Article 7 of the TRIPS Agreement, Hence, in its implementation, this will be detrimental to local patent owners, especially if competing in the global market. Also for patent holders from individual, small entities, university/government research sectors will have obstacles more in capital, manufacturing facilities, or even

institutional/organizational that will experience difficulties in implementing their patent appropriately and timely.

Furthermore, there is “harsh” sanction like invalidation in (Article 132(1)(e)) in case failure to meet the provision of Article 20, which makes it increasingly impossible and unfair to implement. For patent holders, it is expected that the Government will offering grace period and flexibilities to patent holders from the grant date until presumably 2 or 3 years prior to the expiration of the patent.



In the latest development, the Ministry of Law and Human Rights has finally issued the Regulation of the Minister of Law and Human Rights Number 15 of 2018 concerning the Implementation of Patents by Patent Holders as a solution to the implementation of Article 20 of the Patent Law. The Minister Regulation no. 15 of 2018 is stipulated on May 22, 2018 and promulgated on July 11, 2018.

In this Ministerial Regulation, it is stipulated that in the event that the Patent Holder has not been able to implement his patent in Indonesia, the patent holder may delay the implementation of the manufacture of the product or the use of his patent process in Indonesia for a maximum of 5 (five) years by submitting an application containing a request for delay the implementation of product manufacturing or the use of patent processes in Indonesia, submitted to the Minister accompanied by stating reasons thereof. The application for the postponement of patent application can be submitted within a period of 3 (three) years, counting from the date of the grant.

Furthermore, the Minister will provide a delay to patent holders after agreeing to a request for delay the implementation of product manufacturing or the use of patent processes in Indonesia. The delay is given from the date of the decision and can be extended with reasons.

Finally, with the existence of Ministerial Regulation No. 15 of 2018, critics and deficiencies regarding article 20 of the Patent Law No. 13 of 2016 have been corrected. Further, there is no more doubt for investment in the development and implementation of its patent in Indonesia, since the government has given sufficient time to develop the company's structure and infrastructure. Furthermore, there will be no more fear that your patent will be invalidated if fails to timely implemented.

Should you or your client are patent holders in Indonesia and experience these obstacles. We will be pleased to assists you

to submit an official letter requesting to delay the implementation of the patent along with the reasons for which it can be submitted and accepted by the Ministry.

Should you have any further questions or query, please contact us at: info@harvespat.com.

Sincerely Yours,

HARVESPAT
Intellectual Property Services

automatically signed

NADYA P G DJAJADININGRAT
Partner, Licensed Advocate, Chartered IP Attorney
info@harvespat.com
nadyapgd@harvespat.com



HARVESPAT
Ruko Griya Cemerlang Blok 49 No. 34, Jl. Limo Raya, Depok 16515
Jl. Kibinca Raya No. 22, Kibinca Baru, Jakarta Selatan 12160
PO BOX 147 CIBERE 16515, INDONESIA
(ph) +62 21 7548781, (fax) +62 21 7548781
Email : info@harvespat.com
Website : www.harvespat.com

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