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## **ANALYSIS OF NOVELTY ELEMENTS AS A REQUIREMENT FOR PATENT REGISTRATION IN LAW NUMBER 13 OF 2016 CONCERNING PATENTS**

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### **ABSTRACT**

This study delves into the elements of patent rights and dispute resolution strategies in cases of patent infringement. The background of the research stems from the necessity to understand the legal framework surrounding patent protection and the mechanisms available for resolving disputes in the event of infringement. The primary objective is to identify the crucial components of patent rights and the various methods employed to address disputes arising from alleged patent violations. Employing a normative legal research approach, with both conceptual and statutory analyses, this study aims to provide a comprehensive overview of the subject matter. The findings underscore the significance of novelty as a fundamental criterion for patent acceptance, as defined by Law Number 13 of 2016 concerning Patents. Novelty, characterized by the absence of prior public disclosure, usage, or inclusion in existing knowledge standards, is essential for patent registration. The study reveals that patent disputes concerning novelty can be addressed through diverse legal avenues, including patent removal suits, trial proceedings, mediation, patent reexamination, out-of-court settlements, and appellate processes. Furthermore, alternative mechanisms such as arbitration offer additional pathways for resolving disputes. The implications of this research highlight the importance of adhering to novelty requirements during patent registration and understanding the array of dispute resolution mechanisms available to safeguard intellectual property rights.

**Keywords:** Patent, Novelty, Patent Abolition.

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### **INTRODUCTION**

God creates humans to have a mind, imagination and reason. Therefore, humans are creatures that are called the most perfect among others. Humans also have skills or expertise that they use in everyday life for their own or other people's needs. The gift of thinking, imagination, and creativity, which is owned, allows humans to quickly produce various kinds of products that are useful for themselves and others and that can be created based on the science and technology they learn (Rapp, 2022). Technological knowledge in this day and age is so broad, and every time, new inventions are being made (Aji, 2021).

Humans, with their ability to think, can find creative ideas, and humans pour them into the form of works that can be expressions that can be seen, read, heard, or used. The results of these works are precious because the results of these ideas are beneficial for human life itself and have economic value, which can be called Intellectual Property Rights, from now on referred to as IPR, but now more often referred to as Intellectual Property, from now on referred to as IP (Castaldi et al., 2024).

IP is basically in the form of property rights resulting from human intellectual abilities. Humans, with their creative creations, are able to produce intellectual works that are useful for daily

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life and have value. These innovative works have economic value that can increase wealth (Dharmawan, 2018). IP makes works made by humans that arise or are born from human intellectual abilities that must be protected. Wealth is born because of ideas, creations, imagination and thoughts (Darusman, 2016). The ability that is produced by humans, or called human intellectual ability, is made through the power of taste in the form of intellectual works. Intellectual property rights (IPR) can be understood as the rights owned by an individual for his intellectual work (Wauran-Wicaksono, 2015).

The Agreement of Trade-Related Aspects of Intellectual Property Rights, or TRIP, classifies the types of IPR that are protected, including Patents (Chazawi, 2019). Patent or Oktroi (Indonesian term is the same term), Patent (English), and octroon (Dutch) are some of the protected IPRs (Sutedi, 2009). A patent is basically the exclusive right of the inventor; the inventor's right is to have the right to do anything on the invention in the field of technology for the exclusive time to carry out itself or to give approval to other parties to carry out the invention (PANDIANGAN, n.d.)

Patents existed during the Dark Ages in Europe, and in that century, technology was developing, which was used to create patents. The first patent regulation was around 1470 in Venice, Italy. It was granted to Caxton, Galileo Galilei, and Johannesburg Guttenberg for their inventions, creating their monopoly rights. This idea then circulated throughout Europe in the 16th century and was used during the Tudor period of the English Empire. This situation is what created the industrial field to flourish in England until the peak of the Industrial Revolution that occurred in England.

Patent rights in England were born in 1623 under the name Statute of Monopolies; over time, this patent right spread to the United States. It was only in 1719 that America had a patent law. Every invention that can be in the form of objects, quality tools or those that are not qualified but have a valid value both in terms of form and composition can obtain legal protection in the form of a patent, but only a simple patent.

The meaning of "patent" in Greek is 'open'. The conclusion is "latent", which means 'hidden' (WAHYUNI, n.d.). Then, in the UK, it is known to use the word letters patent, which is a decree issued by the kingdom with the intention of granting certain rights to specific individuals or businesses; certain rights mean special rights or exclusive rights. Inventors receive rights for a set period (20 years for ordinary patents and 10 years for simple patents). The basis for granting a patent is actually very honourable because the grant of a patent to the inventor is based on fairness and the worthiness of their efforts, so they deserve the patent.

In Indonesia, patents are regulated through Law No. 13 of 2016, which was previously regulated in Law No. 14 of 2001, and internationally, the basis for patent knowledge rules are the Paris Convention, Patent Cooperation Treaty (PCT), European Patent Convention (EPC), and TRIPs Agreement (Dharmawan, 2018).

In the history of Indonesia, the Dutch government in 1844 introduced the Law on IPR, the Dutch government promulgated the Patent Law in 1910 (Sumarna, 2018). The development of patent law in Indonesia can be divided into 4 periods, including:

#### **Period years (1989-1996)**

In this period, Indonesia was confused about the difference between public interest and international pressure. This period was a tough time for Indonesia as the government was under pressure from the United States, which expected Indonesia to adopt US patent protection standards. Indonesia needed clarification of the public interest. Patent law during this period was only

considered very important in the late 1980s because one of the articles stipulated that patent examination would be conducted in the Netherlands; this was changed after Indonesia achieved its independence because it was incompatible with Indonesian sovereignty. Finally, Indonesia only had a patent law for decades because the Dutch law was no longer in use. Many considerations were made by the government, including the government considering that the existence of a patent law could attract foreign investors to invest in Indonesia. Finally, the government passed a patent law in 1989 due to international pressure from many developed countries. When developed countries signalled Indonesia to legislate IPR, including patents, Indonesia was forced to follow the request (Alhidayah et al., 2023).

The enactment of the 1989 Patent Law was also intended to attract foreign investment and facilitate the entry of technology into the country. However, it is also emphasized that efforts to develop the IP system, including patents, in Indonesia are not solely due to international pressure but also due to the national need to create an effective IPR protection system (Rizkia & Fardiansyah, 2022).

#### **Period (1997-2000)**

This period was the period when Indonesia was subject to the international standards of the TRIPs Agreement, and this period was also a significant time for the Indonesian government, which decided to revise the 1989 Patent Law. In 1995, the patent law was revised as one of the consequences of Indonesia's participation in the WTO. In 1997, the revision efforts could be realized; some of the laws included in the 1997 Patent Law were the extension of patent protection from 14 years to 20 years, changes in the scope of patentable inventions and the issue of importation of patentable products, the issue of importation of patented products as well as the mechanism for implementing compulsory licenses.

#### **Period (2001-2005)**

In this period, Indonesia improved the quality of its law enforcement. In contrast to the last revision year, which emphasized substance issues more, this period was focused more on law enforcement issues. In this period, the government realized that law enforcement of violations of the TRIP agreement was an obligation that had to be carried out by WTO members. Although in this period, Indonesia was included as a watch country by the United States, the main reason for revising this law was that it wanted to improve the quality of law enforcement in Indonesia. The formation of the Patent Law of 2001 was the ratification of international treaties as well as the rapid development of technology, industry, and trade (Aulia, 2015).

#### **Period (2016- present)**

Law No.13 of 2016 is still in effect today. After passing through time, the 2001 Law was finally changed to Law No. 13 of 2016 because many things were not in accordance with the times and in this latest law, there were additions, deletions, and improvements.

There are four categories of revisions made by the framers of the new patent law, and from time to time, there are always improvements, additions, and deletions. These four revisions to the law are also factors that distinguish the new patent law from the old one.

Patent rights are rights that protect inventors or creators of innovations or inventions produced. In patent law, one of the critical elements determining the acceptance of a patent is novelty. Novelty is essential to assess whether an invention deserves a patent, ensuring that only genuinely novel innovations can enjoy exclusive protection (Mike, 2019). Law No. 13 Year 2016 on

Patents provides conditions related to the registration and protection of patent rights. Article 5 Paragraphs 1 and 2 emphasize that patents are only granted for inventions that are considered new, where this novelty is defined as technology that has never been announced, either in Indonesia or abroad before being announced by the Directorate General of Haki in Indonesia. However, this discussion on novelty is only sometimes as straightforward as one would like. The definition of "new" in the law can be vague and subjective, posing challenges for consistent interpretation and assessment (Mahyar & Hernawati, 2017).

To examine the problem of the element of banality more deeply, it is necessary to study some of the research that has been published. Several writings have themes similar to this paper but differ in terms of discussion and focus on the problem. These papers include a paper prepared by Jerry Vicky Mawu with the title "Dispute Resolution of Patent Rights According to Law Number 13 of 2016 concerning Patents". The paper discusses the legal regulation of patent rights in Indonesia and the process of resolving patent disputes for the parties as a form of legal protection. Furthermore, there is a paper written by Aprizal Parada, "Juridical Analysis of the Novelty Element Criteria on Patents as the Basis for a Lawsuit for the Abolition of Rights on Simple Patents (Study of the Supreme Court Decision No. 167. K/PDT. SUS-HKI/2017)". This paper discusses the element of novelty in simple patents but uses the Supreme Court Decision Study No. 167. K/PDT. SUS-HKI/2017. This research is important to do, considering that there is a lack of norms related to the element of novelty of a product that wants to be patented (Borris & Samatha, 2023).

This background underscores the urgency to conduct an in-depth analysis of norm vagueness in the context of patent novelty. A better understanding of this challenge can provide a solid foundation for the government, patent holders, and legal practitioners to improve the accuracy of statutory interpretation, create a clean legal environment, and stimulate the development of sustainable innovation in Indonesia. This paper is entitled "Analysis of the Novelty Element as a Condition for Registering Patent Rights in Law Number 13 of 2016 concerning Patents."

## **METHOD**

To answer the problem of the element of patent novelty in the article "Analysis of the Novelty Element as a Condition for Registration of Patent Rights in Law Number 13 of 2016 concerning Patents" with normative legal research. Because of normative legal research, this research uses a variety of books related to and processed by reviewing various literature books and laws. As in the book Peter Mahmud Marzuki, there are two kinds of research sources: primary and secondary sources (Budiono et al., 2015).

This research uses normative legal research methods because the focus of the study departs from the vagueness of norms, using approaches such as the statute approach, conceptual approach, and analytical approach. The legal material search technique uses document study techniques, and the study analysis uses qualitative analysis.

## **RESULTS AND DISCUSSION**

### **Definition and Interpretation of "Novelty" in the Context of Law Number 13 Year 2016 on Patents**

In Law No. 13/2016 on Patents, "novelty" is defined as the characteristic of an invention that has not been previously announced in Indonesia or abroad before it is announced by the Directorate General of Rights in Indonesia. This definition emphasizes that an invention is considered new if

there has been no publication or announcement regarding the innovation before the DGH announced it. In the context of Law No. 13/2016 on Patents in Indonesia, "novelty" is one of the essential criteria in patent registration (Prasetyo & Waluyo, 2023).. Patents themselves are defined as exclusive rights granted by the state to inventors for their inventions in the field of technology for a certain period. In this case, "novelty" means that at the time the industrial design is registered, it has not been disclosed, announced or used. A Simple Patent, for example, is one type of patent that is granted for new inventions or the development of an existing product or process and can be applied in industry. A Simple Patent uses an absolute novelty standard with a limited grace period. It is determined through the addition of practical features to the invention. Suppose an invention that has been granted protection does not fulfil the element of novelty. In that case, a third party can file a lawsuit for the abolition of a Simple Patent by proving its position.

The following is Article 5 Paragraphs (1,2) of Law Number 13 Year 2016 Concerning Patents, which regulates explicitly the requirement of novelty: Article 5 Paragraphs 1 and 2:

1. An invention is considered new if, at the date of registration, it has never been announced by anyone, either at home or abroad.
2. An invention shall be deemed to have been announced at the date of registration if, prior to that date, the invention was announced by the registrant or by another person who obtained information about the invention from the registrant.

This article establishes the principle that in order to meet the novelty requirement, an invention must not have yet been previously announced by anyone either at home or abroad at the time of the registration date. Suppose the invention has already been announced by the registrant or by another party who obtained information from the registrant before the registration date. In that case, the invention is deemed not to meet the novelty requirement.

To be considered a patent-eligible new invention, an invention must fulfil several criteria, including novelty. The following are the conditions that must be met for an invention to be considered novel:

1. Never Publicly Announced  
An invention is considered new if it has never been announced or published before, either domestically or abroad. This means that the invention must be completely new and not previously known to the public.
2. Never Used or Sold  
The invention must not have been used or sold before the patent filing date. If an invention has been known or sold before, then it may reduce or even eliminate the claim to novelty.
3. Not Existing in the Generally Accepted Knowledge Standards: An invention should only be considered familiar if it already exists within the generally accepted standard of knowledge in the relevant field of technology. If a concept or technology is already widely known, then it will not be considered a new invention.
4. Not Contained in Existing Patent Documents:  
An invention is considered novel if it is not contained in previously filed patent documents. This emphasizes the importance of conducting a patentability search to ensure that another party has yet to patent the invention.
5. Not Available in Scientific Publications or Conferences:

An invention should be considered familiar if it has already been described in a scientific publication or presented at a conference before the patent filing date.

A case of patent nullification exists when an invention partially or wholly does not meet the criteria for patentability as stipulated in the Patent Law, so the invention should not be granted. One example of the removal of a patent due to not meeting the element of novelty is if the invention does not meet the criteria stipulated in the Patent Law. However, when registered, it passes and is fully protected by the state as in this case (District Court Decision Number 47/Pdt.Sus-Paten/2017/PN.Niaga.Jkt.Pst), then this patent should be removed to revoke its patent rights.

District Court Decision Number 47/Pdt.Sus-Paten/2017/PN.Niaga.Jkt.Pst is a case involving Budijani Sanjata et al. and PT. KARUNA SUMBER JAYA. This decision was made on March 19, 2018. This case relates to patents. In a research conducted by Fajar Ariyantono Pangestu and Budi Santoso from Diponegoro University Semarang, Indonesia, they discussed the lawsuit of patent expungement because it was not a new invention. They found that patent No ID P0031670 was granted despite not being a new invention. Claims number 6 to 10 of the patent had no invention value and no novelty value. Cases like these show the importance of the legal system in ensuring that patents are only granted to inventions that meet the conditions of patentability, including novelty. The abolition of patent rights in such contexts is a necessary step to maintain the integrity of the patent system and prevent the granting of legal protection to something that should not meet the criteria of a new invention (Yurnida et al., 2020).

In the context of patents, "novelty" refers to an invention or discovery that has never existed before. According to the Director of Patents, Integrated Circuit Layout Designs and Trade Secrets, Directorate General of Intellectual Property (DJKI) of the Ministry of Law and Human Rights, Dede Mia Yusanti, the conditions for being granted a patent are that it has novelty value, has inventive steps and can be applied in industry. Novelty in a patent means that the invention must be new and has never existed anywhere in the world. So, suppose the product already exists in America but has yet to exist in Indonesia (Ribowo & Raisah, 2019). In that case, the patent application for the product in Indonesia will be rejected. In addition, the invention must also have an inventive step, which means it has advantages over pre-existing inventions or something unexpected (Nugraha, 2022).

Basically, to be considered a patentable invention, an invention must not only be new (novelty) but must also exhibit an inventive step. The inventive step of ten, referred to by the term "non-obviousness", is one of the essential requirements to fulfil the patentability criteria. The inventive step refers to the ability of an invention to show a sufficient degree of novelty and innovation that it cannot be considered an obvious or familiar step within the relevant field of technology. This means an expert in the field with reasonable knowledge of the relevant matter of expertise should not be able to achieve similar findings in a straightforward or commonplace manner (Ardana et al., 2021). In other words, if an invention is only an apparent or predictable step based on existing knowledge in the relevant field of technology, then it will not meet the inventive step requirement. This requirement aims to encourage real innovation and new contributions to progress in science and technology.

#### **Settlement of Patent Disputes if the Novelty Element is Not Found in the Patent**

The settlement of patent disputes is regulated in Article 142 through Article 152 of Law Number 13 Year 2016 on Patents. The rightful party or the subject of a patent, as stipulated in Article

10, Article 11, Article 12, and Article 13, may sue the Commercial Court if a patent is granted to a party other than the rightful party.

In addition, patent disputes can also be resolved through arbitration or alternative dispute resolution, as stipulated in Article 153 paragraph (1) of Law Number 13 Year 2016 on Patents. Every patent lawsuit must be filed with the commercial court in the jurisdiction of the residence or domicile of the defendant. Suppose the defendant's residence or domicile is outside Indonesia's territory. In that case, it can be filed with the Central Jakarta Commercial Court, as stipulated in Article 144 paragraphs (1) and (2) of the Patent Law.

The settlement of patent disputes that do not have the element of novelty can be done in the following ways (Ramli & Putri, 2018):

1. Patent Holder:

Patent holders can apply in writing to the relevant Minister if they wish to have all claims deleted.

2. Third-Party:

A third party can file an expungement suit through the Commercial Court. The reasons can vary, such as needing more novelty, not being within the scope of the invention and not being a patentable invention.

3. Directorate of Patents:

If the simple patent does not contain the element of novelty or does not contain the element of progress, the simple patent shall be rejected by the Directorate of Patents in accordance with the provisions of the applicable laws and regulations in the field of Patents.

Resolving these patent disputes entails complex legal proceedings. It may require assistance from a patent law expert or intellectual property law attorney. Suppose a patent is deemed not to fulfil the element of novelty. In that case, this can be the basis for challenging or filing a lawsuit for patent expungement (Muhibuddin, 2022). The resolution of patent disputes related to novelty may involve several stages and mechanisms, depending on the legal jurisdiction and applicable regulations. Some of the steps that may be taken involve:

1. Filing a Patent Removal Lawsuit:

A party who feels that a patent does not meet the element of novelty can file a lawsuit for patent abolition to the court or authorized institution. This lawsuit is an attempt to cancel the patent.

2. Trial or Mediation Process:

Parties involved in a patent dispute can either follow a trial process in court or engage in mediation to seek dispute resolution. These processes provide an opportunity for the concerned parties to present their evidence, arguments, and opinions to the competent authorities.

3. Patent Reexamination:

Some jurisdictions may provide for a patent reexamination procedure, where the patent can be re-examined to ensure it meets the necessary conditions, including novelty. If it is found that the patent does not fulfil the conditions, the patent may be modified or revoked.

4. Out-of-Court Settlement:

The parties involved can also seek an out-of-court settlement through negotiation or arbitration. This settlement may include negotiations between the patent holder and the party filing the suit.

5. Appeal or Appeal:

Suppose either party is dissatisfied with the decision of the court or authorized agency. In that case, they can appeal or initiate an Appeal process to re-examine the decision.

Each step in this patent dispute resolution will largely depend on the legal provisions applicable in a particular country or jurisdiction. In many cases, the process is complex and involves in-depth legal and technical considerations. Suppose the patent expungement judgment has become final. In that case, the court will deliver a copy of its decision to the Directorate General of Intellectual Property within 14 days of the judgment being pronounced.

## CONCLUSION

In the context of Law No. 13/2016 on Patents in Indonesia, "novelty" is one of the essential criteria in patent registration. Novelty is defined as characterizing an invention that has yet to be previously announced in Indonesia or abroad before the Directorate General of Haki in Indonesia announces it. The conditions that must be met for an invention to be considered new are that it has never been publicly announced, has never been used or sold, is not contained in generally accepted standards of knowledge, is not included in existing patent documents, is not contained in scientific publications or conferences. Suppose an invention that has been granted protection does not fulfil the element of novelty. In that case, a third party can file a lawsuit for the abolition of a Simple Patent by proving its position.

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