

# JAPAN INTELLECTUAL PROPERTY ASSOCIATION

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To: Freddy Harris

Director General of Intellectual Property

cc: Dede Mia Yusanti

Director of Patent, Layout Design of Integrated Circuit, and Trade Secret

cc: Erni Widhyastari

Director of Cooperation and Intellectual Property Empowerment Secretariat of Directorate General

Re: JIPA Concerns and requests regarding Article 20 and others of the Indonesian Patent Law

Dear Dr. Freddy Harris,

We, the Japan Intellectual Property Association "JIPA", are a private user organization established in Japan in 1938 for the purpose of promoting intellectual property protection, with about 980 major Japanese companies as regular members.

Having learned the patent working requirements and related rules in the current patent law, we would like to offer our opinions as follows.

## 1. Article 20 of the Indonesian Patent Law (domestic implementation obligation)

### 1.1 Background

Article 20 of the Patent Law in Indonesia that came into force on August 26, 2016 stipulates that: a patent holder shall be obliged to make the product or to use the process that has been granted a patent in Indonesia; and if the patent holder does not fulfill this obligation within a period of 36 months after the patent is granted, the patent would be subject to compulsory licensing pursuant to Article 82 of the Indonesian Patent Law.

However, when companies operate businesses in Indonesia, many of them manufacture outside Indonesia their products that have been granted patents in Indonesia, and import and distribute the products into and in Indonesia. Therefore, the actual situation is that the patented products are not always manufactured in Indonesia.

In this regard, according to Regulation No. 15 of 2018, which came into effect on July 11, 2018, a patent holder that has not implemented a patented invention is allowed to postpone

the implementation of the patented invention for a maximum of 5 years by submitting a written request for implementation postponement along with reasons therefor within a period of 36 months from the grant of the patent. This regulation was abolished and discontinued according to Regulation No. 30 of 2019, which came into effect on December 9, 2019, but a regulation similar thereto was carried on in Articles 40 and 41 of Regulation No. 30 of 2019. We therefore understand that a certain amount of consideration is given to patent holders.

## 1.2 Request

When the position of patent holders is taken into consideration, for filing of a written request for implementation postponement, searches on matters to be described in a request form have to be conducted and man-hours or costs for the filing of the request form are spent, which are burdens on patent holders. Especially, in the case of a patent holder having a large number of patents in Indonesia, such burdens are very heavy. Heavy burdens in maintaining patent rights would lead to reductions in investment in patent application and industrialization thereof, and further R&D establishments or the like in your country, consequently causing concern that opportunities for technology transfer or industrial development regarded as important in your country would be rather damaged. Further, for commercialization, a period of 5 years or more including an investigation stage is often required, and thus we have received numerous voices that request the abolishment or easing of the implementation obligation system itself.

Our member companies as patent applicants in Indonesia respectfully present their wish that the Indonesian government should abolish the system on the obligation of domestic implementation, or ease the procedures such as simplification of required documents even when the system is maintained.

## 2. Article 82 of the Indonesian Patent Law (exercise of compulsory licensing)

### 2.1 Background

We acknowledge that, in Indonesia, a compulsory license on a pharmaceutical was exercised in 2004, 2007 and 2012. In addition, the revised Indonesian Patent Law that came into force on August 28, 2016 additionally stipulates that the Indonesian government is eligible to invoke a compulsory license on manufacture, import and export of pharmaceuticals, and thus we understand that the compulsory licensing system on pharmaceuticals has been further strengthened.

### 2.2 Request

We have received voices from some member companies of JIPA that they are concerned about an improper use of the compulsory licensing system on pharmaceuticals. This concern was conveyed directly to the related persons during the meeting with DGIP in

January 2018. At the meeting, the related persons of DGIP answered that it has been determined that a notice would be issued to a patent holder when a compulsory license is to be invoked. In addition, Regulation No. 30 of 2019, which has recently come into effect, clearly stipulates that when an application for a compulsory license is declared to have no flaw, it is notified in writing by the Minister to a patent holder or a representative thereof (Article 22 (1) a of the Regulation); and that a result of substantive examination on the application for a compulsory license is notified to the patent holder or the representative thereof (Article 23 (3) of the Regulation). We are very grateful for a certain amount of consideration given to patent holders.

However, regarding "an advance notice on exercise of a compulsory license" to a patent holder, it is considered that the notice in writing in Article 22 (1) a of Regulation No. 30 of 2019 is naturally issued before exercise of a compulsory license. However, no specific timing thereof is stipulated in written form, and the way of notification is not clearly stipulated, either. We are therefore concerned that a confusion may occur between the patent holder and DGIP.

Considering the above, for "advance notice on exercise of a compulsory license," we respectfully present our wish that the timing and the way of notification should be stipulated in written form.

Further, Article 23 (4) of Regulation No. 30 of 2019 stipulates an obligation that requires a team of experts to hold a hearing for explanation to a patent holder or a representative thereof before an exercise of a compulsory license. We understand that this is a certain amount of consideration given to patent holders. However, many uncertainties remain about actual operation of the article. For example, when a patent holder concerned has a place of residence outside Indonesia, the following problem may arise: it would take considerable time to prepare for the hearing. For smooth operation of the article between patent holders and DGIP on a practical level, we respectfully request stipulation of procedures therefor in written form and thorough operation of the article for reduction in procedural burdens.

### 3. Request for introduction of public comment system

For revision of the Patent Law or related regulations, it is respectfully requested to introduce a public comment system, through which a draft revision is publicly announced in advance, and public opinions and information are widely invited. The introduction of this public comment system ensures more fairness of administrative management and enhances the transparency thereof, and as a result, we are sure that the system helps protect rights and interests of the people of your country.

Your deeply consideration on these matters will be appreciated.

Yours faithfully

Munehisa Matsumoto

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Managing Director

Japan Intellectual Property Association