



The Legal Protection for Patent Holders in Divided Infringement in Indonesia

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Article Info

Received: 4th November 2024
Accepted: 31st December 2024
Published: 31st December 2024

Keywords:

Legal Protection; Patents;
Divided Infringement

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DOI:

10.24843/JMHU.2024.v13.i0
4.p05

Abstract

This research aims to analyze the elements of patent infringement in divided infringement cases and the legal protection for patent holders in Indonesia. The research employs a normative juridical research method, selected due to the legal vacuum in the regulation of patent infringement, particularly concerning new types of patents. The approaches used include the Legislative Approach, Comparative Approach, and Case Approach, which collectively establish guidelines regarding the key issues addressed in this study. The research findings reveal that current Indonesian patent law, as outlined in Law No. 65 of 2024, does not regulate the elements present in divided infringement, leading to legal gaps in protecting patent holders. The absence of provisions for indirect infringement leaves patent holders vulnerable and limits their ability to seek compensation from those who contribute to violations in divided infringement. To address these issues, the article recommends that Indonesia adapt regulations encompassing indirect infringement and enhance the legal framework protecting the exclusive rights of patent holders. This adaptation would not only promote innovation but also provide clearer avenues for legal recourse against parties contributing to patent infringement, thereby reinforcing the enforcement of intellectual property rights in Indonesia.

I. Introduction

The growth of trade in goods and services in Indonesia in recent years has significantly increased. This has been driven by information and transportation technology advancements, which have accelerated activities in both the goods and services sectors. The trend of increasing trade flows is expected to continue in line with the nation's growing economy. Alongside the growth in trade flows, intellectual creativity protection becomes increasingly important. In this context, Intellectual Property Rights (IPR) serve as a vital mechanism in protecting innovative works that form the foundation of economic growth across various sectors. In this way, it can be stated that intellectual property rights recognize and assign value to individuals or organizations for their creative discoveries or productions, thereby bestowing social and economic rights upon the rights holder.¹

¹ M Suyud and A Amir, *Komersialisasi Aset Intelektual-Aspek Hukum Bisnis* (Jakarta: Grasindo, 2002).

The IPR protection system is a vital tool to ensure that the innovations supporting this trade are protected and optimally utilized, creating a healthy and competitive business environment such as through licensing agreements.² IPR is a legal system that protects creative and innovative results. The core principle of IPR is to provide exclusive legal protections as a recognition for individuals who dedicate their intellect, effort, time, and resources to create original works, thereby affirming their natural entitlement to ownership.³ One form of IPR is patents, which grant exclusive rights to the holder to control and exploit specific innovations for a set period. If another party that receives the transfer wishes to gain economic benefits from using the patent rights, they must obtain a license from the owner or holder.⁴

In Indonesia, regulations related to patents are governed by Law No. 65 of 2024, which constitutes the Third Amendment to Law No. 13 of 2016 concerning Patents (hereinafter referred to as Law 65/2024) and establishes the legal framework for patent protection. In the amendment to the law, several provisions were added, including the addition of new types of patents, namely system, method, and use patents. Previously, there were only two types of patents, namely product patents and process patents. This is stated in Article 1, Point 2 of Law 65/2024, which regulates that:

“Inovensi adalah ide inventor yang dituangkan ke dalam suatu kegiatan pemecahan masalah yang spesifik di bidang teknologi berupa produk dan/atau proses, penyempurnaan, dan/atau pengembangan produk dan/atau proses, serta sistem, metode, dan penggunaan.”

In the previous law, method patents were categorized under process patents. However, in the latest amendment, they are now separately classified to align with legal developments and advancements in technology.

One of the other countries currently prioritizing innovation in the technology sector is the United States. This has positioned the U.S. as the second country with the most patents globally, after China, in 2022.⁵ Patent protection in the United States dates back to the late 18th century and is rooted in the U.S. Constitution. Specifically, Article 1, Section 8, authorizes Congress to encourage innovation by safeguarding creators' rights. The framework for addressing patent infringement is comprehensively outlined in Title 35 of the United States Code. Under 35 US Code, patent infringement is categorized into two types: direct infringement and indirect infringement.⁶

As technology advances, patents have become an essential tool for driving innovation, particularly in the technology sector. Internationally, cases such as Akamai Technologies Inc. v. Limelight Networks Inc. illustrate how technological progress has created complex new legal situations concerning patent infringement, particularly in cases of "divided

² Syafrida, "PENTINGNYA PERLINDUNGAN HUKUM PATEN WARGA NEGARA ASING DI WILAYAH INDONESIA GUNA MENINGKATKAN INVESTASI ASING," *ADIL: Jurnal Hukum* 10, no. 1 (2019): 95, <https://doi.org/10.33476/ajl.v10i1.1067>.

³ Adrian Sutedi, *Hak Atas Kekayaan Intelektual* (Jakarta: Sinar Grafika, 2013).

⁴ Abdul Kadir Muhammad, *Kajian Hukum Ekonomi Hak Kekayaan* (Bandung: Citra Aditya Bakti, 2001).

⁵ World Intellectual Property Organization, "World Intellectual Property Indicators Report: Record Number of Patent Applications Filed Worldwide in 2022," 2022.

⁶ Arianne Astrinia and Brian Amy Prastyo, "Perbandingan Konsep Pelanggaran Paten Di Indonesia Dan Amerika Serikat: Studi Kasus Pelanggaran Paten Obat" (Universitas Indonesia, 2014).

infringement". Divided infringement is a doctrine in patent infringement where more than one party is involved in performing the steps required to infringe a patent, but no single party independently performs all the claimed steps.

Patent regulations in Indonesia grant exclusive rights to patent holders, allowing them to prohibit unauthorized parties from performing various actions related to the patented invention, such as making, using, or selling the patented product or process.⁷ However, the law does not explicitly address situations where multiple parties independently perform separate steps of a patent claim, which is the essence of divided infringement cases. Patents in Indonesia are divided into two categories: product patents and process patents. For product patents, infringement occurs if an unauthorized party manufactures or sells the protected product. For process patents, infringement may occur if an unauthorized party uses the patented process to produce a particular product.⁸ However, with the presence of divided infringement, where the steps of a patent claim are carried out by more than one party, Indonesian law currently lacks a clear framework to address this issue.

In the United States, divided infringement has become a critical issue in patent infringement cases. A key case involving divided infringement is *Akamai Technologies v. Limelight Networks*, where the U.S. Supreme Court ruled that a party can be held liable for patent infringement even if they do not directly perform all the steps outlined in the patent claim. If the party controls or directs the actions of others, they can still be held responsible.

"a defendant that does not itself undertake all of a patent's steps can be liable for direct infringement only when there is an agency relationship between the parties who perform the method steps or when one party is contractually obligated to the other to perform the steps".

In this case, Akamai sued Limelight for encouraging its customers to infringe on its patent by requiring them to perform certain steps that were part of Akamai's patent claim (inducement). Although Limelight itself did not carry out all the steps of the patent, the Supreme Court ruled that Limelight could be held responsible due to its control over certain aspects of the process involving its customers.

"When a single actor commits all the elements of infringement, that actor is liable for direct infringement under 35 U.S.C. § 271(a). When a single actor induces another actor to commit all the elements of infringement, the first actor is liable for induced infringement under 35 U.S.C. § 271(b). But when the acts necessary to give rise to liability for direct infringement are shared between two or more actors, doctrinal problems arise,"⁹

The case of *Akamai Technologies v. Limelight Networks* initially involved accusations of "inducement to infringe." However, as the case evolved, the concept of "divided infringement" became entangled, adding legal complexity. Akamai and Limelight are both companies in the information technology field. In this case, Akamai Technologies Inc. (Akamai) operates a Content Delivery Network (CDN) and, as the exclusive patent holder, has contracts with several web content providers to deliver specific content (such as large video or music files) to individual internet users. Limelight Networks (Limelight) also operates a CDN but does so contrary to the method claims in Akamai's licensed

⁷ Republic of Indonesia, Law Number 13 of 2016 on Patents.

⁸ *Ibid.*

⁹ *Akamai Technologies, Inc. v. Limelight Networks, Inc.*, 692 F.3d 1301 (Fed. Cir. 2012).

patent. In the case, while Akamai "tags" the components of its clients' websites to store on its servers, Limelight requires its customers to carry out the tagging process themselves.¹⁰ In Indonesia, questions arise regarding whether cases of divided infringement qualify as patent infringement under Law 65/2024 and what legal protections exist for patent holders whose rights are violated through divided infringement. This research aims to analyze the elements of patent infringement in divided infringement cases and the legal protection for patent holders in Indonesia.

While the latest law does not provide further provisions regarding patent infringement, it still refers to the previous law, Law 13/2016, which regulates patent infringement under Article 160. However, there are no clear provisions regarding the newly introduced patent types, such as system, method, and use patents. Furthermore, the law does not address situations where multiple parties separately perform the steps required to infringe a patent, nor does it regulate actions related to inducement or contributory infringement, as seen in the United States.

This gap is significant because, in practice, scenarios resembling inducement and contributory infringement often occur, particularly in collaborative industries and modern technologies where multiple parties share responsibilities in executing patented processes or methods. Therefore, a deeper analysis of infringement itself within patent law in Indonesia is needed regarding the rights of patent holders to receive protection. A broader interpretation of the law is required to address the existing legal gaps. One option is to adopt an approach where parties that control or direct the actions of others can be considered liable for patent infringement.

The rapid advancement of technology presents new challenges related to patent infringement, including the concept of divided infringement, which has been applied in various jurisprudence, such as in the United States. Given its complexity, regulations concerning divided infringement have become an important concept that needs to be considered within the context of patent law in Indonesia. Based on this, the author is interested in researching the Legal Protection for Patent Holders in Divided Infringement in Indonesia.

The current state of the art in intellectual property law has increasingly focused on addressing complex infringement scenarios, including divided infringement. However, Indonesian regulations have lacked specific provisions to address such issues. This article provides a novel analysis of Indonesia's legal framework, particularly after the enactment of Law 65/2024, and proposes legal reforms to strengthen patent protection in response to the challenges posed by Industry 4.0 and 5.0. This article contributes to the discussion by analyzing these developments and proposing reforms to strengthen legal protection and enforcement.

¹⁰ *Ibid.*

2. Research Method

The research method used in this study is a normative juridical approach. This method was chosen based on the legal issue raised in this research, which is the legal vacuum.¹¹ The research approaches used are Legislative Approach, Comparative Approach, and Case Approach. The legal research approach will establish guidelines regarding the key issues to be addressed.¹² The author utilizes primary legal sources, including statutory regulations, secondary materials like legal journals and expert opinions, and tertiary sources such as legal dictionaries. In analyzing the legal materials in this study, the techniques used are systematic interpretation and comparative interpretation.

3. Result and Analysis

3.1 Regulation of Patent Infringement in Indonesia

Patents provide legal protection to inventors by granting them exclusive rights to their inventions.¹³ This protection incentivizes innovation while safeguarding inventors from unauthorized exploitation. Patents are part of a broader legal framework that not only emphasizes commercial aspects but also recognizes the intellectual contributions of inventors. Hegelian philosophy offers a theoretical foundation for understanding intellectual property rights (IPR). Hegel argues that intellectual creations reflect the personality and identity of their creators, making ownership an extension of one's self. Thus, intellectual property rights encompass not only legal protection but also ethical and philosophical dimensions. Violating these rights is akin to infringing on the creator's personal integrity.

According to Hegel, human personality is expressed through creative activities. An invention represents a manifestation of the inventor's identity, justifying their natural right to ownership and control. These rights protect inventors from unauthorized use, modification, or exploitation, which could compromise their integrity.¹⁴ Granting exclusive rights also upholds the autonomy and dignity of inventors while recognizing their contributions to society. In intellectual property law, this theory is used to explain why intellectual creations, such as ideas, innovations, or artworks, should be protected. These creations are regarded as expressions of an individual's will and creativity, which form an essential part of their personality.¹⁵

Patent protection under IPR serves both as a legal tool and as acknowledgment of the intellectual value within inventions. It highlights the concept of infringement as a violation of rights, constituting theft of intellectual efforts, creativity, and innovation.

¹¹ Pasek Diantha I Made, *Metodologi Penelitian Hukum Normatif Dalam Justifikasi Teori Hukum* (Prenada Media, 2016).

¹² Tunggul Ansari Setia Negara, "Normative Legal Research in Indonesia: Its Originis and Approaches," *Audito Comparative Law Journal (ACLJ)* 4, no. 1 (February 2, 2023): 1-9, <https://doi.org/10.22219/aclj.v4i1.24855>.

¹³ Surahno, "Hukum Kekayaan Intelektual" (Universitas Terbuka, 2014).

¹⁴ Deborah E. Bouchoux, *Intellectual Property: The Law of Trademarks, Copyrights, Patents, and Trade Secrets*, 4th ed. (Delmar Cengage Learning, 2012).

¹⁵ Jie Ouyang, "Servitised Property and Personality: Theorising Servitisation through the Personality Theory of Property," *European Law Open* 2, no. 4 (December 2, 2023): 833-56, <https://doi.org/10.1017/elo.2023.54>.

Understanding legal enforcement and different types of patent infringements is essential to ensuring optimal protection for inventors' rights.

IPR in Indonesia has had a legal foundation since 1844, when it was first introduced by the Dutch Colonial Government.¹⁶ Over time, IPR regulations have continued to be updated. A significant milestone in Indonesia's commitment to international intellectual property protection was its accession to the Paris Convention for the Protection of Industrial Property in 1950. This step demonstrated Indonesia's dedication to safeguarding intellectual property rights globally. Furthermore, regulations are governed by the Patent Cooperation Treaty and the TRIPs Agreement, which have been ratified as part of Indonesia's commitment to harmonize legal standards.¹⁷ To date, the Patent Law in Indonesia has undergone several amendments, beginning with Law No. 6 of 1989 on Patents, then revised to Law No. 13 of 1997, and most recently to Law No. 13 of 2016. These changes reflect the evolving dynamics of technology and the need to provide legal protection for new inventions. As part of industrial property rights, patents are protected internationally under the Paris Convention. Article 1(2) of the Paris Convention states,

*"The protection of industrial property has as its object patents, utility models, industrial designs, trademarks, service marks, trade names, indications of source or appellations of origin, and the repression of unfair competition."*¹⁸

This article defines patents as part of industrial property protection. Although patent protection is territorial, one form of protection guaranteed by membership in the Paris Convention is the Right of Priority.¹⁹ The Right of Priority allows an applicant to file a patent application from a member country of the Paris Convention or the WTO, with the application date in the home country recognized as the priority date in the destination country, provided that the destination country is also a member of one of these agreements and the application is filed within the specified timeframe under the Paris Convention.²⁰ Furthermore, Article 2(1) of the Convention stipulates that citizens of each member country are entitled to enjoy the same industrial property protections as citizens of other member countries. This protection includes the benefits or advantages provided by each member country's laws to its citizens, including any legal benefits currently or in the future. The article also states that equal protection will be granted without prejudice to rights specifically regulated within the Convention. Thus, citizens of member countries receive equal legal protection and recourse when their rights are infringed, provided they comply with applicable regulations.

Patent protection is also based on the TRIPs Agreement, which was ratified into national law under Law No. 7 of 1994 concerning the Ratification of the Agreement Establishing the World Trade Organization.²¹ Ratification aims to implement the provisions of the

¹⁶ Surahno, "Hukum Kekayaan Intelektual."

¹⁷ Endang Purwaningsih, "Paten Sebagai Konstruksi Hukum Sebagai Perlindungan Terhadap Inovasi Dalam Bidang Teknologi Dan Industri," *Jurnal Hukum Pro Justitia* 24, no. 2 (2006).

¹⁸ Article 1(2) of Paris Convention for the Protection of Industrial Property.

¹⁹ Article 4(1) of Paris Convention for the Protection of Industrial Property.

²⁰ Article 1 Number 10 of Republic of Indonesia, Law Number 13 of 2016 on Patents.

²¹ Erika Vivin Setyoningih, "Implementasi Ratifikasi Agreement on Trade Related Aspects of Intellectual Property Right (Trips Agreement) Terhadap Politik Hukum Di Indonesia," *Jurnal Penegakan Hukum Dan Keadilan* 2, no. 2 (November 25, 2021): 117-29, <https://doi.org/10.18196/jphk.v2i2.11749>.

TRIPs Agreement into national law.²² In the General Provision and Basic Principles, as the name suggests, general provisions and basic principles require each member country to apply broader legal protections, as long as they do not conflict with the TRIPs Agreement while allowing members the flexibility to determine appropriate methods of implementing the Agreement's provisions within their legal systems and practices. This includes adherence to the Paris, Berne, and Rome Conventions and the Washington Treaty on Integrated Circuits, as well as the principles of national treatment and most favored nation treatment. The goal is not only to provide protection but also to ensure law enforcement fosters, facilitate, and expand the dissemination of technology while respecting ownership rights and promoting technology usage that supports economic and social welfare, maintaining a balance between rights and obligations.²³

In Part III, Section 1 of the agreement, general obligations are outlined,

“Members shall ensure that enforcement procedures as specified in this Part are available under their law so as to permit effective action against any act of infringement of intellectual property rights covered by this Agreement, including expeditious remedies to prevent infringements and remedies which constitute a deterrent to further infringements. These procedures shall be applied in such a manner as to avoid the creation of barriers to legitimate trade and to provide for safeguards against their abuse”.

This article regulates the obligations of member states to provide effective enforcement procedures to address IPR violations in accordance with the provisions of this agreement. Member states must ensure legal protection to prevent the creation of trade barriers and to safeguard against potential abuse. In Indonesia, this is carried out by the Directorate General of Intellectual Property (DGIP) under the Ministry of Law and Human Rights, which is responsible for formulating and implementing policies related to intellectual property in accordance with the regulations.²⁴ More specifically, the DGIP has a Directorate of Investigation and Dispute Resolution tasked with preparing policy formulation and implementation, providing technical guidance, prevention, complaints, enforcement, and monitoring of intellectual property crimes, alternative dispute resolution, and the administration of civil servant investigators.²⁵ Its authority is not limited to patents but also covers other areas of intellectual property.

In the Patent Law 65/2024, patent protection is more specifically regulated. The exclusive rights granted by the state in patents can be owned not only by the inventor but also by other parties as long as they hold the status of Patent Holder. This is regulated in Article 1(6) of the Patent Law, which defines who can be considered a Patent Holder. The Patent Law divides it into three types: the inventor (as the owner of the patent), the recipient of rights from the patent owner, and other parties as subsequent recipients registered in the general patent register. Proof of patent rights is established through a Patent Certificate. Through the Patent Certificate, the Patent Holder can obtain the right to legal protection in accordance with applicable regulations. The Patent Certificate serves as a basis for the

²² *Ibid.*

²³ Tri Setiady, “Harmonisasi Prinsip-Prinsip Trips Agreement Dalam Hak Kekayaan Intelektual Dengan Kepentingan Nasional,” *FIAT JUSTISIA: Jurnal Ilmu Hukum* 8, no. 4 (August 14, 2015), <https://doi.org/10.25041/fiatjustisia.v8no4.322>.

²⁴ Direktorat Jenderal Kekayaan Intelektual, “Struktur Organisasi,” 2024.

²⁵ *Ibid.*

rights holder to take legal action against those who infringe upon the patent, ensuring the exclusive rights of the patent owner are protected against misuse or unauthorized use.

Patent holders have the exclusive right to use their patented product, process, method, system, or use, and prevent others from utilizing it without consent, as outlined in Article 19 of Law 65/2024.

“Pemegang Paten memiliki hak eksklusif untuk melaksanakan Paten yang dimilikinya, memberi izin melaksanakan Paten yang dimilikinya kepada pihak lain, dan untuk melarang pihak lain yang tanpa persetujuannya:

a. dalam hal Paten-produk: membuat, menggunakan, menjual, mengimpor, menyewakan, menyerahkan, atau menyediakan untuk dijual atau disewakan atau diserahkan produk yang diberi Paten;

b. dalam hal Paten-proses: menggunakan proses produksi yang diberi Paten untuk membuat barang atau tindakan lainnya sebagaimana dimaksud dalam huruf a; dan

c. dalam hal Paten-metode, sistem, dan penggunaan: menggunakan metode, sistem, dan penggunaan yang diberi Paten untuk membuat barang atau tindakan lainnya sebagaimana dimaksud dalam huruf a”

This article stipulates that patent holders may prohibit others from making, using, selling, importing, leasing, or delivering the patented product or implementing the patented process, method, system, or use. However, this prohibition may be waived for educational, research, experimental, or analytical purposes as long as it does not harm the patent holder's legitimate interests and is non-commercial. This provision provides patent holders with legal certainty over their exclusive rights while defining boundaries that allow the patent to be used for non-commercial purposes in research and education.

According to Gustav Radbruch's Theory of Legal Certainty, the primary purpose of law is to provide clarity and certainty in regulating societal behavior.²⁶ This theory emphasizes that laws must be established as positive law, meaning they are codified in formal legislation. Furthermore, laws should be fact-based, reflecting actual societal conditions to ensure relevance and fairness. Legal provisions must also be clearly formulated to prevent misinterpretation and facilitate effective implementation. Additionally, laws should possess stability and not be easily altered, ensuring consistency and reliability in governance. Radbruch's theory underscores that legal certainty serves as the foundation for fairness, predictability, and enforceability in legal systems.²⁷ Law 65/2024 does not provide further provisions regarding patent infringement, it still refers to the previous law, Law 13/2016. Further details regarding patent infringement are explained in Article 160, which defines actions that are considered patent infringements if conducted without the patent holder's permission. However, there are no clear provisions regarding the newly introduced patent types, such as system, method, and use patents.

²⁶ Satjipto Rahardjo, *Ilmu Hukum*, 8th ed., 2014.

²⁷ Dino Rizka Afdhali and Taufiqurrohmah Syahuri, “Idealitas Penegakkan Hukum Ditinjau Dari Perspektif Teori Tujuan Hukum,” *Collegium Studiosum Journal* 6, no. 2 (December 12, 2023): 555–61, <https://doi.org/10.56301/csj.v6i2.1078>.

Individuals are prohibited from making, using, selling, importing, or delivering patented products or using patented production processes. This provision provides clear guidelines on what actions constitute patent infringement, thus serving as a legal basis for patent holders to take action against those who violate their rights. Law No. 13 of 2016 also establishes criminal sanctions for patent violators. Article 162 states that any person who willfully and without authorization commits acts violating the provisions of Article 160 will face imprisonment of up to 4 (four) years and/or fines up to IDR 1,000,000,000 (one billion rupiah) for regular patents. For simple patents, lighter penalties apply, with imprisonment of up to 2 (two) years and/or fines up to IDR 500,000,000 (five hundred million rupiah). This provision serves as a deterrent for violators and clarifies the strict legal consequences for those who infringe upon the exclusive rights of patent holders.

Indonesia has established a legal framework for IPR, specifically in patent protection, reflecting a commitment to both national and international standards. Since the first introduction of IPR protection by the Dutch colonial government in 1844, Indonesia's regulations have evolved, with notable milestones including the ratification of the Paris Convention and the TRIPs Agreement. Law No. 13 of 2016 on Patents provides clear guidelines on patent holders' rights, obligations, and infringement procedures. The law empowers patent holders with exclusive rights to prevent unauthorized use of their inventions, backed by legal recourse and criminal sanctions for violators.

3.2 Elements of Patent Infringement in Divided Infringement

Indonesia has emerged as one of the countries with the fastest patent growth, with a 65 percent increase in the number of patents.²⁸ Another country that is currently prioritizing innovation in the technology sector is the United States, which ranks second in the world for the most patents after China in 2022. The United States ranks second globally in patent holdings, with 323,410 patents in 2022, following China, which holds 798,347 patents in the same year.²⁹ Patent protection in the United States has existed since the late 18th century, established under the U.S. Constitution. Article 1, Section 8 grants Congress the authority and duty to advance knowledge by providing safeguards for inventors and their creations. The concept of patent infringement in the United States is detailed in the United States Code Title 35. Under this code, patent infringement is categorized into two types: direct infringement and indirect infringement.³⁰

Indonesia and the United States adopt different legal systems, which influence how their patent laws are structured and enforced. Indonesia follows the Civil Law system, which relies primarily on codified statutes as the main source of law. Legal certainty is emphasized, and judicial decisions are generally not binding as precedents for future cases.³¹ Instead, judges base their rulings on written laws, supported by legal doctrines and expert opinions as secondary sources of law. In contrast, the United States operates

²⁸ Direktorat Jenderal Kekayaan Intelektual, "Indonesia Masuk Negara Dengan Pertumbuhan Perlindungan Paten Tertinggi," 2023.

²⁹ World Intellectual Property Organization, "Ranking of the 20 Countries with the Most Patent Grants 2022," 2022.

³⁰ Arianne Astrinia and Brian Amy Prastyo, "Perbandingan Konsep Pelanggaran Paten Di Indonesia Dan Amerika Serikat: Studi Kasus Pelanggaran Paten Obat."

³¹ Afga Samudera Erlangga and Ellyne Dwi Poespasari, "Comparison of Civil Law and Common Law Legal Systems in the Application of Jurisprudence," *Journal of Law, Politic and Humanities* 4, no. 6 (2024): 2229–2235.

under the Common Law system, where judicial precedents play a central role. Court decisions establish binding precedents under the *stare decisis* principle, making case law a primary source of legal authority.³² This approach allows greater flexibility in interpreting laws, particularly in complex areas such as patent law. Due to these differences, patent regulations in Indonesia and the United States reflect distinct approaches. While Indonesia's framework prioritizes statutory rules and procedural clarity, the U.S. system incorporates judicial doctrines,³³ such as file wrapper estoppel and the doctrine of equivalents,³⁴ to address evolving legal challenges³⁵ and disputes in patent infringement cases. In addition, the doctrine of divided infringement is another example applied in U.S. patent law to handle cases where multiple parties collectively perform actions that infringe on a patent.

This complex form of infringement occurs when multiple parties separately perform actions that violate a patent, often seen in process patents where different steps are carried out by different parties, resulting in an overall infringement. In practice, there are various rules for assessing infringement from divided claims.³⁶ A prominent case illustrating divided infringement is *Akamai Technologies, Inc. v. Limelight Networks, Inc.*

This patent dispute focused on the alleged infringement of a method for delivering electronic data owned by Akamai. The invention is a method of delivering electronic data using a Content Delivery Network (CDN) owned by Akamai. U.S. Patent No. 6,108,703 (Patent 703) was at the center of the case. Akamai sued Limelight, but the District Court initially dismissed the claim, arguing there was no infringement since Limelight did not complete all the steps of the patent. The en banc court overturned the District Court's earlier decision, which had granted Limelight's motion for Judgment as a Matter of Law (JMOL) regarding non-infringement of patent '703. However, in 2012, the Federal Circuit decided that Limelight could be liable for indirect infringement because they directed customers to perform the remaining steps. The final ruling in 2016 determined that Limelight was responsible for direct infringement and must pay \$51 million in damages.³⁷

At the appellate level, the judge assessed that although Limelight did not perform all steps of the patent, they could still be liable for induced infringement because Limelight provided instructions and technical assistance to their customers to carry out those steps. The judge ruled that a party directing or controlling another party to complete steps of the patented method could be held accountable. This underscores the importance of the relationship between the controlling party (principal) and the executing party (agent). The

³² *Ibid.*

³³ Theresia Ngutra, "Hukum Dan Sumber-Sumber Hukum," *Jurnal Supremasi* 11, no. 2 (October 2016).

³⁴ Andika Adhyaksa, "Doktrin Hukum: Perspektif Belaka Atau Menciptakan Hukum Yang Ideal," *De Jure: Jurnal Ilmiah Ilmu Hukum* 5, no. 4 (June 2024).

³⁵ Sutarman Yodo, "Perlindungan Hak Paten (Studi Komparatif Lingkup Perlindungan Di Berbagai Negara)," *FIAT JUSTISIA: Jurnal Ilmu Hukum* 10, no. 4 (May 29, 2017): 697, <https://doi.org/10.25041/fiatjustisia.v10no4.821>.

³⁶ Lowrie Mathew, "The Changing Landscape of Joint, Divided and Indirect Infringement - the State of the Law and How to Address It," *The Journal of High Technology Law* 12, no. 11 (January 2011).

³⁷ *Akamai Techs., Inc. v. Limelight Networks, Inc.*, 805 F.3d 1368, 117 U.S.P.Q.2d 1101 (Fed. Cir. 2015)

requirement of a relationship between principal and agent, along with a contract or cooperation in a joint venture, becomes a crucial factor in determining legal responsibility.

The U.S. courts address the issue of divided infringement by identifying challenges in cases where more than one actor is involved in performing the steps of a patent method claim. In such cases, the key question is whether one party's actions can be attributed to another, allowing the second party to be considered liable for infringement.³⁸ The court notes that one party may be held accountable for the performance of method steps by another party in two main scenarios: when the party directs or controls the performance of another or when the actors form a joint enterprise. For instance, in the case of Akamai's CDN patent, multiple method steps are required for operation. Limelight also operates a CDN, but the final step (tagging) is required to be performed by its customers. Thus, in this instance, Limelight can be held responsible for directing or controlling the performance of another party, which in this case is its customers.

Previously, liability for divided infringement under 35 United States Code Section 271(a) was restricted to instances where an individual acted through an agent (in line with traditional agency principles) or entered into an agreement with another party to execute one or more steps of the claimed method. However, in the Akamai and Limelight cases, the court broadened the scope of divided infringement. It introduced a third criterion, where liability under Section 271(a) could arise if an accused infringer requires involvement in an activity or benefits from performing specific steps of the patented method, while also dictating the manner or timing of their execution.

For the basis of "joint enterprise" liability, the court requires evidence of four elements: (1) an agreement, either explicitly or implicitly, among members of the group; (2) a common purpose pursued by the group; (3) a shared financial interest in that purpose among the group members; and (4) equal rights among the parties to participate in the direction of the enterprise, granting equal control rights to each party. Subsequent cases in the United States, such as *Eli Lilly & Company v. Teva Parenteral Medicines* and *Travel Sentry v. Tropp*, clarify how the "conditions or benefit" test is applied specifically to pharmaceutical and mechanical process patents.³⁹

In the *Eli Lilly* case, the focus was on a pharmaceutical process, where Teva was accused of infringing *Eli Lilly's* patent by directing healthcare providers to implement the patented treatment method. The court ruled that Teva's actions, through instructions on the product label governing the implementation of the method by third parties, could be considered control over the actions of those third parties. This meets the patent infringement standard under the requirement or benefit test.⁴⁰ In the *Travel Sentry* case, the matter centered on a dual access key method for luggage between *Travel Sentry* and *TSA*. The Federal Circuit determined that *Travel Sentry* could be liable for direct infringement because the licensing agreement and provision of master keys to *TSA* were viewed as forms of control and conditioning of benefits. This means that *TSA's* actions in executing the steps of the method could be attributed to *Travel Sentry* under the

³⁸ Keith Robinson, "Economic Theory, Divided Infringement, and Enforcing Interactive Patents," *Florida Law Review* 67, no. 6 (2015).

³⁹ Hunter Keeton and Susmita Gadre, "Considerations in Divided Infringement Based on Recent Case Law," December 2, 2022.

⁴⁰ *Eli Lilly Company v. Teva Pharmaceuticals USA, Inc.* (S.D.Ind. 2004), No. IP02-0512-C-B/S (S.D. Ind. Jul. 29, 2004).

requirement or benefit test, thus expanding how divided infringement is assessed in collaborative cases.⁴¹

Divided patent infringement occurs when one party controls the actions of others or collaborates in a joint enterprise. The court establishes three main criteria to determine liability, including the presence of instructions or arrangements made by the accused party. The four elements required for liability claims based on joint enterprise include the existence of an agreement, a common goal, shared financial interests, and equal control rights. Case examples such as *Akamai v. Limelight*, *Eli Lilly, Co. v. Teva Parenteral Medicines, Inc.*, and *Travel Sentry, Inc. v. David Tropp* illustrate the application of these elements in practice, clarifying how courts assess infringement in situations involving multiple parties.

3.3 Legal Protection for Patent Holders in Divided Infringement in Indonesia

Indonesia has established a legal framework for IPR protection, particularly in patents, reflecting its commitment to both national and international standards. Since it was first introduced by the Dutch colonial government in 1844, IPR regulations in Indonesia have evolved, marked by significant milestones such following the adoption of the TRIPs Agreement and Paris Convention. Law 65/2024 provides guidelines on the rights, obligations, and enforcement procedures for patent infringement. However, patent law continues to evolve over time, including developments in the United States related to patent infringement issues, such as in cases of divided infringement. In the United States, patent law includes the concept of inducement or "induced infringement," where a party that encourages or directs another to infringe may be held accountable, as outlined in 35 United States Code Section 271(b). In Indonesia, patent infringement is regulated under Article 160, which states:

“Setiap Orang tanpa persetujuan pemegang paten dilarang:

a. dalam hal Paten-produk: membuat, menggunakan, menjual, mengimpor, menyewakan, menyerahkan, atau menyediakan untuk dijual atau disewakan atau diserahkan produk yang diberi paten; dan/atau

*b. dalam hal Paten-proses: menggunakan proses produksi yang diberi Paten untuk membuat barang atau tindakan lainnya sebagaimana dimaksud dalam huruf a”.*⁴²

However, this provision not only leaves a legal vacuum regarding method, system, and use patents, but also fails to address actions that induce or direct others to commit patent infringement. Actions such as instructing, encouraging, or assisting others to perform infringing activities are not explicitly prohibited under this article. Article 160 focuses solely on direct infringement and does not incorporate the concepts of induced infringement or contributory infringement, which are recognized under the United States patent law system. As a result, under Indonesian patent law, a party that induces or directs another to infringe is not directly considered to be infringing, leaving gaps in protection for patent holders, particularly in the new patent and cases involving divided infringement.

Indonesian patent regulations are still limited to direct infringements committed by a single party without accounting for the liability of parties that may collaborate or direct

⁴¹ *Travel Sentry, Inc. v. Tropp*, No. 16-2386 (Fed. Cir. 2017).

⁴² Article 160 of Republic of Indonesia, Law Number 13 of 2016 on Patents.

such infringements. The absence of regulations on inducement and other forms of indirect infringement creates a legal void in the Indonesian patent system, especially in situations where divided infringement occurs. In cases of divided infringement, more than one party is involved in carrying out a protected patent, but no single party completes all steps of a patented method claim. If cases such as *Akamai v. Limelight*, *Eli Lilly v. Teva*, and *Travel Sentry v. Tropp* occurred in Indonesia, the current legal system would not provide sufficient protection for patent holders because it does not recognize the concept of infringement by multiple parties, with one party inducing the infringement.

Legal protection involves the preservation of human rights that have been violated by others, ensuring individuals can fully exercise the rights afforded to them by law. It encompasses a range of legal actions that law enforcement authorities are required to carry out, providing a sense of security – both physical and psychological – against threats or disruptions from any source.⁴³ As a rule-of-law state, legal protection is a fundamental matter that must be guaranteed for every citizen. According to Philipus M. Hadjon's theory of legal protection, can be divided into two types based on its instruments: preventive and repressive protection.⁴⁴ Preventive protection, in this case means that the state should provide regulations to prevent infringement of patent rights. Therefore, Indonesian patent regulations need to be adapted to include indirect infringement, such as induced infringement and contributory infringement, to protect patent holders from patent infringement. Repressive protection, in this case, means that when an infringement has occurred, the patent holder must have clear legal access to assert their rights, including seeking justice against parties who contribute to the infringement.

Legal protection is essential to ensure the exclusive rights of patent holders and to prevent infringement, as mandated by the TRIPS Agreement, which requires member states to provide effective protection for patent rights. To achieve this, Indonesia needs to consider implementing regulations that cover indirect infringement, as adopted in the United States. Some countries, such as Germany, also have a similar approach to handling patent infringements. In Germany, even if there is no direct infringement, a party may still be held liable if they actively induce patent infringement or contribute to it (referred to as indirect infringement).⁴⁵

In a divided infringement situation, infringement is carried out by more than one party in executing the steps of a patent claim. Liability in such cases can be determined by the existence of control or direction by one party to another to infringe, or through collaboration in the form of a "joint enterprise," which can be proven with four elements: agreement, shared objective, shared financial interest, and equal right to control the joint activity. As an alternative regulation in Indonesia, if one party (e.g., a service provider) instructs or encourages another party (e.g., a customer) to perform actions that infringe on a patent, the first party could be considered liable for indirect infringement. Courts could assess whether there is sufficient control or direction to establish liability, as well as whether there is a contractual agreement clarifying the responsibilities of each party regarding patent infringement. Evidence of relationships between the parties, such as

⁴³ Mutia Denti Armala Zuami and Bakti Tresnawati, "Perlindungan Hukum Terhadap Pemegang Hak Paten Akibat Dihapusnya Kepemilikan Hak Paten Dari Daftar Umum Paten," *Jurnal JURISTIC* 1, no. 01 (April 4, 2020): 95, <https://doi.org/10.35973/jrs.v1i01.1486>.

⁴⁴ Philipus M. Hadjon, *Perlindungan Hukum Bagi Rakyat Indonesia* (Malang: Bina Ilmu, 1987).

⁴⁵ Alexandra Harguth, *Divided Patent Infringement in Germany* (McDermott Will & Emery, 2012).

communication, instructions, or technical assistance, may show that one party controls or influences the actions of another.

Legal protection for patent rights in Indonesia still requires updates to better align with the evolving nature of patent infringements, especially in cases of divided infringement. Currently, Indonesian patent law does not cover the concept of indirect infringement, such as induced and contributory infringement, which are recognized in the United States and some other countries. This gap in regulation creates a legal void that reduces protection for patent holders, especially in situations where infringement involves multiple parties collaborating or directed to infringe on patent rights.

In fulfilling legal protection for patent holders, both doctrine and law grant exclusive rights. As a rule-of-law state, Indonesia should ensure effective legal protection for patent holders by adopting regulations that include indirect infringement. This step aligns with international standards as mandated by the TRIPS Agreement, and it guarantees that patent holders have clear rights to pursue claims against parties who contribute, either directly or indirectly, to patent infringement. By implementing regulations that address indirect infringement, Indonesia would establish a more comprehensive and fair legal framework for protecting the exclusive rights of patent holders, ultimately promoting innovation and providing legal certainty in the enforcement of intellectual property rights.

4. Conclusion

Patent infringement in divided infringement can occur through controlling the actions of others or through the establishment of a joint enterprise. The elements that must be fulfilled to determine infringement liability include the existence of an agreement, a common goal, shared financial interests, and equal control rights. Case examples such as *Akamai v. Limelight*, *Eli Lilly, Co. v. Teva Parenteral Medicines, Inc.*, and *Travel Sentry, Inc. v. David Tropp* illustrate the application of these elements in practice, which assists courts in assessing infringement by multiple parties. To provide adequate legal protection for patent holders, Indonesia can fill the legal vacuum in patent protection by adopting provisions that address indirect infringement, including contributory and induced infringement. Additionally, it is essential to further regulate divided infringement by incorporating key elements such as control or direction, and joint enterprise liability to ensure comprehensive protection—especially for new types of patents, such as methods, systems, and uses, introduced under Law No. 65 of 2024. This would align with international standards outlined in the TRIPS Agreement. By implementing these regulations, Indonesia will establish a more comprehensive and fair legal framework for protecting the exclusive rights of patent holders while also promoting innovation and providing legal certainty in the enforcement of intellectual property rights.

Acknowledgments

This research owes its completion to the invaluable contributions of many individuals and institutions. First and foremost, I express my deepest gratitude to Almighty God for His guidance and grace throughout the process of preparing this work. I would also like to extend my profound appreciation to Afifah Kusumadara, S.H., L.L.M., SJD, and Dr. Yenny Eta Widyanti, S.H., M.Hum, as the advisors, for their insightful guidance, constructive

feedback, and encouragement, which have greatly enriched this manuscript. Lastly, I would like to express my heartfelt gratitude to all lecturers and academic staff of the Faculty of Law at Universitas Brawijaya, who have imparted valuable knowledge to the author. May this work contribute to the advancement of knowledge and serve as a source of inspiration for others.

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Laws and Regulations

Law Number 13 of 2016 concerning Patents

Law Number 65 of 2024 concerning the Third Amendment to Law Number 13 of 2016 concerning Patents

TRIPs Agreement