



Anno 1951

# Biro Oktroi Roosseno

INTELLECTUAL PROPERTY NEWSLETTER - June 2013 - 7<sup>th</sup> edition

Kantor Taman A-9 Unit C1&C2 Jl. DR. Ide Anak Agung Gde Agung (Mega Kuningan), Jakarta 12950 - INDONESIA

www.iprbor.com

## This edition newsletter contains:

1. MOU Program "Be Safe With Genuine"
2. The 13<sup>th</sup> World IPR day "Non Stop Innovation toward Domestic Success"
3. Preparation of draft regulation regarding Patent Cooperation Treaty
4. Technical Consultation on Collective Management Society
5. Indonesia Geographical Indications
6. MCM cassation was granted by the Supreme Court
7. Patent for "Fish Box Packaging" was cancelled
8. The Cheesecake Factory trademark registration is deleted
9. The Cancellation Lawsuit of Trademark "SKFSKC"
10. The 5<sup>th</sup> APAA Indonesia Group, Forum Group Discussion: : **The Null and Void of Patent due to the negligence of Annuity Payment**

### 1. MOU Program "Be Safe With Genuine"



Directorate General of Intellectual Property Rights (DGIP) signed a Memorandum of Understanding (MOU) with the Indonesian Anti-Counterfeiting Society (MIAP). One of the basis in signing the MOU is the several findings from forensic computer experts (SEA Forensic Study: Malware Study 2013) that the distribution of pirated software always carries the risk of a malicious virus or a new malware outbreak that

highly detrimental to consumers, either for companies or individuals.

The Director General of Intellectual Property Rights, Mr. Ahmad Ramli, said that the findings are very important and DGIP will deal with this issue seriously in order to protect the consumer interests. He also said that DGIP will conduct any legal effort that deem necessary in case they find any parties, including computer sellers who sell computer with the pirated software (illegal), since there will be a risk of malware for consumers. Further, DGIP will carry out maximum efforts to ensure that the business community, including user and seller of computer also consumer become more aware of the risks which could cause the loss.

Moreover, the Director of Investigation of DGIP, Drs. Moh. Adri S.H., has also promised that the tagline such as "Be Safe With Genuine" is not only a tagline

but it will take firm action against the perpetrators or for those who commit violations on the Intellectual Property Rights. (March, 2013) source DGIP

## 2. The 13<sup>th</sup> World IPR day "Non Stop Innovation toward Domestic Success"



The celebration of World Intellectual Property Day in 2013 was held with a different concept. If in the past two years took place at the Presidential Palace (2011) and also at the Vice President Palace (2012), this year the celebration took place in a public area in downtown Jakarta, precisely at the Blitz Megaplex, Grand Indonesia. The DGIP has chosen Blitz Megaplex as an attempt to get closer with the public.

In the said commemoration, the numerous awards were given to the people who have creativity, innovation, and appreciation of the IPR, namely:

NO.	Award Recipient	Category
1	Ahmad Fuadi	Novel Works
2	Mus Mulyadi	Legendary Singer
3	Panbers (Pandjaitan Brothers)	Legendary Singer (Group)
4	Aloysius Riyanto (deceased)	Singer and Song Writer

5	Saung Angklung Udjo	Traditional Music
6	Daeng Soetigna	Angklung Music Developer
7	Bojonegoro United	Copyright for Computer Program
8	Andrew Darwis KASKUS for category	Copyright and Multimedia Content Innovator and e-commerce
9	Dr. Keri Lestari	Patent Inventor in Pharmaceutical field
10	Nico Kansil	IPR Figures
11	Ir. Haji La Tinro La Tunrung from Enrekang	Geographical Indication Motivator
12	Blue Bird Group	Reputed and Trusted Trademark Owner
13	Garuda Indonesia	Reputed and Trusted Trademark Aviation
14	Majelis Ulama Indonesia	Institution that concerned for IPR
15	Movie Team of "Habibie dan Ainun"	Cinematography works
16	Bunga Citra Lestari	Multi Talented Artist
17	PT Kalbe Farma	Original Software user (company)

Further, in this occasion the Ministry of Law and Human Rights signed the Memorandum of Understanding (MOU) between the three ministries and two state-owned enterprises. The three ministries are the Ministry of Tourism and Creative Economy; Ministry of Communications and Information

Technology (Ministry of Communication), and Ministry of Health (MoH), meanwhile, the two state-owned enterprises are the State Electricity Company (PLN) and National Nuclear Energy Agency (BATAN). (April 2013) source DGIP

### 3. Preparation of draft regulation regarding Patent Cooperation Treaty



Directorate of Patent of the Directorate General of Intellectual Property Rights (DGIP) held a Focus Group Discussion (FGD) on Patent Cooperation Treaty (PCT) together with stakeholders of DGIP with the theme "Priority Rights and Patent Cooperation Treaty". In accordance with the above mentioned exposure, DGIP is preparing the draft of Regulation which can unify the comprehension of PCT for all relevant parties.

The FGD is highly important as an attempt to gathering input, information or feedback from stakeholders regarding the Priority Rights and patent application through PCT which is one of the material to be regulated in the regulation (Terms and Conditions) of Patent Application Procedures as a replacement of Government Regulation No. 34 of 1991 concerning Patent Application Procedures as implementing regulation for the previous Patent Law No. 6 of 1989, which at this present is no longer relevant as implementing regulation

based on Law No. 14 of 2001 concerning Patent.

In accordance with the dynamic development of patent filing application through PCT, it is necessary to establish a revision of Government Regulation No. 34 of 1991 regarding Patent Application Procedures. In the Draft Regulation will set the requirements and procedures for application of patents including the Priority Right and PCT. In addition, the Draft Regulation will be socialized to the wider community and are expected to seek an input, in order to contribute more comprehensive results. Therefore, the nature and functions of this government regulation as the Implementing Regulations mandated by the law may be applied and be able to achieve the maximum goals and objectives. This Draft Regulation is expected to be drawn up a concrete proof of the government's earnest efforts to preserve national interests, particularly in contributing the development of national laws. (May 2013) Source DGIP

### 4. Technical Consultation on Collective Management Society



Director General of Intellectual Property Rights, Prof. Dr. Ahmad M. Ramli, SH, MH, FCBarb, officially open the Technical Consultation on Collective Management Society which was held on May 30 - 31, 2013 at Hotel Sahid, Jakarta. The event

was held based on the growing of Collective Management Society (CMS) in Indonesia that could raise legal problems which lead to discomfort in carrying out of royalty payments.

Nowadays, the CMS existence in Indonesia that does not run smoothly nowadays is due to the misunderstanding between CMS creator and CMS producer. The synergy of all elements that support national copyright systems should be continuously developed, strengthening each other to protect the rights optimally, legal certainty as a necessity, solid, strong, transparent and accountable CMS. The National CMS that become coordinator for the pre-existing CMS is remains acclaimed as a legal entity which has the main goal is to simplify the bureaucracy for music licensing users with optimal use of information technology. (May 2013) source DGIP

### 5. Indonesia Geographical Indications



On June 3, 2013, Geographical Indication Experts Team (TAIG) Indonesia was held a meeting of Substantive Examination results presented by the Society of Protection of Geographical Indications (MIPG) from 3 (three) different regions in Indonesia. Arabica coffee **Java Ijen Raung** (East Java), Arabica Coffee **Java Preanger** (West Java) and **Patchouli Oil Aceh** (Aceh Special Region) are the names of the Geographical Indications that being examined in order to obtain

certificates from the Ministry of Law and Human Rights cq. the Directorate General of Intellectual Property Rights.

TAIG has evaluating the report as set forth in the Book of Requirements from each MIPG. In the period of March to May 2013, to evaluate the Book of Requirements, TAIG has been conducting a field examination and interviews the members of MIPG. Beside to ensure the credibility of the applicant / MIPG, the field team also ensures the detailed specifications of each product characteristic. For examples, to examine the categories of assessment material characteristics for Geographical Indications of a coffee are:

1	Fragrance	6	Uniformity
2	Flavor	7	Balance of flavor (sourness, coarseness, bitterness)
3	After Taste	8	Clean
4	Acidity	9	Sweetness
5	Grain	10	Overall

A product could be categorized have a specialty/distinctiveness if it has reached a certain score. For example Arabica Coffee **Java Preanger** and Arabica Coffee **Java Ijen Raung** have reached a score of 80. This indicates that the distinctive taste of both coffees can't be obtained if they are planted in other areas.

Further, there are only 18 registrations of Geographical Indications which currently have been registered in Indonesia. In regards with that, the MIPG are expected to increase their registration for Geographical Indications in Indonesia and the authority under MIPG will be able to improve the welfare of farmers

and built a preserves for Geographical Indications in Indonesia territory.  
(May 2013) Source DGIP

## 6. MCM cassation was granted by the Supreme Court



Swiss top fashion product “Moderne Cration Munchen” (MCM) has been successfully defeat local product bearing the same trademark. As stipulated in the decision by the Supreme Court, the case was start when MCM found out that their product is being plagiarized by local businessman. Having an objection to that, MCM file a cancellation action to the Jakarta Commercial Court.

MCM stated that their trademark is a well-known mark in every countries around the world that proven by having boutique in the USA, Singapore, the United Kingdom, Canada, Malaysia and South Africa. Beside having trademark registration in the said countries, MCM also has conduct promotion and marketing.

However, the cancellation suit was rejected by the first instance court, that makes MCM file a cassation to the Supreme Court. In the consideration, the Supreme Court stated that the

Commercial Court has been mistakenly implementing the laws, since in the evidences shows that MCM is a well-known mark not only in other countries, but also in Indonesia. Based on the said decision, the local mark MCM was cancelled and should be crossed out from the General Register of a Mark. (May 2013) Source detik.com

## 7. Patent for “Fish Box Packaging” was cancelled



Supreme Court cancelled patent certificate owned by Sukar Prayitno (Defendant) with the title “Packaging of Fresh or Live Fish for Air Transportation and the Packaging Methods” since it has no novelty and lack of innovation.

The Defendant was sued by PT Kemas Ciptatama Sempurna, PT Maxfos Prima, and PT Akrikkurnia Kencana (Plaintiffs). The Plaintiffs are top companies in Indonesia for packaging since 1989.

The said packaging is made from styrofoam in rectangle shape and has a cover on top of it. The use of this packaging is to store a fresh or life fish for the purpose of delivery by air. The Plaintiffs has been using the said packaging since long time ago and it is proven by Test and Examination Certificate in 1997, 1998, 2002, 2005 and

appointment letter from Garuda Indonesia. Apart from that, they also advertised in Yellow Pages.

The Plaintiffs were summoned by the Defendant on May 2009 stating that the Plaintiffs should stop producing the said packaging boxes since the Plaintiffs has no rights in producing it, while the Defendat is the true patent holder of the said packaging boxes.

After the Plaintiffs conducting search at the DGIP, it is revealed that the Defendant indeed has the certificate since March 12, 2008 with the title "Packaging of Fresh or Live Fish for Air Transportation and the Packaging Methods".

Assuming that the Defendant's patent is not novel, the Plaintiffs file a cancellation law suit at the Jakarta Commercial Court. On May, 6 2010 the Panel of Judges decided that the Defendant patent is not novel and has become a public domain, therefore it is cancelled for the entire claim with all consequences.

Based on this decision, the Defendant files a cassation to the Supreme Court. However, this remedy is failed, since the Supreme Court affirming the Commercial Court Decision. (May 2013) Source detik.com

#### 8. The Cheesecake Factory trademark registration is deleted



American company, The Cheesecake Factory Assets Co LLC (Defendant), has

to accept the fact that their trademarks registration in Indonesia has been declared delete by the Jakarta Commercial Court due to it has not been use in 3 (three) consecutive years.

The Deletion suit was filed by De Silva U Chandra Sri Lai (Plaintiff) as the owner of trademak Cheese Cake in Indonesia. The Cheese Cake trademark of the Plaintiff has been registered since March 1, 2004 under IDM000050336 to protect the service in class 35 which is a shop that selling bread, cake and beverages. The Plaintiff intend to expand his cheese cake business in Indonesia, therefore he also file a trademark application in classes 30 and 43. However, he found out that there are registered trademarks belong to the Defendant, and after thorough investigation, it appears that Defendant not using the trademarks in Indonesia.

Based on this decision, the Defendant file a cassation and the case still being examined at the Supreme Court. (April 2013) source *Bisnis Indonesia*

#### 9. The Cancellation Lawsuit of Trademark "SKFSKC"



On November 21, 2012, **AKTIEBOLAGET SKF** (Plaintiff) filed a cancellation lawsuit against local businessman, Chandra Amin (Defendant), at Jakarta Commercial

Court. The Plaintiff is the beneficial owner of the well-known mark "**SKF, SKF AKTIEBOLAGET SKF, SKF FLAG, SKF EXPLORER** and **SKF & Logo**" which has been registered at the Ministry of Law and Human Rights of the Republic of Indonesia cq. Directorate General of Intellectual Property Rights cq. Directorate of Trademark under classes 04, 06, 07, 08, 09, 11, 12, 16, 17, 35, 37, 39, 40, 41, and 42.

The reason of this cancellation is that the Plaintiff found out the existence of the trademark "**SKFSKC**" that registered in the General Register of Mark under Registration No. IDM000327060 dated October 18, 2011 in the name of the Defendant, that having substantial similarities to the Plaintiff's trademark, so it can be mislead consumers considering the goods sold under the

trademark **SKFSKC**. Moreover, the Defendant's products also similar to the product being sold/distributed by the Plaintiff. Therefore, the Plaintiff considered that the Defendant's trademark registration was registered based on bad faith.

On mid March 2013, finally the Panel of Judges of the Jakarta Commercial Court has decided that the Plaintiff is the rightful owner, the rights holder and the first user of trademarks **SKF**, the decision also state that **SKF** is a well-known mark and declaring that the trademark **SKFSKC** has substantial similarities to **SKF**, so that **SKFSKC** trademark registration have to be cancelled.

Against this decision, the Defendant file a cassation to the Indonesia Supreme Court and at the present the case is still being examined. (March 2013)

## 10. The 5<sup>th</sup> APAA Indonesia Group, Forum Group Discussion: The Null and Void of Patent due to the negligence of Annuity Payment



On June 27, 2013 Asian Patent Attorneys Association (APAA) Indonesia Group held the 5<sup>th</sup> Forum Group Discussion (FGD) in Jakarta. This FGD is a routine

agenda held by the APAA Indonesia Group every three times a year. This time FGD is a co-operation between APAA Indonesia Group with the Directorate

General of Intellectual Property Right (DGIP) under the topic of **“Dissecting problem in regard with the Null and Void of Patent due to the negligence of Annuity Payment: Solution and Anticipation”**. The discussion was opened by Mrs. Migni Myriasandra as the President of APAA Indonesia Group, continued with the opening remarks by Mr. Ahmad M. Ramli (The Director General of Intellectual Property). According to Directorate General of IPR (DGIP), it was stated from the data founded by Financial Investigation Bureau of Indonesia (BPK) at the DGIP, that there are 2.425 of patent applications which have been granted still remain unpaid. This matter becomes a problem for DGIP, since it is considered as a national debt. Pursuant to Article 88 Law No. 14 of 2001, a patent holder should pay the annual/maintenance fee, and pursuant to Article 88 of the same Law stated that if the patent holder did not fulfilled his/her obligation to pay the annuity/maintenance fee the patent will

be deemed Null and Void. Based on the said founding and Articles as regulated in Law No. 14 of 2001, DGIP issued a notification letter to the patent holder instructing them to fulfill his/her obligation to pay the annuity/maintenance fee or if they neglect to pay the said fee, the patent will be deemed Null and Void.

This discussion is aimed for the parties that still unclear with the notification which has been issued by the DGIP, so they can interact actively with the DGIP and understand the matters clearly. The speakers of this FGD are Mr. Razilu (Director of Information Technology) and Mr. Surahno (Head of Finance) and the participants are patent applicants, companies, universities, IP Consultants, and others. The FGD was also attended by Mrs. Corrie Naryati (Director of Patent), Mrs. Yuslisar Ningsih (Director of Copyright, Industrial Design, Layout Design and Integrated Circuit, and Trade Secret), Mr. Fatlurahman (Director of Trademark), and the echelon II staffs of DGIP. (June 2013) Source *Minutes of FGD APAA Indonesia Group*



(Anno 1951)

## **BIRO OKTROI ROOSSENO**

Intellectual Property Protection, Licensing,  
Franchising, Unfair Competition, Advocacy &  
Legal Consultation and Litigation

Kantor Taman A9, Unit C1 & C2  
Jl. Dr. Ide Anak Agung Gde Agung (Mega Kuningan),  
Jakarta 12950, Indonesia  
P.O. Box 4585, Jakarta 10001

Phone No. : (62-21) 576 2310 (Hunting System)  
Fax. No. : (62-21) 576 2301, (62-21) 576 2302,  
eFax. No. : (65) 6826 4084  
E-mail : [iprlaw@iprbor.com](mailto:iprlaw@iprbor.com) & [migni@iprbor.com](mailto:migni@iprbor.com)  
Website : <http://www.iprbor.com>