

## Special Committee Question Q228

**National Group:** Indonesia

**Title:** Prior user rights

**Contributors:**

**Reporter within  
Working Committee:**

**Date:** 28 April 2014

### I. Analysis of current law and case law

Our answers to the following questions under Indonesian national laws are as follow:

**1. *Is there a provision in your national patent law that makes an exception to the exclusive right of a patent holder for parties who have used the invention before the filing/priority date of the patent (“prior user rights”)***

Yes, under Patent Law No. 14 of 2001, there are provisions of “prior user rights” in Article 13, 14, and 15, where a party who exploits an Invention at the time a similar Invention is filed for Patent shall still be entitled to exploit the Invention as a prior user, even though the similar Invention is then granted a Patent.

The right to use the invention mentioned under Article 13 shall not be applicable when the party, who exploits the Invention as a prior user, exploits the Invention by using the knowledge about the Invention from the description, drawings, or any other information from the Invention for which a Patent is requested.

A party who uses the previous invention shall only recognized as “the prior user”, if, after a Patent has been granted for the same Invention, he submits a request for such purpose at the Directorate General.

However, the procedure for obtaining the recognition as a prior user shall be regulated further by a Government Regulation.

**2. *How frequently are prior user rights used in your country? Is there empirical data on how often prior user rights are asserted as a defense in negotiations or court proceedings?***

Since the implementing regulation has not yet been issued, therefore, data is not available.

3. ***To what degree must someone claiming a prior user right have developed the embodiment which is asserted as having been used prior to the filing/priority date of the patent? Is it sufficient to have conceived of the embodiment, or must it have been reduced to practice or commercialized?***

The law No 14, 2001 regarding Patent is silent about the degree of development of an embodiment, it is only expanded to the stipulation that the party shall be recognized as a prior user right if the party requested for prior user right, after the same invention is granted, filed an application for a prior user right. The request for a prior user right shall be furnished with the evident that the exploitation of his/her invention was not performed by using a description, drawings, or sample of, or other information on the Invention for which a Patent has been requested.

4. ***Does it make a difference in your country if***
- ***the prior use occurred before the priority date; or***
  - ***it occurred after the priority date, but before the filing date?***

The law is silent regarding that condition.

5. ***Is there a territorial limitation with regard to the scope of prior user rights in your country? In other words, if a party has used the patented invention before the filing/priority date in a foreign country, can it the claim a prior user right in your country?***

Article 13 par (2) stipulates that the Article 13 par (1) is applicable for the invention filed using priority rights. Quote "Article 13 par (1) a party, who exploits the Invention at the time a similar Invention is filed for Patent shall still be entitled to exploit the Invention as a prior user, even though the similar Invention is then granted a Patent."

6. ***Is there a provision that excludes prior user rights for those who have derived their knowledge of the invention from the patent holder and/or the inventor?***

Not available.

7. ***Is it necessary that the prior user has acted in good faith to be granted a prior user right?***

Yes it is necessary that the prior user has acted in good faith as mentioned under the elucidation of Article 15 par (2).

8. ***Is there a material limitation with regard to prior user rights in your country? More specifically, if someone has used an embodiment of a patented invention before filing/priority date of the patent can he then claim a prior user right to anything covered by the patent? In particular, is the owner of a prior user right entitled to alter/change the embodiment of the patented invention used before the filing/priority date of the patent of other embodiments that would also fall within the patent's scope of protection or is he strictly limited to the concrete use enacted or prepared before the patent's application or priority date? In the event that changes/alterations are permitted by your national law, to what degree?***

The law is silent.

9. ***Does a prior user right in your country require the continued use (or the necessary preparations of the use) of the invention claimed by the patent at the moment in which the objection of the prior user right is asserted or is it sufficient of the invention claimed by the patent has been used before the priority/filing date of the patent but has been abandoned at a later stage?***

The law is silent.

10. ***Is a prior user right transferable and/or licensable in your country? If yes, under what circumstances?***

Except for inheritance the right as the Prior user right shall not transferred.

11. ***Does your national law provide any exceptions or special provisions with regard to a prior user right owned by a company within a corporate group? In particular can a prior user rights be transferred or licensed to another group company?***

See answer point 10

12. ***Are there any exceptions for any specific fields of technology or types of entity with regard to prior user rights in your country?***

The law is silent on those exceptions, or that exceptions are not available.

13. ***The groups are invited to explain any further requirements placed on prior user rights by their national law.***

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II. Policy considerations and proposals for improvements to your current system

14. ***Should a prior user right exist in any legal system? If yes, what is the main legal justification for a prior user rights?***

Yes, the main legal justification it means to give a protection to the prior user with the good faith but he does not file a patent application.

15. ***What is the perceived value of prior user rights in your country?***

Not available

16. ***Are there certain aspects that should be altered or changed with regard to the existing implementation of the prior user right in your country? In particular are there measures or ways that could lead to improvement and/or strengthening of your current system?***

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### III. Proposal for harmonization

Groups are invited to put forward proposals for the adaptation of harmonized rules in relation to prior user rights. More specifically, the Groups are invited to answer the following questions:

**17. *Is harmonization of prior user rights desirable?***

Yes.

**18. *What should be the standard definition of “use” in relation to prior user rights? Must the use be commercial?***

The standard of use could be during the exploitation or commercially implemented.

**19. *What should be the definition of “date” (or “critical date”) for prior user rights? (i.e. when must the invention have been used to establish a prior user right?)***

The date for the prior user rights should be the date when the invention was invented or implemented for commercially before the same invention was filed.

**20. *Should a prior user right persist in the event that the use and/or preparation for use of the invention has already been abandoned at the time of the patent application/priority date or should the prior user right lapse upon the termination of the use and/or preparation of use?***

A prior user certificate shall expire at the same time as the expiry of the patent for the same invention, then the prior user right lapses upon the termination of the use and or preparation of use.

**21. *What should be the territorial scope of a prior user right? In particular, if a party has used the patented invention before the decisive date in a foreign country, should it then be entitled to claim a prior user right?***

See Article 13 Law Number 14, 2001 on Patent.

**22. *Should there be a provision that excludes prior user rights for those who have derived their knowledge of the invention from the patent holder and/or the inventor? If yes, should it be necessary that the prior user has acted in good faith to be granted a prior user right?***

Yes, and it should be necessary that the prior user has acted in good faith to be granted a prior user right.

**23. *Should there be material limitation with regards to prior user rights? In particular, if someone has used an embodiment of a patented invention before the filing/priority date of the patent, should he then be entitled to claim a prior user right to anything covered by the patent?***

Based on our patent law, someone will be recognized as a prior user with evidence that the exploitation of the invention was performed by his own document, drawing and description, and not using a description, drawing, or sample of, or other information on the Invention for which a Patent has been requested.

**24. *Should a prior user right be transferable and/or licensable?***

It is transferable if it inheritance.

**25. *Should there be any exceptions for any specific fields of technology or types of entity with regard to prior user rights?***

There should be no exception for any specific fields of technology or types of entity with regard to prior user rights.

**26. The group is also invited to present all other suggestions which may appear in the context of the possible international harmonization of "prior user rights".**

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