



*Where we are now –  
patent pending or  
pending patent?*

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# Outline

- Political support important
  - Funding to support IP development
- Strong court system to support patent development
  - Developed system that work
  - Consider specialized IP court
  - areas that need improvement
- Need support from developed countries
- Some statistics

# What we need

- High level political commitment
  - Funding
  - Other countries
    - Singapore - Scope IP / IPM (Intellectual Property Management)
    - Malaysia - Enterprise Innovation Fund, Techno Fund
    - Thailand - OMSEP
  - Current focus on creative economy
    - Fashion
    - Digital content
    - Music
    - Industrial/Technical know how?
  - SME funding or research institution?
  - IP professionals
    - Need to skill up

# Current state of patent law

- Why do we care if litigation is rare
  - Many patents are not enforced
  - Why bother to file
  - Courts take the lead for a mature system
- Patent is a very complex area
- The state of patent law application, no different from ten years ago
- Foreign companies fear to litigate here
  - Lack of jurisprudence
  - Inexperienced judges

# Current state of patent law case study

- Patent claim for - “COMPOSITION OF ALKALINE PHOSPHATE SOLUTION AS PRESSURE RETAINING FLUID WITH ADJUSTED SALINITY FOR OIL AND GAS WELLS”
- First round - patent revoked, claim is for naturally occurring substance without numerical limit
- Second round - patent still revoked,
- Third round - patent restored because parties reach settlement

- Is this an abuse?
- Plaintiff and Defendant can now gang up.

- The claim of the Patent Registration No. ID 0 018 469 shouldn't get protection from Patent Office because salinity from the chemical that produced between 1-150.000 ppm by Alkali Halide could be found on Sea and piped water as usually used by public/ Public Domain.
- .

- Based on the fact, it is not fair if the people that used sea or piped water especially the Plaintiff which always do research and development by using the chemical should get the permission from the Defendant first.
- The Defendant has bad faith. The defendant has intent to monopolize the Patent rights which become Public Domain.



- The Patent registration with title “COMPOSITION OF ALKALINE PHOSPATE SOLUTION AS PRESSURE RETAINING FLUID WITH ADJUSTED SALINITY FOR OIL AND GAS WELLS” in the name of Defendant registration No. ID 0 018 469 on 5 December 2006 has no new invention and has no inventive step

# Why infringement action is rare?

## Current state of patent law

- Outcome uncertain
- Judges are not specialized
- Patent could be defective because translation error
  - No post grant amendment
- No discovery
- Undeveloped Jurisprudence
  - Poor case reporting
  - Learn from past case experience - rare

# Current state of patent law

- Patent drafting experience limited  
Understanding of patent is limited
- Established firms mostly prefer overseas  
Inbound work
  - Manpower focused in translation into Indonesian language
  - Little investment in patent drafting scale

# What do we need

- High level political commitment
- Better quality decisions – better patent law appreciation all around
  - How? Better reporting
- Case reporting crucial for development
- Specialist IP court,
  - going on travelling circuit
- Training from developed jurisdiction
  - Experienced foreign judge as advisor to Judge panel

# Statistics - infringement cases

Year	Number of cases	Plaintiff Win	Plaintiff Lose
2003	1	1	-
2007	3	-	3
2008	1	1	-
2012	0	-	-
2013	1	-	1

# Statistics – infringement cases (foreign plaintiffs)

Year	Number of cases	Foreign Plaintiff	Local Plaintiff
2003	1	-	1
2007	3	1	2
2008	1	-	1
2012	0	-	-
2013	1	-	1

# Statistics - patent invalidation cases

Year	Number of cases	Plaintiff Win	Plaintiff Lose	Year
2003	3	1	2	2003
2004	2	1	1	2004
2007	1	1	-	2007
2008	5	2	3	2008
2009	2	1	1	2009
2011	2	1	1	2011
2012	1	1	-	2012

# Statistics – invalidation cases with foreign plaintiffs

Year	Number of cases	Foreign Plaintiff	Local Plaintiff
2003	3	-	3
2004	2	1	1
2007	1	-	1
2008	5	-	5
2009	2	-	2
2011	2	-	2



# Trend in patent litigation

Plaintiff (nationality)	Defendant (nationality)	Year	Type Furniture Mechanical Automotive	Case type Infringement Invalidation	Outcome Patent infringed Amount of damages ordered Patent invalidated	Witness Witness from patent office, witness from academic institution
PT. KUMALAJAYA INTERNUSA (Indonesia)	1. SISWANDI (Indonesia). 2. PATENT OFFICE (Indonesia)	2002	Mechanical	Invalidation	Patent invalidated (no novelty)	Witness academic institution, witness from Non- Government Organization (Association)
TAKEDA CHEMICAL INDUSTRIES, Ltd (Japan)	PATENT OFFICE (Indonesia)	2002	Chemical	Appeal to Patent Office Decision	Court ordered Patent Office to Re-examination the Patent Application	No Witness
PT. STRAWLAND (Indonesia)	1. PT. SEOILINDO PRIMATAMA (Indonesia) 2. PATENT OFFICE (Indonesia)	2003	Mechanical	Invalidation	Procedural Issue (PoA not qualified)	No Witness
PT. TATA LOGAM LESTARI (Indonesia)	PT. SUGI LANGGENG GENTALINDO (Indonesia)	2003	Building Materials	Infringement	Patent infringed, damages ordered IDR 500.000.000 (five hundred million rupiah)	Witness from patent office

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Plaintiff (nationality)	Defendant (nationality)	Year	Type Furniture Mechanical Automotive	Case type Infringement Invalidation	Outcome Patent infringed Amount of damages ordered Patent invalidated	Witness Witness from patent office, witness from academic institution
1. PT. KARUNA (Indonesia)	1. PT. BOMA INTERNUSA (Indonesia)	2003	Mechanical	Invalidation	Patent valid (defendant Patent has novelty)	Witness from Ministry of Industry and Trading, Witness from Ministry of Law and Human Right, Witness from PT. ANJAPLAST (which has Patent license from PT BOMA INTERNUSA)
2. PT. YANAPRIMA HASTAPERSADA (Indonesia)	2. PATENT OFFICE (Indonesia)					
3. PT. FORINDOPRIMA PERKASA (Indonesia)						
4. PT. MURNI MAPAN MAKMUR (Indonesia)						
5. PT. MURNI MAPAN MAKMUR (Indonesia)						
6. PT. DUTA PRIMA PLASINDO (Indonesia)						
7. PT. MITRA MURNI MAKMUR (Indonesia)						
8. PT. EDELI JAYA PERKASA (Indonesia)						
9. PT. POLITAMA PAKINDO (Indonesia)						
10. PT. POLIPLAS INDAH SEJAHTERA (Indonesia)						

# Trend in patent litigation

Plaintiff (nationality)	Defendant (nationality)	Year	Type Furniture Mechanical Automotive	Case type Infringement Invalidation	Outcome Patent infringed Amount of damages ordered Patent invalidated	Witness Witness from patent office, witness from academic institution
PT. TRIPRIMA INTIBAJA INDONESIA (Indonesia)	PT ENOMOTO SRIKANDI INDUSTRIES (Indonesia)	2004	Mechanical	Invalidation	Patent invalidated	Witness from Government institution (PT. Pertamina which is costumer of the Defendant)
Salbu Research And Development (Proprietary) Limited (South Africa)	Patent Appeal Commission (Indonesia)	2004	IT	Appeal to Patent Appeal Commission Decision	Appeal rejected	No Witness
PT SUPERDRY INDONESIA (Indonesia)	Lars Mikael Lang THORDEN (Sweden)	2005	Mechanical	Dispute of invention rights	Defendant is not the inventor of Patent Application No. P00200400397	Witness from Plaintiff (Plaintiff's employees)
E.I. DU PONT DE NEMOURS AND COMPANY (USA)	PT. PROBIO INTERNATIONAL CHEMICALS (Indonesia)	2005	Chemical	Infringement	No Patent infringement	Witness from academic institution

# Trend in patent litigation

Plaintiff (nationality)	Defendant (nationality)	Year	Type Furniture Mechanical Automotive	Case type Infringement Invalidation	Outcome Patent infringed Amount of damages ordered Patent invalidated	Witness Witness from patent office, witness from academic institution
PT. Niko Elektronik Indonesia (Indonesia)	EDIJANTO (Indonesia)	2008	Mechanical	Invalidation	Patent invalidated	Witness from academic institution, witness from public (the Defendant's costumer), witness from Patent Office
H. DODI SOLEHUDIN (Indonesia)	1. EDI JASIN (Indonesia) 2. Patent Office	2008	Automotive	Invalidation	Patent is valid	No Witness
Siswandi (Indonesia)	1. Budianto (Indonesia) 2. Patent Office (Indonesia)	2008	Mining	Invalidation	Patent is valid	Witness from academic institution.
PT. MITRA CHEMINDO SEJATI (Indonesia)	1. HARYANTO WARDOYO (Indonesia) 2. FORREST DALE STANDLEY (USA)	2009	Chemical	Invalidation	Patent is valid	Witness from academic institution
Bajaj Auto Limited (India)	Honda Giken Kogyo Kabushiki Kaisha	2010	Automotive	Invalidation	Procedural Issue (Plaintiff filed appeal passed the grace period)	



Thank you  
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