

Compulsory licensing in India

January 4, 2021

What is Compulsory licensing?

- A compulsory license provides that the owner of a patent or copyright licenses the use of their rights against payment either set by law or determined through some form of adjudication or arbitration
- According to WTO, compulsory licensing is when a government allows someone else to produce a patented product or process without the consent of the patent owner or plans to use the patent-protected invention itself.
- In other words, it is a license or authorization issued by the government to an applicant for making, using and selling a patented product or employing a patented process without the consent of the patentee. The Indian Patents Act of 1970 discusses compulsory licensing.
- It is one of the flexibilities in the field of patent protection included in the WTO's agreement on intellectual property – the TRIPS (Trade-Related Aspects of Intellectual Property Rights) Agreement.

What does the Indian Patents Act 1970 say about Compulsory licenses?

It says that at any time after the expiration of three years from the date of the grant of a patent, any person interested may make an application to the Controller for grant of compulsory license on patent on any of the following grounds, namely:

- that the reasonable requirements of the public with respect to the patented invention have not been satisfied, or
- that the patented invention is not available to the public at a reasonably affordable price, or

- that the patented invention is not worked in the territory of India

What is a patent?

According to World Intellectual Property Organization(WIPO), a patent is an exclusive right granted for an invention, which is a product or a process that provides, in general, a new way of doing something, or offers a new technical solution to a problem. To get a patent, technical information about the invention must be disclosed to the public in a patent application.

Compulsory license for the export of patented pharmaceutical products in certain exceptional circumstances.

According to the Indian patents act 1970, compulsory license shall be available for manufacture and export of patented pharmaceutical products to any country having insufficient or no manufacturing capacity in the pharmaceutical sector for the concerned product to address public health problems, provided compulsory licence has been granted by such country or such country has, by notification or otherwise, allowed importation of the patented pharmaceutical products from India

The Controller shall, on receipt of an application in the prescribed manner, grant a compulsory licence solely for manufacture and export of the concerned pharmaceutical product to such country under such terms and conditions as may be specified and published by him

Examples of cases where compulsory license is mandated by the Indian government

Cases pertaining to grant of compulsory license□□ India's first ever compulsory license was granted by the Patent Office on March 9, 2012, to Natco Pharma for the generic production of Bayer Corporation's Nexavar, a life saving medicine used for treating Liver and Kidney Cancer.