



Europäisches
Patentamt
European
Patent Office
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des brevets

Compulsory licensing in Europe

A country-by-country overview



European Patent Academy

Planning and co-ordination

European Patent Academy

Responsible for editing

European Patent Academy

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Published by

European Patent Office

Munich

Germany

© 2018

ISBN 978-3-89605-222-3

This publication is also available online at www.epo.org/compulsory-licensing

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Greece

Legal basis

Arts. 13 and 14 of Law 1733/87 on technology transfer, inventions and technological information, as amended.

The Biotech Directive (including its Art. 12) was implemented by Presidential Decree 321/2001 that refers back to Law 1733/87.

The provisions of EU Regulation 816/2006 are directly applicable.

Grounds for applying for a licence

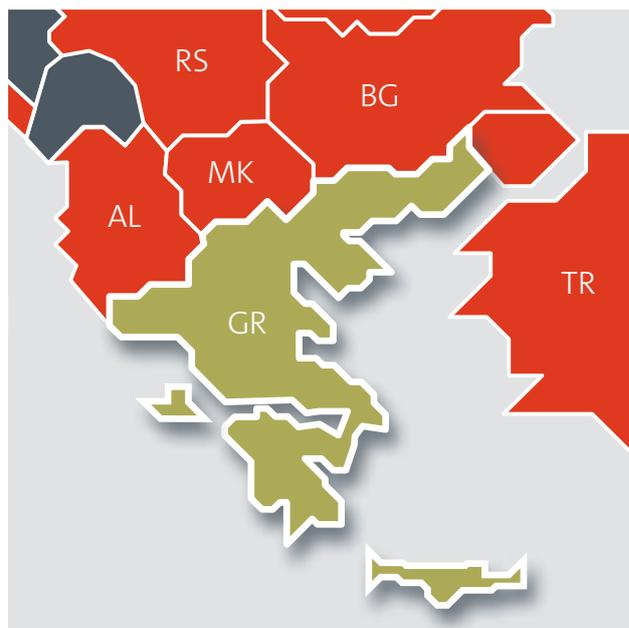
Compulsory licences may be granted on the following grounds:

A third party may request a compulsory licence from the court provided that all of the below conditions apply:

- (i) Three years from grant or four years from filing of a patent have passed;
- (ii) The patentee has not worked the invention or has not worked the invention in a way to cover local demand;
- (iii) The third party is capable of working the invention;
- (iv) The patentee has been notified, a month before initiating legal proceedings, of the third party's intention to request a compulsory licence.

Importation from EU and WTO countries qualifies as working of the invention for the purpose of this ground for applying for a compulsory licence (see Presidential Decree 54/1992 and law 2359/95).

A compulsory licence may also be granted by the State when an invention has not been worked or has not been worked in a way to cover local demand¹, and an imperative need for purposes of national health or national defence exists. The Minister of Development may grant a compulsory licence to any state authority to work the invention in Greece.



General procedure

The competent authority is the First Instance Court or the Ministry of Development.

Compulsory licence granted to third parties by the Court

The party requesting a compulsory licence must notify the patentee of his intention to request a compulsory licence at least one month before making the request to the court. Upon request to the court, a request for the provision of a written opinion from the patent office must be made on whether the conditions for granting the licence are met. The applicant serves the patentee with copies of (a) the licence request and (b) the patent office's opinion before the court hearing.

The written opinion of the patent office is not binding on the court in reaching a decision on the compulsory licence.

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¹ Importation from EU and WTO countries qualifies as working of the invention also for the purpose of a compulsory licence granted by the state (see Presidential Decree 54/1992 and law 2359/95).

Compulsory licence granted by the State

The patentee and any other party capable of providing useful information on the granting of a compulsory licence (such as the patent office) are invited by the Ministry of Development to provide their views on the granting of a compulsory licence. The compulsory licence is granted by decision of the Ministry of Development to any State authority.

The First Instance Court and the Minister of Development have discretion as to the terms of the compulsory licence after obtaining the patent office's opinion.

If there is a dispute on the terms of the licence and the amount due, the First Instance Single Member Court will decide following the procedure applied for preliminary injunctions.

It is not possible to obtain a compulsory licence by way of preliminary relief.

If the compulsory licence is not complied with, any party can file a request to the court to grant an order for the other party to comply and/or request financial compensation.

Appeal/review

The decision can be appealed before the Court of Appeal, whose decision can be further appealed before the Supreme Court. The Supreme Court only examines the legal correctness (not the facts) of the decision issued by the second instance court.

In the case of a compulsory licence granted by the State, the decision may be appealed before the Supreme Administrative Court. If the patent owner challenges the amount of licence fees (royalties) granted, the patentee may launch an action before the First Instance Single Member Court following the procedure applied for Preliminary Injunctions.

Statistics and jurisprudence

There have been no cases concerning compulsory licences.