



Compulsory Licensing under The Patents Act, 1970

A Comprehensive Analysis under the Patents Act, 1970

Published by **Patenevo** | Indian Intellectual Property Knowledge Platform | www.patenevo.in

Compulsory licensing under the Patents Act, 1970 represents one of the most carefully calibrated intersections between private intellectual property rights and the constitutional commitment to public welfare. The Act makes clear that patents are not granted as absolute monopolies insulated from social accountability. Instead, they are conditional statutory privileges, conferred subject to compliance with obligations that ensure the invention serves the public interest.

Legislative Philosophy

The legislative philosophy behind compulsory licensing in India cannot be understood without recalling the structural evolution of Indian patent law. The Patents Act, 1970 was enacted following the recommendations of the Ayyangar Committee, which emphasised that patent protection must not become an instrument of economic exploitation. Although the 2005 amendments introduced product patents in pharmaceuticals to comply with TRIPS, Parliament retained and reaffirmed compulsory licensing as a core public interest mechanism.

Section 84 — The Cornerstone

Section 84 is the cornerstone of the compulsory licensing framework. It permits 'any person interested' to apply for a compulsory licence after the expiry of three years from the date of grant. The three-year waiting period signals that Parliament intended to grant patentees a reasonable opportunity to exploit their inventions before subjecting them to compulsory intervention. The grounds under Section 84(1) are threefold and disjunctive: the reasonable requirements of the public have not been satisfied, the patented invention is not available at a reasonably affordable price, or the invention is not worked in the territory of India.

Reasonable Requirements of the Public — Section 84(7)

The phrase 'reasonable requirements of the public' is further elaborated in Section 84(7), which sets out circumstances in which such requirements shall be deemed not to have been satisfied. These include refusal to grant licences on reasonable terms, failure to meet demand on reasonable terms, restrictive trade practices and non-working of the invention in India. The statutory language is intentionally



capacious — it does not confine the inquiry to mere quantitative supply but invites examination of whether the patentee's conduct has, in substance, impeded access.

Reasonably Affordable Price

The second ground under Section 84 — availability at a reasonably affordable price — introduces a normative economic standard. The Act does not define affordability. This omission is deliberate; affordability cannot be reduced to a universal numerical threshold. It must be evaluated in light of socio-economic conditions.

Bayer Corporation v. Natco Pharma Ltd. — Bombay High Court

The Controller of Patents granted a compulsory licence in respect of Sorafenib Tosylate (Nexavar), used in treatment of renal and hepatocellular carcinoma. The drug was priced at approximately INR 2.8 lakhs per month. The Bombay High Court upheld the grant, affirming that affordability must be assessed from the standpoint of the public and not solely from the patentee's perspective of recouping investment. The Court declined to accept that availability to a small fraction of patients satisfied statutory requirements — articulating a pricing jurisprudence grounded in distributive justice.

Working in the Territory of India

The third ground under Section 84 concerns whether the invention is 'worked in the territory of India.' In Bayer, the Controller and the High Court examined whether limited quantities imported by Bayer met domestic demand. The Court adopted a contextual approach — where importation is minimal relative to demand and local manufacture is feasible, non-working may be inferred. The inquiry remains fact-specific.

Procedural Safeguards

An applicant must ordinarily demonstrate efforts to obtain a voluntary licence on reasonable terms as required under Section 84(6)(iv), unless such efforts are excused. This aligns with Article 31(b) of TRIPS, which requires prior negotiation except in cases of national emergency or extreme urgency. Compulsory licensing is therefore not automatic; it is the outcome of a structured adjudicatory process.

Terms of Compulsory Licences — Section 90

Section 90 mandates that licences be non-exclusive and non-assignable and that they be granted predominantly for supply of the Indian market. It also requires that the patentee receive reasonable remuneration. In Bayer, the royalty was fixed at 6% of net sales, subsequently enhanced to 7% by the Intellectual Property Appellate Board. Section 90 thereby mirrors the safeguards contemplated in TRIPS



Article 31(h).

Section 85 — Revocation for Non-Working

Section 85 introduces a more stringent consequence. If, after grant of a compulsory licence, the conditions justifying it continue for a period of two years, the Controller may revoke the patent. The structure of Sections 84 and 85 reflects escalating intervention: first compulsory licensing, then possible revocation.

Sections 92 and 92A — Emergency and Export

Section 92 empowers the Central Government to declare that compulsory licences may be granted in cases of national emergency, extreme urgency or public non-commercial use — without prior negotiation with the patentee. Section 92A permits compulsory licensing for export of patented pharmaceutical products to countries with insufficient manufacturing capacity, reflecting India's role as a supplier of affordable generics to developing nations.

TRIPS Compatibility

The compatibility of India's compulsory licensing regime with TRIPS has been widely discussed. TRIPS does not prescribe an exhaustive list of grounds for compulsory licensing; it leaves Members free to determine the bases upon which such licences are granted, subject to procedural safeguards. India's framework satisfies the core requirements of Article 31: individual merits review, prior negotiation except in emergencies, adequate remuneration and judicial review. There has been no adverse WTO ruling against India's compulsory licensing provisions.

Conclusion

Compulsory licensing under the Indian Patents Act represents a jurisprudential commitment to balance. It affirms that innovation deserves reward, but not at the cost of exclusion so severe that it defeats the social purpose of patent protection itself. The framework's endurance, doctrinal coherence and treaty compatibility ensure that it will remain a central feature of India's patent landscape in the years to come.

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