

Albania

Legal basis

Law No. 9947 of 7 July 2008 on Industrial Property (as amended) (hereinafter IP Law).

This legislation implements the relevant TRIPS articles on intellectual property including those on compulsory licensing.

Grounds for applying for a licence

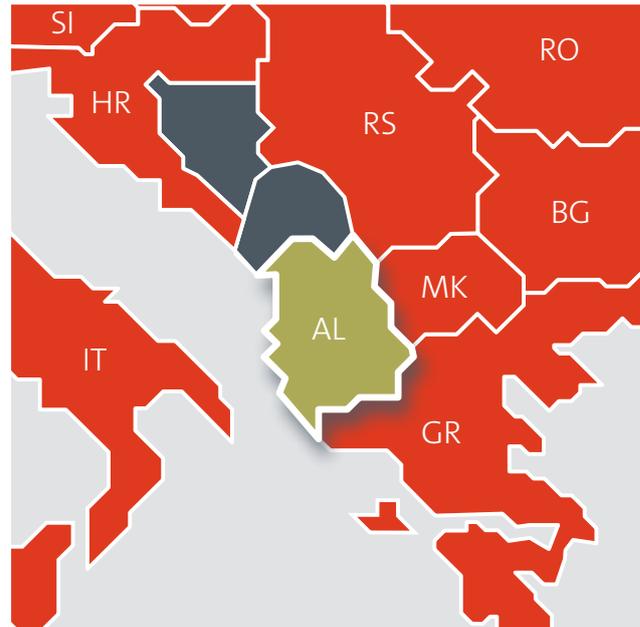
(1) The court may grant a compulsory licence:

(a) to any person who can demonstrate that he is able to exploit the invention, which is the subject-matter of a patent granted in the Republic of Albania, as well as who meets the requirements provided in the respective regulation issued for the implementation of IP Law, provided that:

- (i) four years have passed from the filing of the patent application or three years have passed from the grant of the patent;
- (ii) the patent owner has not exploited the patent for a reasonable period of time or has not made efficient and serious preparations to do so, unless he provides legitimate reasons for omission to act;
- (iii) the person has made all efforts to obtain authorisation from the patent owner, under reasonable conditions and within reasonable time periods, and if such efforts had not been successful within a reasonable period of time.

(b) based on the request for a non-exclusive use of the invention protected by the patent or of the plant species protected by this patent right. The court may grant a compulsory licence for an earlier patent to the owner of a later patent or right holder of the plant species, who cannot use the later patent or the right of a plant species without infringing the earlier patent, against a payment set by an expert chosen by the court, provided that:

- (i) the invention claimed in the later patent or the protected plant species is a technical innovation of considerable economic significance as compared with the invention contained in the earlier patent;
- (ii) they have asked the patent or right holder of the plant species for the right to obtain a contractual licence, but it has not been granted to them.



For a non-exclusive use of a protected invention, the court may take any measure it deems necessary to verify these facts.

The owner of an earlier patent or the holder of the right of a plant species may obtain an interrelated licence with reasonable conditions to use the invention protected by the later patent or the protected plant species.

(c) according to Art. 50(3) IP Law, the court may grant a compulsory licence for a patent and a supplementary protection certificate regarding the production and sale of pharmaceutical products, when such products are intended for export to countries considered as being “in need” in order to meet public health problems.

(2) In specific cases, a compulsory licence may be granted for a patented invention, without the consent of the patent owner, by the Minister of Defence or the Minister of Health in the interests of defence or national security.

General procedure

As a rule, the competent authority to grant a compulsory licence is the Tirana district court. An interested person may file a request to the Tirana district court to obtain a compulsory licence. The request must meet and comply with all the legal requirements.

The court has the discretion to set the terms and conditions that will be contained in a compulsory licence and will consider:

- (1) the scope and the duration of the exploitation should be limited to the purpose for which the authorisation has been given;
- (2) the exploitation should be non-exclusive;
- (3) the exploitation should be non-transferrable. In the case of a compulsory licence, the authorised exploitation for the earlier patent is transferable only when the later patent or the plant species is transferred;
- (4) the quantity of pharmaceutical products to be produced should not exceed the country's needs or those of the importing countries on the basis of other compulsory licences.

A compulsory licence is valid until the end of the time period determined by the court or until the expiry of the patent. Upon a reasoned request, the court may annul the authorisation in order to protect the legitimate interests of the authorised persons, when the circumstances which led to the issue of the authorisation have ceased to exist and there is no possibility for them to recur.

The use of a compulsory licence is limited to supply the market of the Republic of Albania. The patent owner has the right to adequate compensation for the compulsory licence, taking the economic value of the authorisation into account. If the parties do not agree, the amount of the compensation shall be set by the court.

Compulsory licences must be registered in the patent registry of the Albanian General Directorate of Industrial Property.

The holder of a compulsory licence may renounce it at any time. If the holder of a compulsory licence does not exploit it within one year from the date of grant, the patent owner may request the modification or the annulment of the compulsory licence.

Appeal/review

Compulsory licences granted by the Tirana district court may be appealed to the Court of Appeal.

Decisions of the Minister of Defence or the Minister of Health for exploitation of a patent via a compulsory licence by the government or third parties authorised by the government may be appealed to the Tirana district court.

Statistics and jurisprudence

None to date.