

Bulgaria

Legal basis

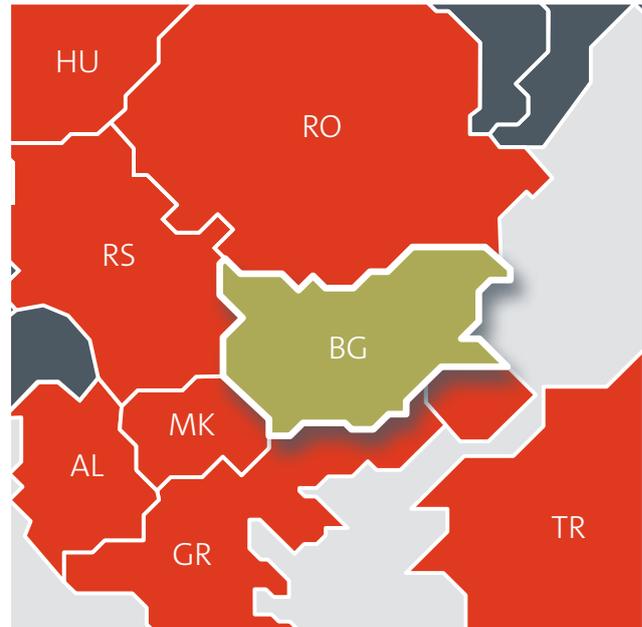
Art. 32 of the Law of Patents and Utility Models Registration (1993) (hereinafter LoP).

Art. 32a was adopted in 2006 and intended to implement Art. 12 Biotech Directive.

Grounds for applying for a licence

Arts. 32 and 32a LoP provide for the grant of a compulsory licence under the following specific circumstances:

- (1) The claimant has unsuccessfully tried to obtain a contractual licence from the patentee under fair conditions and at least one of the following conditions is met:
 - the invention has not been exploited for a period of four years from the date of filing of the patent application or three years from the grant of the patent, the later term being applicable, or
 - within the time limits set out above the invention has not been put to sufficient use to satisfy the needs of the national market, unless the patent owner proves valid reasons thereof.
- (2) The compulsory licence is of public interest, even if negotiations with the right owner over the patented invention have not been conducted.
- (3) The invention is part of the subject matter of a later patent and is included in the scope of another, earlier patent, when the owner of the earlier patent refuses to grant a licence under fair conditions, and where the subject matter of the later patent represents a significant technical progress of great economic importance compared to the subject matter of the earlier patent.
- (4) When a plant breeder cannot obtain or use the right in a plant variety without infringing an earlier patent and insofar as the licence is required for using the plant variety for the purposes of its legal protection, or when the owner of a patent for a biotechnological invention cannot use it without infringing an earlier plant variety right, provided that the breeder or the owner of a patent for a biotechnological invention proves that he has tried unsuccessfully to get a contractual licence



from the patent or plant variety owner, and the plant variety or the invention represents a significant technical progress of great economic importance, compared to the patented invention or the protected plant variety.

General procedure

Compulsory licences are an administrative procedure, conducted before the Bulgarian Patent Office (hereinafter BPO).

According to Arts. 55(2) and 57(1) LoP, the authority competent to grant a compulsory licence is a panel of experts from the Disputes Department of the BPO, specifically appointed for the hearing by the Chairman of the BPO. Art. 57(2) LoP further specifies that the panel must consist of five experts, two of whom are lawyers.

The procedure is initiated by a written request by the person who has a legal interest to request a compulsory licence. The request should be accompanied by evidence (written and material) in support of the facts and circumstances claimed, as well as explicit evidence that the claimant is capable to use the invention within the scope of the licence requested. After a formal examination, a copy of the request and supporting evidence is sent to the patent owner, who has a three-month time limit to respond. The response is sent back to the claimant for review and filing of observations within one month. The statement of the claimant is sent back to the patent owner only if it contains new facts and evidence.

The appointed panel of experts examines the request, opinions and evidence provided and, if necessary, has consultations with outside experts in the relevant technical field. After completing the examination, the panel convenes an oral hearing where all parties, as well as any appointed outside experts in the relevant technical field are summoned. During the oral hearing, each party presents its position. Witnesses may be heard if necessary. Only the grounds for granting the compulsory licence outlined in the initial request are debated during the oral hearing. If new evidence is presented, the hearing will be adjourned. The decision on the merits is taken behind closed doors. It is taken by the panel of experts and subsequently approved by the Chairman of the BPO.

Art. 32(7) LoP provides that the scope of the compulsory licence shall be determined by the purpose it was granted for. This is a precondition to which the panel is bound, thereby granting the panel discretion, albeit limited, as to the terms of the licence. It is, however, disputable whether the panel has discretion with regard to the licence fee. Art. 32(10) LoP provides that the compulsory licensee shall owe the patent owner a remuneration, but does not provide as to who determines it. Art. 66 LoP provides that disputes concerning the amount of remuneration for the grant of a compulsory licence shall be reviewed by the Sofia City Court, which is a civil and not an administrative court. It could therefore be concluded that the panel has no discretion to establish the amount of the remuneration as part of its decision to grant the compulsory licence, but it is the patent owner who must do so. If the licensee does not agree the dispute must be reverted to the Sofia City Court.

The civil procedure to determine the amount of remuneration awarded to the patent owner for the compulsory licence is a general court procedure with open sessions and hearing of the parties, submission of evidence, hearing of witnesses, and so on. The court often appoints one or more experts during these types of disputes to determine the amount of the remuneration, based on the terms of the licence and different methods for its calculation. The experts' testimony usually forms the basis for the decision on the merits. The decision may be appealed to the Sofia Court of Appeals and, in certain circumstances, before the Supreme Court of Cassation as a final instance.

Appeal/review

The BPO decision may be appealed within three months of its announcement to the parties before the Sofia City Administrative Court. The decision of the Sofia City Administrative Court is subject to cassation before the Supreme Administrative Court, whose decision is final.

The Sofia City Administrative Court and the Supreme Administrative Court may return the case back to the BPO for a new decision on the merits based on the court's explicit instructions on the application of the law.

Statistics and jurisprudence

Our research shows that at least since 1993, the year the current LoP was first adopted, there have been no procedures for granting of a compulsory licence initiated before the BPO and, consequently, there is no court practice at all on this topic.