

Estonia

Legal basis

Estonian Patents Act of 16 March 1994 (hereinafter PA).

The Biotech Directive was implemented several years before Estonia joined the EU in 2004, and EU Regulation 816/2006 applies directly.

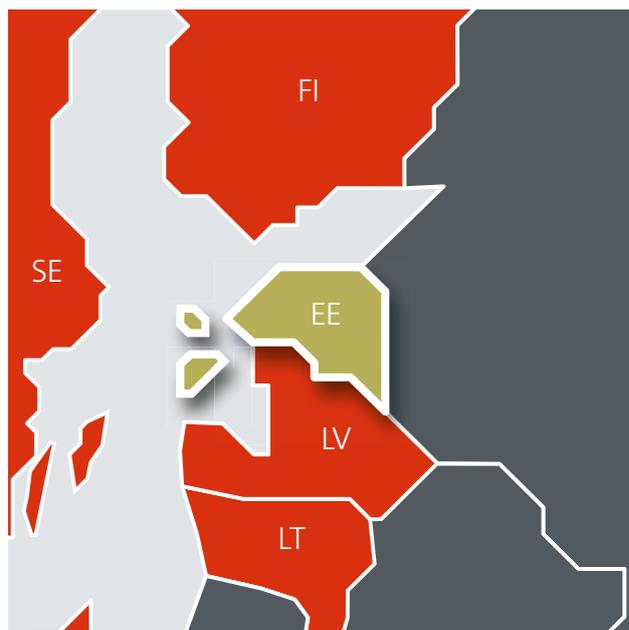
Grounds for applying for a licence

Pursuant to Section 47(1) PA, a person who is interested in using a patented invention and is capable of doing so in the Republic of Estonia, may, upon refusal of the proprietor of the patent to grant a licence, file a court action to acquire a compulsory licence in any of the following cases:

- the proprietor of the patent has not used the invention in the Republic of Estonia within three years from the publication of the notice concerning the grant of the patent or within four years from the filing of the patent application, whereas the term which expires later shall apply;
- the proprietor of the patent does not use the invention to an extent corresponding to the needs of the domestic market of the Republic of Estonia;
- the patent hinders the use of another, technically advanced invention significant for the economy of the Republic of Estonia;
- national defence, environmental protection, public health and other significant national interests of the Republic of Estonia require the use of the invention, including the need to use the invention in connection with a natural disaster or other emergency;
- the patent hinders the grant of plant variety rights pursuant to the Plant Propagation and Plant Variety Rights Act or the use of the protected variety.

Pursuant to Section 47(2) PA, a compulsory licence shall not be granted if the proprietor of a patent imports the product protected by the patent from any member state of the WTO to an extent corresponding to the needs of the domestic market of the Republic of Estonia.

The legal basis for compulsory licences for protected plant varieties is laid down in Section 53(1) of the Estonian Plant Propagation and Plant Variety Rights, which provides that a person interested in using and able to use the variety protected by the plant variety right may apply for a compulsory licence in the following cases:



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- 1) the use of the protected variety is in the public interest, or
- 2) the licensor has not, within three years after the plant variety right was granted, used the variety or issued a licence for use of the variety to another person.

General procedure

Granting compulsory licences for inventions is under the jurisdiction of Harju County Court as the court of first instance. Granting compulsory licences for protected plant varieties falls under the jurisdiction of the Estonian Minister of Rural Affairs.

Inventions

A prerequisite for the grant of a compulsory licence for an invention is the refusal of the proprietor of the patent to grant a licence, so the person interested in a compulsory licence must first ask the proprietor of the patent for a voluntary licence. If the proprietor of the patent refuses, it is possible to file an action for obtaining a compulsory licence with a court. The court hears the action in accordance with the general rules of civil procedure, with the patent proprietor participating as the defendant, and at the end of the proceeding issues a decision granting or refusing the action. A compulsory licence granted by the court is valid as of the date of making an entry in the register of patents based on the respective court decision.

Upon the grant of a compulsory licence for an invention, the court shall determine the terms and conditions of the compulsory licence, including the extent and duration of the use of the invention and the amount and procedure for payment of the licence fee. The extent and duration of the use of the invention shall be determined on the basis of the needs of the domestic market of the Republic of Estonia. If circumstances change after a compulsory licence has been granted, both the licensor and the licensee may file a new action with a court for amendment of the terms of the compulsory licence.

Plant varieties

To obtain a compulsory licence for a protected plant variety, the person interested in using the plant variety must submit a relevant application to the Minister of Rural Affairs. The application shall set out the information proving the existence of the basis for a compulsory licence (as described above). The owner of the plant variety is notified of the application and may submit its opinion. Based on the information contained in the application, the Minister shall assess whether the issue of the compulsory licence is justified and shall make a decision to issue or to refuse a compulsory licence within 30 working days after the receipt of the application. The right to exploit a protected variety arising from a compulsory licence is created as of the date of making the relevant entry in the Plant Varieties Register.

A compulsory licence will set out the extent of the use of the rights attached to the protected variety subject to transfer as well as the territory where those rights may be used, and specify the licence fee which the licensee must pay to the holder of the plant variety rights. The licence fee will be based on the average licence fee applied to relevant plant species. In the event of a compulsory licence for exploitation of an essentially derived variety, payment of a fee to the holder of the initial variety right will also be prescribed. A compulsory licence is issued for a term of two to four years. If the circumstances which constituted the basis for issue of a compulsory licence continue to exist at the time of expiry of the term of the compulsory licence, the licensee may apply for a new compulsory licence for a term of four years.

Appeal/review

The court decision granting or refusing a compulsory licence for an invention may be appealed first to the circuit court and further to the Supreme Court.

The Minister's decision granting or refusing a compulsory licence for protected plant varieties may be disputed either

by filing a challenge to the decision in administrative procedure or filing a complaint to the administrative court. The administrative court's decision may in turn be appealed in higher courts.

Statistics and jurisprudence

None to date.