

## Finland

### Legal basis

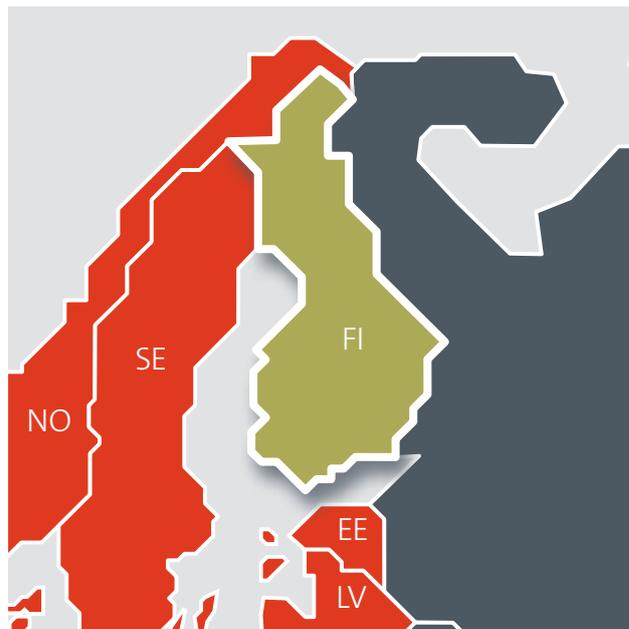
The Finnish Patents Act (550/1967) (hereinafter PA) sets forth the legal basis for granting compulsory licences. The grounds for granting compulsory licences are set out in Chapter 6, Sections 45-50 PA.

Art. 12 Biotech Directive is implemented based on Government Proposition 21/2000, and EU Regulation 816/2006 is implemented based on Government Proposition 175/2010.

### Grounds for applying for a licence

The Market Court may grant a compulsory licence on the following grounds:

- If three years have elapsed since the grant of the patent and four years have elapsed from the filing of the application and the invention is not worked or brought into use to a reasonable extent in Finland, any person who wishes to work the invention in Finland may obtain a compulsory licence to do so unless legitimate grounds for failing to work the invention may be shown (Section 45); importation also qualifies as working of the invention in Finland;
- The proprietor of a patent for an invention whose exploitation is dependent on a patent held by another person may obtain a compulsory licence to exploit the invention protected by such patent if deemed reasonable (Section 46 PA);
- In specific situations relating to plant variety rights (Section 46a PA);
- In the event of considerable public interest (Section 47 PA); or
- Any person who was commercially exploiting an invention in Finland that is the subject of a patent application at the time the application documents were made available shall, if the application results in a patent, be entitled to a compulsory licence for such exploitation, provided there are special reasons for this and also provided that he had no knowledge of the application and could not reasonably have obtained such knowledge. This also applies, under corresponding conditions, to any person who has made substantial preparations for commercial exploitation of the invention in Finland (Section 48 PA).



### General procedure

The Market Court is the competent court (Sections 50 and 64 PA).

The procedure before the Market Court may follow the structure of a declaratory action before the court, in which the applicant initiates proceedings at the Market Court and claims to have a right to a compulsory licence under the grounds set forth in Sections 45-48 PA. A claim regarding a compulsory licence may also be presented in an infringement procedure, in which the defendant as a defence claims to have a right to a compulsory licence. The court may grant the compulsory licence only as a non-exclusive licence.

Further, any person authorised to exploit an invention under license may bring an action before the court for a declaratory judgment to establish whether he enjoys protection against other parties on the basis of the patent in the event of uncertainty that may be prejudicial to him (Section 63 PA).

A compulsory licence may only be granted to a person deemed to be in a position to exploit the invention in an acceptable manner and in accordance with the terms of the licence. Before filing a claim for a compulsory licence, the person shall have made a verifiable effort to obtain, on reasonable commercial terms, a licence to the patented invention (Section 49 PA).

As to the possibility of obtaining a compulsory licence by way of preliminary relief, a preliminary injunction does in theory appear possible under the wording of the law, but it is uncertain as to whether it would be possible in practice to obtain a compulsory licence by way of a preliminary injunction.

Under Section 50 PA, the court granting compulsory licences shall also decide the extent to which the invention may be exploited and shall determine the remuneration to be paid and any other conditions under the licence. In the event of a substantial change in the circumstances, the court may also, on request, revoke the licence or lay down new conditions.

## Appeal/review

Under Section 7(4) of the Market Court Proceedings Act (100/2013), a party may appeal by submitting a written petition of appeal to the Supreme Court. Any appeal to the Supreme Court is subject to a leave to appeal. The period for filing a request for an appeal is 60 days from the day of the Market Court's initial adjudication.

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## Statistics and jurisprudence

There is very limited case law relating to compulsory licences.

In a Helsinki District Court decision on 29 March 1979, the Court dismissed an action for obtaining a compulsory licence. The key questions were whether the requirements for obtaining a compulsory licence were met on the grounds that the invention had not been worked or brought into use to a reasonable extent in Finland (Section 45 PA) and that a considerable public interest required that the drug manufactured by means of the patented process in question should be manufactured in Finland (Section 47 PA). The District Court concluded that also subjective reasons, such as market-related and economic reasons presented by the defendant in the case, could constitute a legitimate ground for non-exploitation of a patent within the meaning of Section 45 PA. As the demand for the drug was sufficiently satisfied through import and production in Finland, and was available at a reasonable price, also no such public interest as set forth in Section 47 existed. The decision was later confirmed by the Court of Appeals, and further appealed to the Supreme Court. The parties settled before the Supreme Court was able to render its decision.