

Croatia

Legal basis

Patent Act (Official Gazette (OG) No. 173/03, 87/05, 76/07, 30/09, 128/10, 49/11, 76/13, 46/18) (hereinafter PA).

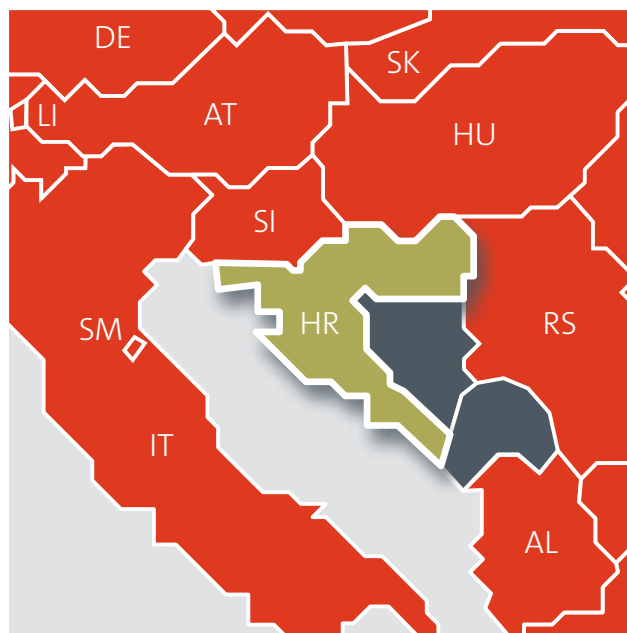
The PA has implemented the Biotech Directive.

Art. 1y PA establishes a competent body and the tasks thereof pursuant to the implementation of (among others) the EU Regulation 816/2006 as well.

Grounds for applying for a licence

A compulsory licence may be granted in the following cases: (i) insufficient exploitation of a patent; (ii) national emergencies; (iii) the need for protection from unfair market competition; (iv) exploitation of another patent or protected plant variety; and (v) cross-licensing.

- (i) A compulsory licence may be granted to any person filing a request (legal action) for the grant of a compulsory licence if the patent owner has not exploited the invention protected by a patent in the territory of the Republic of Croatia on reasonable terms or has not made effective and serious preparations for its exploitation (Art. 68(1) PA). A request for the grant of a compulsory licence may be filed after the expiration of a period of four years from the filing date of a patent application, or after the expiration of three years from the date the patent was granted (Art. 68(2) PA). A compulsory licence may not be granted if the patent owner provides legitimate reasons to justify non-exploitation or insufficiency of exploitation of the protected invention (Art. 68(3) PA). Importation of a patented product into the Croatian market qualifies as use/exploitation of that invention.
- (ii) The court may grant a compulsory licence if the exploitation of the patented invention is necessary in situations of extreme urgency (national security, public interest protection in the field of health, food supply, environmental protection and improvement, specific commercial interest), or when it is necessary to remedy a practice determined by a judicial or administrative process to be anti-competitive (Art. 68(6) PA).
- (iii) In the case of semiconductor technology, a compulsory licence may be granted only in specific cases (Art. 68(7) PA).
- (iv) A compulsory licence may be granted in relation to a first patent to the patent owner or to the owner of a plant variety right who cannot use his patent (second patent) or his plant variety right without infringing the first patent, provided that the invention claimed in the second patent or a protected plant variety involves an important technical advance of considerable economic significance in relation to the invention claimed in the first patent or to the protected plant variety.
- (v) The competent court may take any measure it regards useful to verify facts. In the case of a compulsory licence as provided herein, the owner of the first patent shall be entitled to a cross-licence on reasonable terms to use the invention protected by the second patent or protected plant variety (Art. 68(4) and (5) PA). A compulsory licence granted according to the above-mentioned rule, shall be non-transferable except with a transfer of the second patent or the protected plant variety (Art. 69(5) PA).



General procedure

The Zagreb Commercial Court is the competent judicial authority to grant compulsory licences at first instance.

According to Art. 67a PA, the procedure is litigious. The Act on Civil Proceedings applies and therefore the procedure is not regulated by the PA.

The procedure is initiated by requesting a compulsory licence through the filing of a legal action against the patent owner or SPC holder. The plaintiff must indicate all the facts and present all the evidence, as well as the grounds on which the plaintiff is requesting the compulsory licence. The same rule applies for the defendant's response.

The Court shall issue a judgment either granting a compulsory licence or rejecting the plaintiff's claim.

A compulsory licence shall be non-exclusive, and its scope and duration shall be limited to the purpose for which it was authorised. Thus, the court has discretion to decide the terms of the compulsory licence and will determine the scope primarily with respect to the purpose for which the licence is requested as well as with respect to other factors (such as duration of patent protection, market competition, and the like (Art. 69(1) PA).

With the exception of national emergencies, a compulsory licence may only be granted if the person filing the request has made efforts to obtain authorisation from the patent owner on reasonable commercial terms and conditions and if such efforts have not been successful within a reasonable period of time. There are further exceptions to this (Art. 68(6) PA). The right holder shall be informed of the grant of the compulsory licence as soon as reasonably possible (Art. 68(8) PA).

The court will grant a compulsory licence predominantly for the purposes of supplying the domestic market and, if necessary, to correct a practice determined by judicial or administrative process to be anti-competitive (Art. 69(3) PA), the latter specifically in the case of semiconductor technology.

In addition, that compulsory licence shall be transferred only with the production plant or the part thereof respectively, in which the invention it is granted for has been exploited (Art. 69(2) PA).

The patent owner has the right to remuneration, taking into account the economic value of the authorisation and need to correct anti-competitive practice (Art. 69(5) PA).

The Court shall, upon reasoned request by an interested person, cancel a compulsory licence, subject to adequate protection of the legitimate interests of the persons so authorised, if and when the circumstances which led to its authorisation cease to exist and are unlikely to recur (Art. 69(4) PA).

Pursuant to Art. 69a PA, the Zagreb Commercial Court also has jurisdiction to grant compulsory licences of patents relating to the manufacture of pharmaceutical products for export to countries with public health problems pursuant to EU Regulation 816/2006.

Appeal/review

The decisions of the court issued in the procedures for the grant of a compulsory licence may be appealed in accordance with the rules laid down in the Act on Civil Proceedings.

The High Commercial Court has jurisdiction on appeal.

Statistics and jurisprudence

None to date.