

Iceland

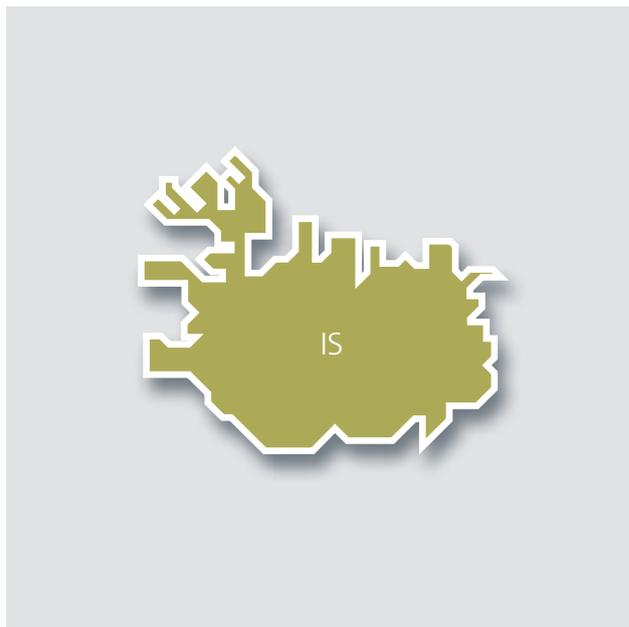
Legal basis

The rules on compulsory licences in Iceland can be found in Part VI of the Patents Act No. 17/1991 as amended (hereinafter PA).

Grounds for applying for a licence

A compulsory licence may be granted in the following scenarios:

- (1) An invention patented in Iceland has not been worked to a reasonable extent; there are no shown legitimate reasons for the failure to work the invention; and three years have elapsed from the grant of the patent and four years have elapsed from the filing of the patent application.
- (2) A subsequent patent cannot be exploited without a licence from a prior patent held by another person and the subsequent patent is considered to represent an important technical advance that has considerable economic significance.
- (3) A holder of a plant variety who can neither acquire a breeder's right to that variety nor exploit that variety without a licence from a prior patent holder can obtain a compulsory licence given that the relevant plant variety involves a technically important advance and leads to considerable financial benefit in comparison to the invention in the patent.
- (4) In the case of important public interest.
- (5) For a party to continue to commercially exploit the invention if that party was exploiting at the time when a patent application was made available to the public, given that very special circumstances make it desirable and that the party had no knowledge and could not reasonably have obtained any knowledge of the pending application. This can also be applied to a person who was not already exploiting but had made substantial preparations for commercial exploitation.
- (6) There is a special authorisation to grant a compulsory licence for medicine intended for export to developing countries and countries struggling with a severe public health problem in accordance with the decision of the WTO's General Council of 30 August 2003 on the TRIPS Agreement and public health.



General procedure

The Reykjavik District Court is competent to grant a compulsory licence.

In general, a compulsory licence will never be granted unless the party seeking such a licence has unsuccessfully attempted to obtain a licence on reasonable terms from the relevant patent holder and may be presumed to be capable of exploiting the invention in a reasonable and acceptable way and in accordance with the terms of the licence. The requirement of a prior attempt to obtain a licence may however be waived in the event of a national emergency or other circumstances of extreme urgency.

IS

According to the laws, further rules on procedure can be enacted through regulations. This has not been done except in the case of a compulsory licence for medicine intended for export to developing countries and countries struggling with a severe public health problem in accordance with the decision of the WTO's General Council of 30 August 2003 on the TRIPS Agreement and public health.

Procedural rules are therefore very limited. However, it is clear that the competent authority is the Reykjavik District Court and that the terms of the licence shall be decided by that court given that the substantial requirements for obtaining a compulsory licence are fulfilled.

According to the provisions on compulsory licences, the Reykjavik District Court has the power to decide whether a compulsory licence shall be granted and the extent of such a licence. Furthermore, the court shall decide the licence fee and other general terms of the licence.

There are however further rules on compulsory licences in the case of medicine intended for export to developing countries. Those are not general rules but may be seen as an example of how this may be carried out by the court.

According to those rules, an application shall be submitted to the Reykjavik District Court duly executed by the applicant containing details such as those concerning the applicant, the relevant patent, the name of the relevant medicine and suggested quantities of production. Furthermore, the application must be accompanied by documents proving that the applicant has attempted to obtain a licence from the patent holder without success. The Reykjavik District Court shall inform the patent holder of the application as soon as possible and invite the patent holder to submit his observations with the application, and may consult the Icelandic Patent Office concerning the matter before reaching a decision on granting the compulsory licence.

In the absence of further rules on procedure, the existing rules on procedure in the case of medicine intended for export to developing countries will most likely be at least a reference point in possible applications for compulsory licences. Besides those rules, nothing has been written in Iceland on the matter.

Appeal/review

There are no specific provisions in the laws concerning a possible appeal. In the bill and the comments made to the provision wherein the Reykjavik District Court is given the competence to grant a compulsory licence, it is clearly stated that the conclusions of the court concerning compulsory licences may be appealed to the Supreme Court. Based on that, it is very likely that the laws will be construed in that manner to allow for an appeal to a higher court. In that regard, it is worth noting that since 1 January 2018, Iceland has a new appeals court, *Landsréttur*, which may be considered the correct appeals court in these cases.

Statistics and jurisprudence

None to date.