

Liechtenstein

Legal basis

Due to the Swiss-Liechtenstein Patent Cooperation Treaty of 1978, Swiss patent law is directly applicable in the Principality of Liechtenstein. Compulsory licences are based on Arts. 36 to 40e of the Swiss Federal Act on Patents for Inventions (hereinafter Swiss Patent Code).

Art. 31bis TRIPS came into force in Liechtenstein on 23 January 2018¹. Importation also qualifies as exploitation of the invention for the purpose of Art. 37 Patents Act.

Grounds for applying for a licence

Since the establishment of the Swiss Federal Patent Court, all patent issues are referred to this court applying the new federal provisions on civil procedure. According to Art. 1(1) and 26(1)(a) of the Swiss Code on the Federal Patent Court, the court has exclusive jurisdiction over cases of compulsory licences.

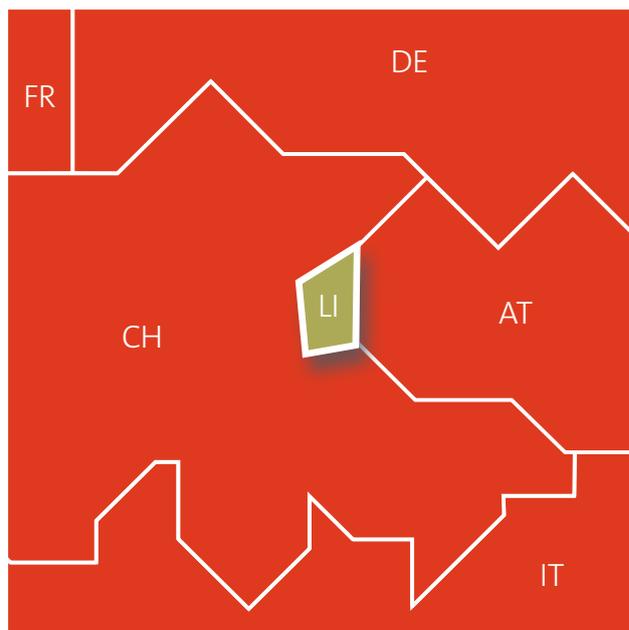
Please refer to the Switzerland section.

General procedure

The jurisdiction of the Swiss Federal Patent Court does not exclude that of the Court of Appeal of Liechtenstein, which is designated as the national court of first instance in patent cases. Therefore, it would not be excluded to file an action for grant of compulsory licence with the Liechtenstein Court of Appeal. There is no relevant case law to date.

The procedure would be regulated by the various provisions of Arts. 36 to 40e of the Swiss Patent Code and the applicable Liechtenstein Laws of Civil Procedure. For an overview over the Liechtenstein legal system and the procedural details, please see Batliner Gasser, "Litigation and Arbitration in Liechtenstein", second edition, Manz Publishers, Vienna, 2013.

Regularly, a claim starts at the Princely Court in Vaduz. The next instance is the Court of Appeal, followed by the Supreme Court. With regard to the way to assert a legal right given by the patent code there is an exception in so far as the Liechtenstein Laws of Civil Procedure contains two specialities:



- (1) A claim has to be made directly to the Court of Appeal². The Court of Appeal applies Swiss substantive law and Liechtenstein procedural law. The instance following is not the Liechtenstein Supreme Court, but the Swiss Federal Patent Court³, which applies Swiss procedural law as well as Swiss substantive law.
- (2) Since 1 January 2012, the Federal Patent Court has been in charge of adjudicating civil law disputes concerning patents as the court of first instance. So there is a certain legal uncertainty because actually there are two ways to claim against a potential infringement within the Swiss – Liechtenstein area (which has to be seen as one area with regards to patents).

According to Art. 40e(5) and (6) of the Swiss Patent Code, the judge decides on the terms of the licence, particularly the licence fee⁴. The substantive law (Swiss Patent Code) describes the discretion; the Liechtenstein Court of Appeal would apply this discretion.

Appeal/review

See above.

Statistics and jurisprudence

None to date.

1 <https://www.gesetze.li/chrono/2017060000>
2 See: <https://www.gesetze.li/konso/1980033000>, Art. 1
3 See: <https://www.bundespatentgericht.ch>
4 See the country pages on Switzerland

