

## Luxembourg

### Legal basis

Luxembourg Law of 20 July 1992 on Patents, as amended (Arts. 47 quinquies and 59 to 66) (hereinafter PL). This law also implements Art. 12 Biotech Directive.

### Grounds for applying for a licence

The applicant (i.e. any public or private legal person) must file a written claim before the court, establishing:

- that it has previously made an effort to conclude an agreement on reasonable commercial terms with the patentee, with no success;
- its ability to effectively and seriously exploit the invention; and
- that the invention has not been sufficiently used.

Importation of a patented product is also considered as use of the invention. Where a compulsory licence aims at enabling a second patent to be exploited (dependant patents), the applicant must also demonstrate that the invention claimed in the second patent involves an important technical advance of considerable economic significance in relation to the invention claimed in the first patent.

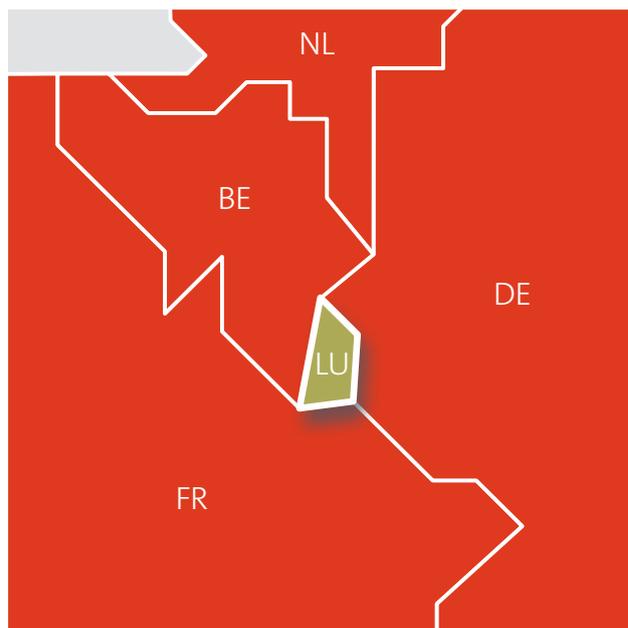
Compulsory licences should be distinguished from ex officio licences. Such licences are delivered by the government, where the invention has been declared by decree of public interest.

### General procedure

Compulsory licence claims are of the competence of Luxembourg district courts (*Tribunaux d'arrondissement*).

The District Court may grant the applicant a compulsory non-exclusive licence if it proves that neither the owner of the patent nor its successors in title:

- has begun to use or has made real and effective preparations for using the invention that is the subject matter of the patent on the territory of the Grand Duchy or of any other member state of the Agreement Establishing the WTO; or



- has used the invention that is the subject matter of the patent in a manner sufficient to satisfy the needs of the Luxembourg market.

A compulsory licence may also be granted where it is demonstrated that such use has been abandoned for more than three years.

The claim may be filed after the expiry of the later of the following periods: three years from the grant of a patent or four years from the filing date of the patent application.

No compulsory licence may be granted if the non-exploitation of the patent is due to legitimate reasons.

Where the compulsory licence is necessary to permit the exploitation of a patent ("the second patent") which cannot be exploited without infringing another patent ("the first patent") (i.e. dependant patents), such licence may be granted only if it is in the public interest, and after the opinion of the public prosecutor has been heard.

If the subject of the patent is an invention in the field of semiconductor technology, a compulsory licence may be granted only where such technology is required to remedy a practice that has been judicially or administratively determined to be anti-competitive.

The terms of a compulsory licence will be decided by the court on a case-by-case basis and will depend on the particular facts of the case, but will be subject to the following conditions set out by PL:

- the licence shall not be exclusive;
- the licence can be assigned only along with the part of the applicant's business that enjoys the use of the patented invention, and, in the specific case of dependant patents, along with the second patent;
- the licence must be predominantly for the supply of the market in the Grand Duchy of Luxembourg;
- the compulsory licence is to include conditions entitling the patentee to adequate remuneration in the circumstances of the case;
- the licence must be limited in scope and duration to the purpose for which the licence was granted, which means that the licence is at risk of termination or modification if circumstances change;
- (for dependant patents) the patentee of the first patent must be entitled, upon request and on reasonable terms, to a cross-licence in respect of the second patent. Same rule applies to plant-variety rights and biotechnological inventions.

### **Appeal/review**

Before the Luxembourg Court of Appeal.

### **Statistics and jurisprudence**

There is no published case law or statistics on this issue.