

Poland

Legal basis

The main legal basis for compulsory licences is Chapter 7 (Arts. 82 to 88) of the Act of 30 June 2000 on Industrial Property (hereinafter referred to as "IPL").

Art. 82(6) IPL implements Art. 12 Biotech Directive. The provision concerning compulsory licences applies accordingly if a grower cannot exercise the right to a protected plant variety or requests a cross licence from the proprietor of a patent.

EU Regulation 816/2006 is binding in its entirety and directly applicable in Poland. No additional provisions have been issued in Poland.

Grounds for applying for a licence

A compulsory licence may be granted in exceptional cases provided for in Art. 82 IPL where:

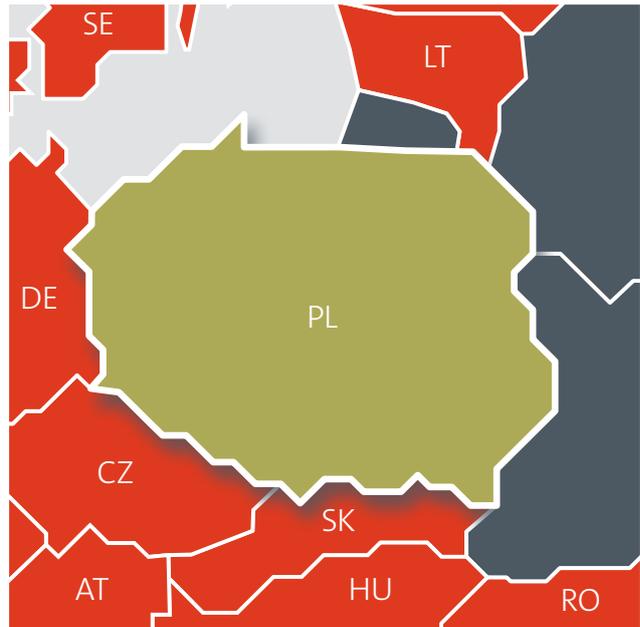
- it is necessary to prevent or eliminate the state of national emergency, in particular in the field of defence, public order, the protection of human life and health, as well as the protection of the natural environment; or
- it has been established that the patent has been abused; or
- it has been established that the patent holder enjoying the right of priority of an earlier application prevents, by refusing to conclude a licence contract, the meeting of home market demands through the exploitation of the patented invention (the dependent patent), whose exploitation would encroach upon the earlier patent; in such case, the holder of the earlier patent may demand that an authorisation be given to him for the exploitation of the invention that is the subject matter of the dependent patent (cross-licence).

The fourth ground on which it is possible to grant a compulsory licence was defined in EU Regulation 816/2006.

General procedure

The Patent Office of the Republic of Poland is the competent authority to grant a compulsory licence.

The Patent Office shall decide on granting a compulsory licence within *inter partes* proceedings.



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Proceedings for granting a compulsory licence are initiated on the basis of an application. The applicant shall prove that he had, in good faith, made efforts to obtain the licence from the patent holder (this requirement does not apply to a compulsory licence in order to prevent or eliminate a state of national emergency). The Patent Office decides at the hearing. The Office may issue the decision in a closed session, if deemed necessary in the light of public welfare and safety (i.e. only for a compulsory licence in order to prevent or eliminate a state of national emergency).

The compulsory licence shall, at the request of the interested party, be entered into the patent register.

It is not possible to obtain a compulsory licence by way of a preliminary relief.

The Patent Office has discretion as to the terms of the compulsory licence, in particular:

- the scope and duration of a compulsory licence;
- the detailed terms and conditions of its use;
- the amount of the royalty in proportion to the market value of the licence (as a rule the person exploiting the invention under a compulsory licence shall be obliged to pay a royalty to the patent holder);
- as well as the manner and time limits of payment of the royalty.

According to Polish legal doctrine, the Patent Office, when issuing the decision on granting a compulsory licence, shall take into account that the scope of the licence should reflect the purpose for which it was granted.

A compulsory licence is always a non-exclusive licence. The patent holder may still:

- use the invention; and
- grant a non-exclusive licence.

Appeal/review

Parties to the proceedings are entitled to lodge a complaint with the Voivodeship Administrative Court in Warsaw. A decision rendered by the Voivodeship Administrative Court can be appealed before the Supreme Administrative Court.

Statistics and jurisprudence

The Patent Office has not granted any compulsory licence in the past 18 years.

On the basis of the currently applicable legislation, no proceedings concerning compulsory licences have been recorded.