

## Portugal

### Legal basis

Compulsory licences are established in the Industrial Property Code in Arts. 107 to 112 (hereinafter IP Code).

The IP Code also implements the Biotech Directive. EU Regulation 816/2006 is directly applicable.

### Grounds for applying for a licence

The grounds for granting a compulsory licence are established in the law, and are:

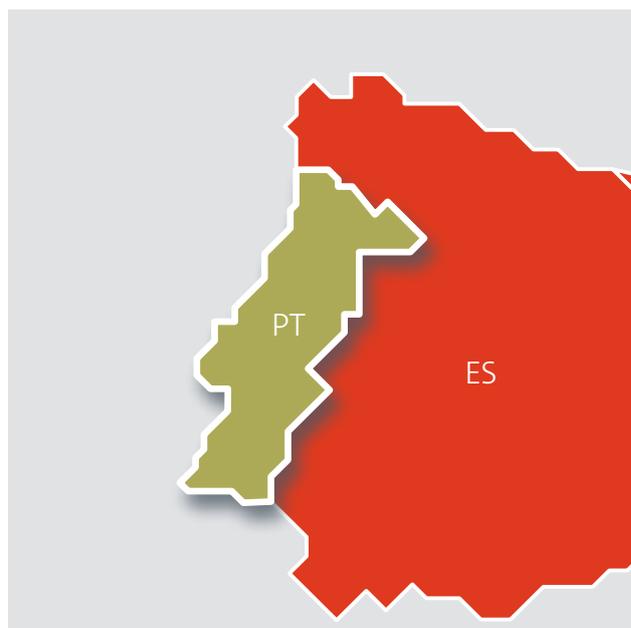
- lack or insufficiency of exploitation of the patented invention;
- dependency between patents; and
- public interest.

A compulsory licence may be granted only in cases where the expected licensee made efforts to obtain a contractual licence from the patent owner in commercially acceptable conditions, and such efforts were not successful within a reasonable time frame.

Regarding the first ground for applying for a compulsory licence, the law establishes that the exploration of a patent must start within four years of the filing date or three years of the grant date, whichever is the longer period. For the purpose of this compulsory licensing provision, importation also qualifies as exploitation of the patented invention, as long as said importation is made from member states of the European Union or the WTO.

### General procedure

The competent authority is the National Industrial Property Institute (INPI). For compulsory licences on the grounds of public interest, the government<sup>1</sup> is the competent authority.



### Filing before INPI

A request for a compulsory licence is filed by the applicant. The patent owner is notified to file its arguments within two months. The INPI will decide within a period of two months thereafter whether the licence should be granted.

If it decides to grant the compulsory licence, it notifies the parties to each appoint an expert to agree on the terms of the compulsory licence and the compensation to pay to the patent owner. The INPI shall also appoint an expert, and this expert panel will, with full discretion, decide on the terms of the compulsory licence as well the compensation to be paid to the patent owner.

Since the decision of the experts may be appealed, also the Court has full discretion to decide on the terms of the compulsory licence.

The law does not contemplate the possibility of obtaining a compulsory licence by way of a preliminary injunction.

<sup>1</sup> The law does not specify who is responsible within government. It may vary from government to government. Usually, the Ministry of Justice is responsible for IP matters.

## Request to the government

There are no specific rules in the law governing the procedure for obtaining a compulsory licence on the grounds of public interest. There are no precedents either. The government is free in this regard. However, it may well be that the government will be guided by the rules governing the procedure before the INPI.

## Appeal/review

The decision to grant or not grant a compulsory licence can be appealed to the Intellectual Property Court.

The expert panel's decision on the terms and compensation of the compulsory licence may also be appealed to the Intellectual Property Court.

## Statistics and jurisprudence

Not available.