

## Serbia

### Legal basis

The compulsory licence is regulated by Arts. 26 to 38 of the Law on Patents (Official Gazette of the Republic of Serbia No. 99/2011) (hereinafter PL).

The legislation is intended to implement Art. 31bis TRIPS.

### Grounds for applying for a licence

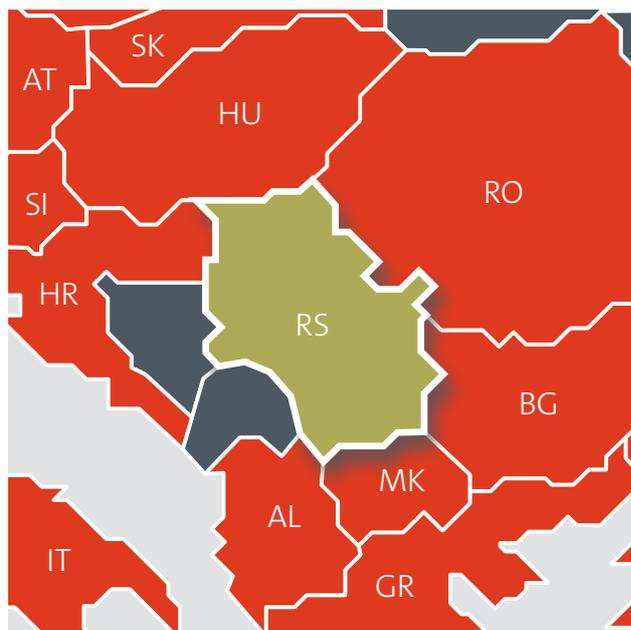
If the right holder refuses to licence the right of commercial use of a protected invention to other parties or sets unreasonable conditions for such licensing, at the request of an interested party after considering the merits of each individual case, the competent authority can grant a compulsory licence, in the following cases:

- (1) If the right holder himself or a party authorised by him does not use the protected invention or uses it insufficiently in the Republic of Serbia (importation of patented products qualifies as exploitation of the invention);
- (2) If the commercial use of an invention that has been subsequently protected in the name of another party is not possible without the use of the protected invention in whole or in part;
- (3) When it is necessary to remedy a practice determined in a judicial or administrative process to be anti-competitive.

### General procedure

The government authority competent in the field in which the invention is to be employed may, at the request of an interested party after considering the merits of each individual case, grant a compulsory licence.

The interested party, which has previously contacted the patent holder for permission for commercial use of a protected invention, may file the request for the compulsory licence to the government authority competent in the field in which the invention is to be employed. The authority will review each particular request and will decide on the grant of the compulsory licence with the requirement that the legal conditions (see above) are met.



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A compulsory licence may be terminated if and when the circumstances that led to its grant cease to exist and are unlikely to recur. On reasoned request, the government authority competent in the field in which the invention is to be employed shall re-examine the further existence of circumstances that were grounds for its grant.

The request for the grant of a compulsory licence cannot be filed before the expiration of a period of four years from the date of filing of the patent application or before the expiration of a period of three years from the grant of the patent or petty patent, whichever period expires last.

The compulsory licence is limited to the purpose for which is granted. It may be assigned only with the manufacturing plant that exploits the invention for which the licence has been granted; it shall not be exclusive and shall predominantly be granted for the supply of the domestic market.

The competence of the authority depends on the field in which the protected invention is exploited (i.e. agriculture, the pharmaceutical industry, electronics). Therefore, the authority for each field is competent to decide on issuance of the compulsory licence under the above conditions.

The duration and scope of licence are determined on the basis of the purpose for which the compulsory licence is issued and these authorities (ministries at first instance and the court in the appeal procedure) have full discretion to set the terms of the licence in each case.

## **Appeal/review**

The appeal may be filed within 15 days of receipt of the decision.

For second instance decisions there is a legal remedy that calls for filing of the administrative dispute with the Administrative Court in Belgrade within 30 days after receipt of the appealed decision.

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## **Statistics and jurisprudence**

None to date.