

Slovakia

Legal basis

The principal legal basis for compulsory licences is the Slovak Patent Act, No. 435/2001 Coll. on Patents, Supplementary Protection Certificates, as amended (hereinafter PA). Compulsory licences are governed by Section 27 PA.

The competence of the court is stipulated in Section 25 of Decree No. 160/2015 Coll. of the Slovak Code of Civil Procedure as amended.

The legislation is intended to implement both Art. 12 of the Biotech Directive and EU Regulation 816/2006.

Grounds for applying for a licence

The cumulative grounds for granting a compulsory licence are:

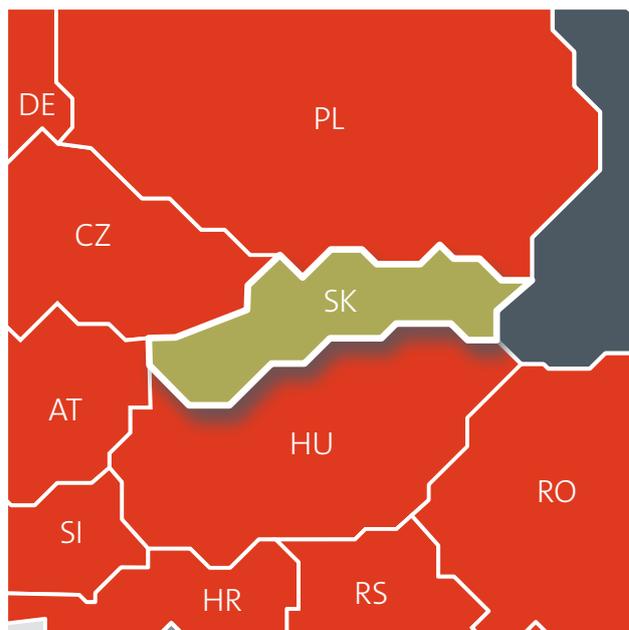
- (i) the expiration of a four-year period from the patent application filing date or three-year period from the date of grant, whereby the period that expires later shall apply;
- (ii) the patentee did not accept due offer for concluding a licence agreement within 3 months;
- (iii) the patentee does not use the invention or uses it insufficiently without due reason whereby the invention as product is not delivered to the market in sufficient quantity.

Irrespective of the conditions under points (i) and (ii), a compulsory licence may be granted in case of threat to an important public interest.

The specific grounds for granting a compulsory licence to a biotechnological invention are: a breeder cannot obtain or exploit a plant or animal variety right without infringing a prior patent; the breeding certificate holder applied unsuccessfully to the patentee to conclude a licence within a three-month period; and the plant or animal variety constitutes significant technical progress of considerable economic interest compared with the invention.

General procedure

The District Court Banská Bystrica (hereinafter “the Court”) has jurisdiction to grant a compulsory licence upon application by a third party. The Court conducts proceedings



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under the Slovak Code of Civil Procedure. The procedure on compulsory licence application can be initiated by a third-party applicant. The applicant must prove that the conditions for grant of a compulsory licence have been met.

The application for a compulsory licence is submitted in writing to the Court and the applicant must substantiate the grounds and demonstrate satisfaction of the above-mentioned criteria. The application is subject to an official fee of EUR 99.50. The Court will invite the patentee to respond to the compulsory licence application.

The Court examines the compulsory licence application to ensure compliance with the conditions set out in Section 27 PA (see above), taking into consideration the general principles of decision-making under the Slovak Code of Civil Procedure. These are general principles of fair and due court procedure such as just and effective protection of the rights and interests of the parties, legal certainty, legitimate expectations, consistency in application of case law, thorough and convincing substantiation of decisions, prevention of abuse of rights, and economy of proceedings as set out in Sections 1-18 of the Slovak Code of Civil Procedure.

The terms, scope and duration of the compulsory licence are determined with respect to the purpose for which it is granted and other circumstances of the case.

In its decision, the Court determines the terms, scope and duration of the compulsory licence. General legal principles, in particular protection of legitimate interests,

proportionality and public interest, are to be applied by the Court. A compulsory licence may be granted primarily for supplying the domestic market. The grant of a compulsory licence does not affect the right of the patentee for payment of licence fees. If the parties cannot agree, the amount of licence fees shall be determined by the Court. The compulsory licence shall be recorded in the patent register.

The assignment or transition of the right of the licensee for the compulsory licence is possible exclusively as part of the assignment or transition of the enterprise or part of the enterprise in which the invention used is the subject matter of the compulsory licence. The compulsory licence can be granted only as non-exclusive.

The recording of compulsory licences in the patent register is subject to an official fee of EUR 20.

Appeal/review

Decisions of the Court are subject to full judicial review with respect to all legal and factual aspects of the decision. The first instance decision of the Court, whether grant of the compulsory licence or rejection of an application, may be appealed within fifteen days to the Regional Court Banská Bystrica.

Statistics and jurisprudence

Compulsory licence procedures and relevant case law or academic opinions are rare in Slovakia. Based on information provided by the Industrial Property Office of the Slovak Republic, there is no record that a compulsory licence application was ever filed in Slovakia.