

Turkey

Legal basis

The legal basis for the compulsory licences is the Code of Industrial Property (CIP), Sections 129 to 137.

Grounds for applying for a licence

Compulsory licences may be obtained on the following grounds:

- non-use of patented invention;
- the dependence of patents;
- exportation of the pharmaceutical products due to public health problems in other countries;
- the patent holder is engaged in intrusive, destructive or restrictive activities while the patent is in use;
- development of a new plant variety (Section 129/1(d) CIP); or
- for matters of public health or national security.

General procedure

The authorities competent to grant compulsory licences can be organised into three groups:

- (1) A compulsory licence is granted by the competent court when the request is based on non-use of the patented invention, the dependence of patents, development of a new plant variety, and exportation of the pharmaceutical products due to public health problems in other countries.
- (2) If the compulsory licence request is based on the patent holder's being engaged in intrusive, destructive or restrictive activities while the patent is in use, the authority competent to issue compulsory licences is the Competition Institution (*Rekabet Kurumu*).
- (3) Compulsory licences for matters of public health or national security depend on the decision of the Presidency¹ (*Cumhurbaşkanlığı*).

The CIP regulates the procedure regarding the first group, i.e. the method of granting compulsory licences by court order, in Art. 129 et seq. A compulsory licence application is made



to the court with a petition, including clearly stated reasons and supporting documents, in particular evidence that the patentee has failed to obtain within a reasonable period of time despite, reasonable contractual licensing under reasonable commercial terms.

The court shall notify the patentee of the application and its attachments without delay. The patentee presents his opinion on the compulsory licence application to the court, together with the evidence, within one month from the date of notification. The court shall decide within one month whether to refuse the request or grant a compulsory licence. This period cannot be extended. If the proprietor of the patent does not object to the compulsory licence request, the court will decide on the compulsory licence without delay.

The court decision specifies the scope of the licence, the cost, the duration, the guarantee shown by the licensee, the time of commencement of use, and measures for the serious and effective use of the patent. As a rule, the appeal process does not stop the enforcement of the decision. However, if the evidence presented by the patentee for the suspension of compulsory licensing is deemed adequate by the court, the use of the invention is postponed until the decision is finalised.

There is no case law involving any interpretation and implementation of the law on whether the court has

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¹ With Article 209 of the Decree Law No 700, dated 2 July 2018, the phrase "Council of Ministers" in the related legal provision has been changed to "Presidency".

discretion as to the terms of the compulsory licence. However, according to the wording of the provision and the nature of the matter, if the patentee did not object when notified of the compulsory licence request, “the court will decide without delay to grant a compulsory licence” and has discretion only to correct obvious contradiction and material errors. If the patentee objected to the request for the compulsory licence, a trial for contested matters would be necessary.

It is stated in the CIP that the court must indicate the scope of the licence, the cost, the duration, the guarantee shown by the licensee, the time to start the use, and the measures that provide the serious and effective use of the patent. The demands and objections of the parties should be assessed and a realistic and fair compulsory licence shall be granted or refused by the court.

The competent courts in charge of compulsory licences are specialised courts called “Intellectual and Industrial Rights Civil Court” regulated by Section 156 CIP. The proceedings concerning the merits of the case in these courts are carried out according to the written procedure. The written procedure consists of three phases:

- (i) The first phase consists of the exchange of petitions. The defendant’s reply should be submitted to the court within two weeks of the date on which the defendant is notified of the petition. However, if more time is necessary for the reply, such period may be extended by the court by as much as one month upon request. The said conditions for the lawsuit and the reply also apply to further replications and rejoinders;
- (ii) The second stage in the written procedure is the preliminary examination phase; and
- (iii) The third step consists of the inquiry and oral hearing sessions.

Section 129 et seq. CIP has created a unique method of proceedings for compulsory licences that is significantly different from the written procedure prescribed in the Code of Civil Procedure.

A compulsory licence request is submitted to the court along with a petition and in particular with evidence demonstrating that the patentee has failed to obtain within a reasonable period of time despite reasonable contractual licensing under reasonable commercial terms.

The court shall notify the patentee of the request and its attachments without delay. The patentee presents his

opinion on the compulsory licence request to the court, together with the evidence, within one month of the date of notification.

The court shall decide within one month whether to refuse the request or grant a compulsory licence. This period cannot be extended. If the proprietor of the patent does not object to the compulsory licence request, the court will decide on the compulsory licence without delay.

As can be seen, a defined but longer period of one month has been granted for the response petition in the compulsory licence trial. In contrast to the written proceedings, the patentee (the defendant) cannot request an extension of this one-month term.

The court will make a decision to grant a compulsory licence without delay if the patentee has not challenged the compulsory licence request. Even if the proprietor of the patent objected to the request for compulsory licences, the court will make its decision within one month. It is not possible to postpone the decision of the court to exceed this period.

It is also not clear in the provision whether it is possible for the court to hold an oral session. But taking into account that the legislator happens to be stricter in terms of duration and number of petitions, the aforementioned question requires a negative answer. Provided that it remains within a period of one month, there would appear to be no obstacle to the oral hearing of the parties if the court considers it necessary.

The CIP entered into force on 10 January 2017. For this reason, there are very few academic studies related to the new regulation. One of these works was done by Judge Güneş (see Güneş İlhami: “*Sınai Mülkiyet Kanunu’da Zorunlu Lisans / Compulsory Licence In Industrial Property Law*”, 26 April World Intellectual Property Day Special Issue, Ankara Bar Association, Intellectual Property and Competition Law journal, Nisan 2017, Ankara; p. 47-56). In his article on compulsory licences, Güneş pointed out the reasons for not using the patent. Accordingly, the court can consider only objective technical or economic reasons as “justifiable grounds” for not using the patent. It is imperative that these be outside the control and will of the patent holder in order to allow for a justifiable excuse. For example, if administrative or formal authorisation is required to produce a patented product, this administrative process or long periods of testing and examinations may be considered “justifiable grounds”. However, it is necessary that the patent owner or his representative does not contribute to the delay due to these transactions.

Appeal/review

The parties may appeal the decision of the competent court before the Court of Appeal (the District Court) within two weeks of the notification of the written decision.

Statistics and jurisprudence

None to date.