

# Compulsory Licensing in Belarus

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## ABSTRACT

The paper informs on the state of compulsory licensing in Belarus and recent changes restricting IP rights.

## KEYWORDS

Intellectual property law, patent law, compulsory licenses.

## 1 INTRODUCTION

The term compulsory licensing refers to a situation where a court or government enforces a non-exclusive license to the protected intellectual property (IP) without the wishes and the consent of the IP owner. It can be dated back to Article 5A (2) of the Paris Convention for the Protection of Industrial Property (Paris, 1883), stating: "Each country of the Union shall have the right to take legislative measures providing for the grant of compulsory licenses to prevent the abuses which might result from the exercise of the exclusive rights conferred by the patent, for example, failure to work" [1].

The world practice has developed three main types of compulsory licenses: 1) for non-working or insufficient working of patented invention; 2) for dependent inventions; 3) in public interest, such as "national emergency" or "public health" [2-9].

The international legal basis for compulsory licensing is found in the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (1995) (TRIPS Agreement) and the Doha Declaration on the TRIPS Agreement and Public Health (2001). Due to the national character of intellectual property rights (IPRs) countries may implement their own systems of compulsory licenses (CL).

## 2 COMPULSORY LICENSING IN BELARUS

The compulsory licensing of industrial property in Belarus has been regulated by Articles 10 and 38 of the patent law (the Law "On patents for inventions, utility models, and industrial designs" dated December 16, 2002, No. 160-3) [2, 10].

Article 10 "Actions not recognized as infringement of the exclusive right of the patent owner" addresses the use of patented inventions under extraordinary circumstances (natural disasters, catastrophes, accidents, epidemics, epizootics, etc.) with notification of the patent owner of such use as soon as possible and payment of corresponding compensation.

For example, based on Article 10 during epidemic any person may, without authorization organize both the production and import of generic medicines. The weakness for the person is that the patent owner may at any time challenge the very legitimacy of such use, its scope and duration, as well as disagree with the amount of compensation offered to him.

In this case the granting of CL would be preferable, since the person in whose interests it is granted understands for what period of time, to what extent and under what conditions the patent-protected subject matter may be used.

Article 38 "Compulsory license" addresses the non-working or insufficient working (1) and dependent inventions (2) types of CL and describes the legal procedure for obtaining a CL by a third party, which is done by filing a claim with the Judicial Collegium for IP of the Supreme Court.

The patent law of Belarus does not use all options in terms of compulsory licensing, which are implemented in other countries. This concern primarily compulsory licensing in "public health" interest.

When opting for the issuance of a compulsory license in the "public health" interest, it is advisable that preference be given to the administrative procedure as it is much simpler and faster [6, 7].

## 3 AMENDMENTS TO THE PATENT LAW

Although Belarus is not a WTO member the above-mentioned gap has been closed by the law "On amendments to laws on the legal protection of intellectual property" dated January 9, 2023, No 243-3 that introduced amendments to patent law.

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**Table 1: Compulsory licensing of industrial property in Belarus**

#	Grounds for granting a CL, legislative act	Procedure	Conditions
<b>Invention, Utility model</b>			
1	Non-working or insufficient working by the patent owner within 3 years from the publication date, leading to insufficient supply of relevant goods, works or services on the market (patent law, Article 38 (1)).	Legal	* Refusal of the patent owner to conclude a license agreement on terms consistent with established practice. * The interested party has the ability to use the invention. * Absence of valid reasons for non-working proven by the patent owner.
2	A patented invention cannot be worked without exploiting an earlier patented invention (utility model) (patent law, Article 38 (2)).	Legal	* The invention is dependent on a patent for an invention (utility model). * The invention is an important technical achievement. * The invention has significant advantages over the original invention (utility model) patent. * Refusal of the patent owner to conclude a license agreement on terms consistent with established practice.
3	The need to ensure national security, state defence, safety and security of people's lives and health (patent law, Article 38 (3)).	Administrative	
<b>Design</b>			
4	Non-working or insufficient working by the patent owner within 3 years from the publication date, leading to insufficient supply of relevant goods, works or services on the market (patent law, Article 38 (1)).	Legal	As 1.
5	The need to ensure national security, state defence, safety and security of people's lives and health (patent law, Article 38 (3)).	Administrative	
<b>Plant variety</b>			
6	Non-working or insufficient working by the patent owner of a plant variety within 3 years from the registration date in the State Register of Protected Plant Varieties (law "On plant varieties", Article 31).	Legal	* Refusal of the patent owner to conclude a license agreement. * The interested party has the ability to use the plant variety. * Absence of valid reasons for non-working or insufficient working, proven by the patent owner.
<b>Topography</b>			
7	Non-working or insufficient working of the topography by the right owner within 3 years from the publication date in the official bulletin of information about the registration of the topography, leading to an insufficient supply of relevant products (goods) (Law "On protection of integrated circuit topographies", Article 22 (1)).	Legal	* Refusal of the patent owner to conclude a license agreement on terms consistent with established practice. * The interested party has the ability to use the protected topography. * Absence of valid reasons for non-working or insufficient working, proven by the rights owner.

The newly added Article 38 (3) of the patent law describes "public health" type of CL, which is granted by the decision of the Council of Ministers. The decision specifies:

1. Last name, first name, patronymic (if any) of the individual, or the legal entity to which CL is granted.
2. The period for which a compulsory simple (non-exclusive) license is granted.
3. Usage rights of a person who has been granted a CL.
4. A government agency that within 30 days from the date of the decision to grant a CL must notify the patent owner about the decision.
5. The procedure for notification of a government agency by an individual or legal entity that is granted a CL about the payment or impossibility of paying the compensation to the patent owner.

6. Amount and procedure for payment of compensation.

Table 1 summarizes procedures for granting CL for industrial property after the amendments.

#### 4 RESTRICTIONS OF IP RIGHTS

The law "On restriction of exclusive rights to intellectual property objects" dated January 3, 2023, No. 241-3.

Articles (1) and (2) of the law allow the use of software, audio/visual works, music and broadcasts without the consent of the rights owner or the organization for collective management of property rights if they are from the foreign countries committing unfriendly actions against Belarusian legal entities or persons. The Council of Ministers appoints

state authorities for managing the lists of corresponding rights owners.

The user of above mentioned IP pays remuneration that is credited to the bank account of the national IP office (the National Center of Intellectual Property). Together with payment the information on IP use and calculation of remuneration shall be provided. The amount of remuneration assigns the Council of Ministers.

The remuneration will be kept on the bank account of national IP office for three years from the moment of deposit and during that period can be claimed by the rights owner. The national IP office can use up to 20% of the remuneration to cover its management expenses.

After three years, the unclaimed remuneration will be transferred within three months to the republican budget.

Articles (3) and (4) of the law allow import from any foreign country of goods from the List of goods (group of goods) vital for domestic market, if there is critical shortage (i.e. parallel import). The Council of Ministers appoints state authority for managing the list.

If imported goods include IP, it will be temporary excluded from the National customs register of IP objects. The notification letter will be sent at the address of the rights owner within two days of the decision to exclude the IP from the register.

The articles of the law are valid until the end of 2024.

## 5 CONCLUSIONS

Most countries provide for compulsory licensing to advance nation's technological development by encouraging the production and use of patented goods and increase access to advanced technologies [5–9].

The compulsory licensing in Belarus before 2023 was not applicable to medicines (new or expensive) since grounds for compulsory licensing did not include "protection of human life and health". Introduction of the Law No. 243-3 on January 9, 2023, updated the legislation for all options allowed by international laws. When granting compulsory licenses in "public health" interest an administrative procedure is applied.

Compulsory licenses in Belarus are not agreements and as such should not be registered with the National Center of Intellectual Property.

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