


Intellectual Property
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Lecture – 63
Compulsory Licences

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Compulsory Licenses


- Two types of Licenses
 - Voluntary license ✓
 - Compulsory license
- CL are statutory licenses to do an act covered by an exclusive right without prior authority of the owner

Compulsory Licences there are two types of licences broadly. Compulsory licences are licences which are forced licences, licences which are granted by the government and you have voluntary licence. Voluntary licence is the licence that the IP holder the owner of the IP would voluntarily grant in leave of a licence fee.

Compulsory licences are employed where it is not possible to get a voluntary licence, and there are certain factors most like most of them are pertaining to the interest of the public. Where, the government can intervene or the administrator authority the like the patent office can grant the compulsory licence.

Compulsory licence is a statutory licences to do an act covered by an exclusive right without the consent of the owner so, it is also called use without authorisation. So, you could get a licence even when the right holder is not inclined to licenced to you.

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Patents


- Types of compulsory licenses in patents
 - Third party initiated CL
 - Special CL
 - CL of related patents
 - CL for export of pharmaceuticals

Now under the patents act there are four types of compulsory licences, there is a third party initiated or a market initiative compulsory licence. There is a special compulsory licence, where the government can grant compulsory licences in case of an extreme urgency or emergency and there is also compulsory licence of related patents or technologies that are related.

A person needs the other technology or the patent without which he cannot put his technology into effect can seek for a licence of a related patent. And there is also a special compulsory licence for export of pharmaceutical products to other countries.

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Patents




- Application for CL [Third Party]
 - Establish a prima facie case
 - Any person interested after the expiration of 3 years from the grant of patent can apply
- Conditions
 - Reasonable requirements of public not satisfied

Now to get an application for a to file an application for a compulsory licence, the person filing the licence has to establish a prima facie case that there is a preliminary case for grant of a compulsory licence. And any person can do this who is an interested person under the definition as defined by the act after the expiry of 3 years from the grant of the patent.

So, the patent has to be allowed to stay for 3 years and only after the 3 year period can a person seek a compulsory licence. Now, the conditions on which a person can seek a compulsory licence are that reasonable requirements of the public has not been satisfied or it is not available for a reasonably affordable price or the invention or the patent is not worked in India.

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Patents


- Conditions
 - Not available at reasonably affordable price
 - Not worked in India
- Other applications under ss. 91, 92, 92A
- One CL in India
 - Nexavar case

RP SV EP

Now, the other applications under 91, 92 and 92 A which we had mentioned as the special compulsory licence; the this is a special licence and this is the licence of related patents and this is the licence for export of pharmaceuticals.

So, these have their own procedure and in India we have so far had only one compulsory licence granted for a patent that was in the Nexavar case that is the name of the product. The licence was granted against by a pharmaceutical company and it was granted to Natco an Indian generic company.

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Copyright

- Section 31 of Copyright Act provides for compulsory licensing of copyright
 - For works that are withheld from the public
- Conditions: © owner refused to
 - Republish or allow the republication of the work
 - Allow for the performance of the work in public, hence work withheld from public

Section 31 of the copyrights Act provides for compulsory licensing of copyright. So, we also have copyright compulsory licensing of copy righted works for works that are withheld from the public. The conditions are that the copyright owner should have refused to publish or allow the publication of the work.

And the copyright owner allow for the performance of the work in public, hence it was did not allow for the performance of the work in public; hence, the work was withheld from the public. So, cases where the work is withheld from the public they could be a compulsory licence saying of such copyrighted works.

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Copyright

- Conditions: © owner refused to
 - Allow communication of the work to the public by way of broadcast of such work
 - Provide sound recording in reasonable terms
- CL can be granted in case of unpublished Indian works
- Objective: Ensure availability of © material

Now, where the copy righted owner allows for communication of the work to the public by way of broadcast of such work where that is refused and where he refuses to provide sound recording in reasonable terms are also covered under instances where a person can seek a compulsory licence. Compulsory licence can also be granted for unpublished Indian works. Now, the objective is to ensure the availability of the copyrighted material.