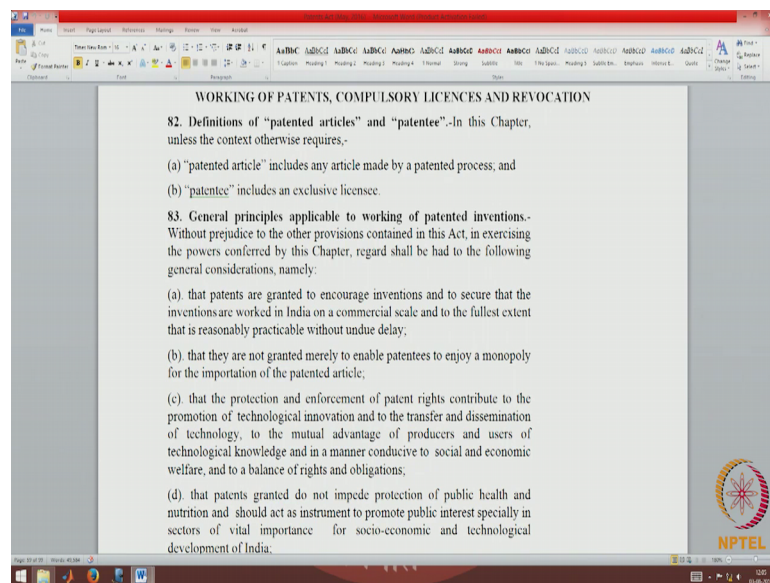


Patent Law for Engineers and Scientists
Prof. Feroz Ali
Department of Management
Indian Institute of Technology, Madras

Lecture – 60
Compulsory Licensing
Introduction to Compulsory Licensing

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Working of patents compulsory licences and revocation. Chapter 16 of the patents act deals with working of patents compulsory licences and revocation. This chapter comes into effect in certain exceptional cases. Compulsory licences are issued when there are grounds for the issuance of such compulsory licences, and pursuant to the issuance of a compulsory licence if certain conditions are satisfied a patent can also be a revoked. The working of a patent or working of patents is a requirement that patents that have been granted should be worked. So, if you look at a spectrum of events all patents that are granted are expected to be worked that is at the beginning of the spectrum. If some patents are not worked there is a possibility given certain grounds there is a possibility to get a compulsory licence issued on those patents.

So, this is in the middle of the spectrum, and if despite granting a compulsory licence if the patent is not worked or the benefit of the patent is not received by the country. Then the patent can be revoked that is at the end of the spectrum. So, working of the patent

compulsory licences and revocation can be seen as events that would have happen in sequence if certain conditions are not satisfied. So, as I mention chapter 16 is a special chapter it is triggered only in special circumstances.

In India we have had since the 1970 act came into force, we have only one recorded instance of grant of a compulsory licence, they been few attempts to apply for these compulsory licences, but there is only been one grant and I say one recorded grant because there is some dispute that they could have been other instances. But right now we have if we have to if we have to directive to an order of the patent of his granting a patent compulsory licence; there is only one licence available. And that is a licence involving bias drug nexavar, for which natco pharmaceuticals had nacto pharma had filed a petition for a compulsory licence.

So, let us look at this chapter. This chapter pertains to certain special circumstances. And the special circumstances can be triggered by certain events. One of those events is the fact that the patent is not worked in India. So, when the patent is not worked a compulsory licence becomes a way in which it can be made to work compulsorily. Now the easiest way for us to understand a compulsory licence is to look at it is opposite a voluntary licence. A voluntary licence is a licence that is granted by the patentee to a licensee voluntarily. The terms are agreed between them there is a contract there is an agreement of licence between them, payment of royalty the territory the scope everything is decided by the licence. Now when the parties are able to come to a consensus, we call that licences voluntary licence, because the party is initiated and the parties are able to take it forward. What happens when parties are not able to come to a consensus?

Company a which is generic company wants to manufacture the technology covered in a patented drug. And it approaches company b which is a originated company the company created the drug. Now company b does not want to grant a licence to company a, how do we resolve that situation? Now compulsory licence is one of the means by which issue pertaining to a refusal to licence can be resolved. It is one of the instances, but as I already mentioned they should be certain circumstances certain grounds that are available for the licensee to make an application for a compulsory licence.

So, once an application for compulsory licence is made before the patent office the controller will look into the merit is of it. And see whether the ingredient of the cases

satisfy. And after hearing both the parties he may grant a compulsory licence. Now that licence that is granted is regarded as a licence that is granted by the patent office. So, it is different from the voluntary licence because parties at least the patentee was not an agreement and granting that licence, it went through an adjudicatory process the patent controller decided the case after hearing the parties, and then the patent controller impose the terms of the licence. In a volunteer licence the parties decide the terms of the licence. Where as in a compulsory licence the terms of a licence is determine by the controller

So, with this we start chapter 16 of the patents act. There are 4 kinds of applications a person can make for a compulsory licence. In affect there are 4 different types of compulsory licences under the act. A person can make an application for a compulsory licence under section 84. This is the default compulsory licence under 84. An application can be made under section 91; we will see what that is. An application can also be made under section 92 and finally, an application can be made under section 92 a. These are all 4 different types of compulsory licences. The circumstances under which the circumstances under which these licences are made are different the grounds are also different.

So, 84, 91, 92 and 92 a are the 4 types of applications a person can make who wants to seek a compulsory licence over an existing patent. Now before we get into section 84 and see how a default or what we call the ordinary compulsory licence process the way in which you have apply and the grounds on which it is applied and how the matter is determined by the controller. Before we look into that, let us look at the introductory provisions on compulsory licence.

Section 82 and 83 gives some introduction or a give some broad general principles on the working of patented inventions. Now let us see 82 first, 82 is has definitions usually we had mentioned this that definitions normally figure in the definitional clause. Section 2, when a definition figures in a particular chapter then that definition will have the meaning only for that chapter or the particular chapter when the meaning given to that definition is confined for that chapter alone. So, 82 comes under chapter 16. So, we understand patented article and patentee for the purpose of this chapter. In fact, 82 begins in this chapter unless the context otherwise requires, patented articles include particle made by a patented process and patentee includes an exclusive licensee. Now this understanding is only for this chapter.