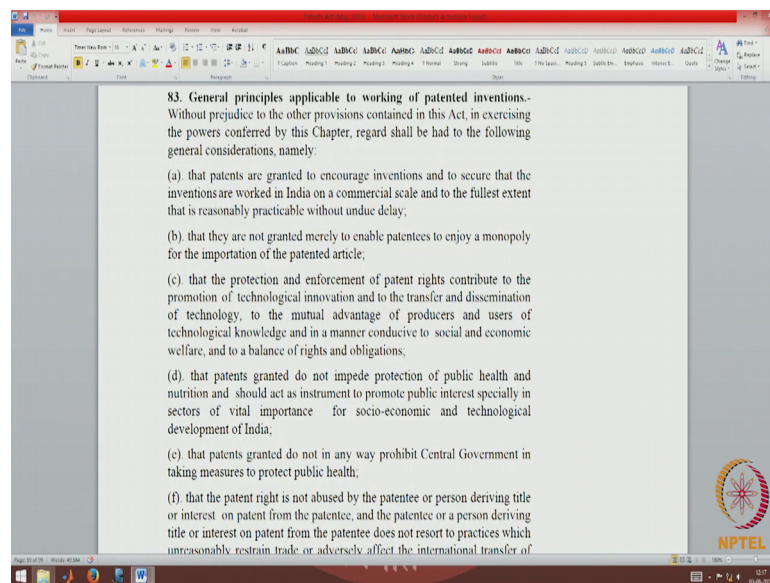


**Patent Law for Engineers and Scientists**  
**Prof. Feroz Ali**  
**Department of Management**  
**Indian Institute of Technology, Madras**

**Lecture – 61**  
**Compulsory Licensing**  
**Working of Patents**

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83; now 83 lays on some principles which are applicable to working of patented inventions, now there is a requirement and this is an historical requirement many countries had this in the process of their development, and as patent law evolved this used to be a requirement in many jurisdictions that patents that are granted should be worked locally, but this is also called the local working requirement.

The objective of a country in granting a patent is not to give an exclusivity or a monopoly to the patentee. Rather the objective of granting a patent is that the patentee will work the invention, the work the technology in the country and the country will get some advantage or some benefit by the working of the pattern. So, patents are granted with the objective that the technology will be put into effect or the benefit of the technology will reach the citizens or the people living in that country.

Now, in this with this objective, the countries which grant patents initially now some countries have removed the working requirement initially they had the principle that

patented inventions have to be worked locally. Now 83 encompasses one such principle which was introduced into the 1970 act, without prejudice to other provisions contained in the act in exercising the powers contained in by this chapter, regard shall be had to the following general considerations namely. These are all general principles general considerations and because they are principles they the in exercising the powers under this chapter, there has these principles shall be considered if regard shall be had.

A patents are granted to encourage inventions and to secure the inventions are worked in India on a commercial scale and to the fullest extent, that is reasonably practicable without undue delay. A clear statement that patents are granted with the objective that the inventions will be worked in India on a commercial scale and to the fullest extent; b that they are not granted merely to enable patentees to enjoy a monopoly for importation of the patented article, that patents are granted not for the patentee to import the patented article, but rather to manufacture and to make the invention available on a commercial scale.

C the protection and enforcement of patent rights contribute to the promotion of technological innovation, and to the transfer and dissemination of technology to the mutual advantage of producers and users of technology to knowledge, and in a manner conducive to social and economic welfare and to balance the rights and obligations. Again we see that there is an objective served by the grant of patents, which is transfer of technology. The patterns require disclosures to be made of the invention, and the disclosures have to be an enabling disclosure. We know this from the requirement that the monopoly or the exclusivity is granted in lieu of the disclosure. So, if there is no disclosure of the invention or the working of the invention there is simply no patent that a country will grant.

So, this itself acts as a transfer of technology, the fact that the patentee discloses the working of the invention and the standard of disclosure is such that a person skilled in the art will be able to make it or what enables a person skilled in they have to make it, we can understand that by the disclosure itself the patentee has discharged his obligation of disclosing the technology, in a manner in which others can do it.

Now, this is only part of the consideration for the grant of a patent. Working of an invention goes to the next level, it says just not the disclosure because even if the

disclosure is there no person can use the technology on a commercial scale because the disclosure is a protected disclosure. A person was granted a patent gets exclusivity for 20 years. So, no other person even if he knows how the pattern can be worked, will be allowed to embark on a commercial scale of production. For this reason countries had a working requirement. Now that the patented technology is protected exclusively and third parties cannot use the technology though they know the technology because the technology is already disclosed in the complete specification, though they know the technology they have to wait till the expiry of the pattern.

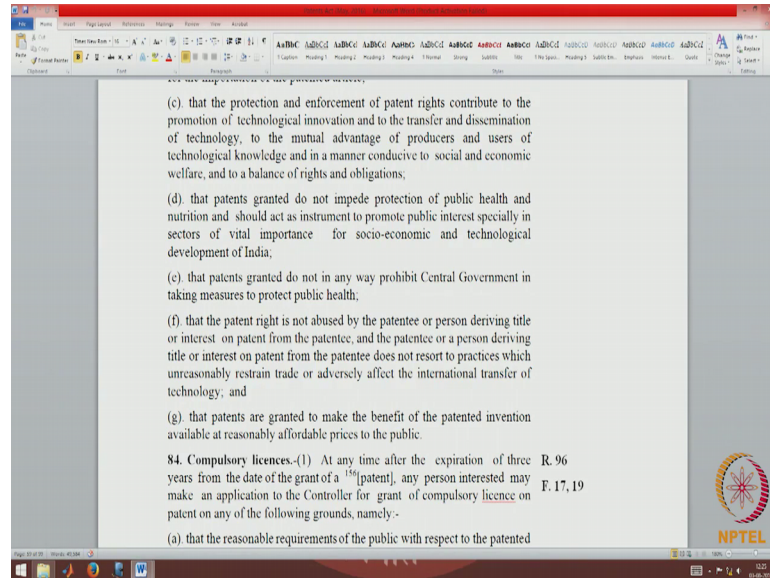
In the meantime if the patentee chooses not to work the invention, then the country that grants the patent will not get the benefit of a patent grant. So, you have this requirement not only should there be an enabling disclosure, which is the requirement for any pattern to be granted, the patentee should also work the invention locally on a commercial scale. So, the objective of working the invention locally on a commercial scale is with the object that the technology that is encompassed in the manufacture will eventually get transferred to the country. So, there is the promotion of technological innovation and the transfer and dissemination of technology, which is envisaged in the working requirement

D; the patents granted do not impede protection of public health and nutrition, and should act as instrument to promote public interest specially in sectors of vital importance for social economic and technological development of India. So, the object of granting patents is that it should promote or contribute to the technological and socio economic development of India, and it should act as an instrument to promote public interest, and should not impede the protection of public health and nutrition. So, if there is a patent over a substance which can cure a nutritional deficiency or a nutritional deficiency in young children, it will be in the interest of the Indian government to have that technology readily available to the masses and if nutritional substance is not available to the masses at an affordable price, then the government can issue a compulsory license.

So, this section 83 actually recognizes the importance of technology in the development of a nation. If you look at the way in which 83 is worded, you will find that the India recognizes the role that technology plays in its development. And accordingly there are certain safeguards to ensure that the public health is and nutrition does not get impeded by the grant of patterns, similarly promotion of public interest is also advanced by the

grant of patents with the objective of serving the goals of economic and technological development of India.

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E patents granted do not in any way prohibit central government in taking measures to protect public health. We had seen a similar provision in section 47, that patents are granted subject to certain conditions, if there is something that impedes public health then the central government can take certain measures. F the patent right is not abused by the patentee or a person deriving title or interest on pattern from the patentee, and the patentee or a person deriving in title or interest on pattern from the patentee, does not resort to practices which unreasonably restraint lead radley affect the international transfer of technology.

Now, this provision is what we call patent abuse or abuse caused by intellectual property rights. Inflation property rights once if when they are granted, it gives the discretion to the right holder to stop others from doing the act or the making the product or process covered by the patent. So, it gives an exclusivity and since the patentee has an exclusivity, there is a possibility that the patentee would use the exclusivity to stop others whereas, he would not use the right in a positive way in which it will be available on a commercial scale.

So, there is a possibility while the pattern gives him the right to exclude others from using the technology, the pattern does not have a obligation that the patentee should use

the technology in India, that obligation is simply not there. So, the working requirement was evolved to make the patentee discharge this obligation. Now the working requirement in itself would not say that patents are granted with the objective that they will be worked, that is no patent law has such a requirement. Rather the working requirement in patent law would state that if the pattern does not worked then that will be a cause for issuing compulsory license so that others may work the invention. Others may make the invention on a commercial scale; others will supply the invention into the Indian market. So, these are the conditions for which they can be a requirement on working.

G the patterns are granted to make the benefit of a patented invention available at reasonably affordable prices to the public. Now this is a one provision which ties the fact that a invention is patented to making it affordable to the public. Now normally patents ads do not get into pricing of a product, but in this chapter you will find that the fact that the patented product or the patented invention is not available at a reasonably affordable price to the public could be a ground for seeking a compulsory license. Now let us look at how a 84 operates.