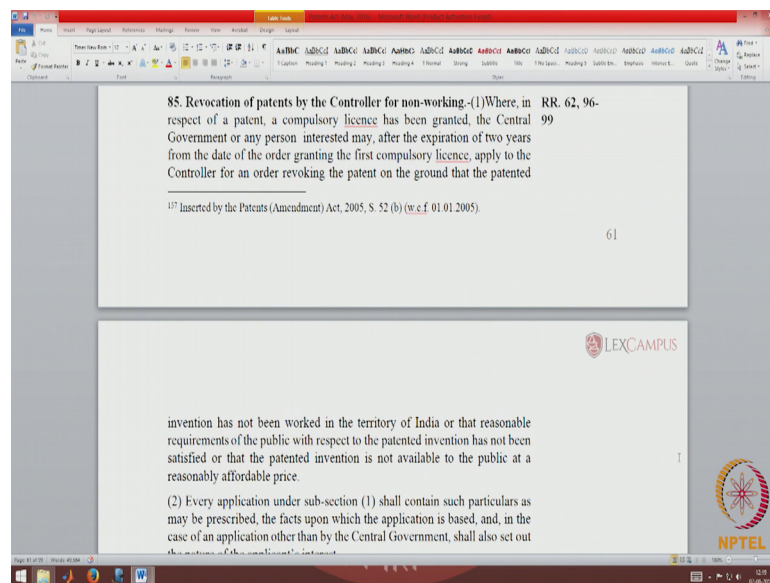


Patent Law for Engineers and Scientists
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Lecture – 63
Compulsory Licensing
Revocation of Patent

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Section 85; rotation of patterns by the controller for non working, 85 applies not only for not working, but also for cases where the reasonable requirements of the public were not met and also where patented invention is not available at an affordable price. We have already seen that one of the conditions for the issuance of a compulsory license is the fact that the pattern does not being worked locally, the other conditions being the reasonable requirements were not met, and the pattern in patented invention was not made available at an affordable price. So, what we call the question of access and the question of affordability.

The third ground on which a compulsory license could be granted is by the fact that the invention was not worked locally; there was no commercial manufacture on a local scale within the country. Now what happens when the patent is not worked? Now one of the consequences of the patent not being continuously worked within the territory of India, is that it could become a subject of revocation.

Now, revocation is an extreme step, because when a patent is revoked the patent ceases to be a right that is enforceable, whatever is covered by the patent falls into the public domain and everybody becomes free to use what is covered by the pattern. So, revocation is an extreme measure and scholars see compulsory licenses as a moderate or an intermediate measure in regulating patterns. Countries which grant compulsory licenses do not end up revoking the pattern because compulsory license would only mean that there is an additional player in the field, the rights of the patentee still remain the same the patentee will be allowed to keep the patent alive, and when the terms of the compulsory license gets modified or the terms of the compulsory license is revoked, then the patentee again becomes gets into the sole control of the pattern.

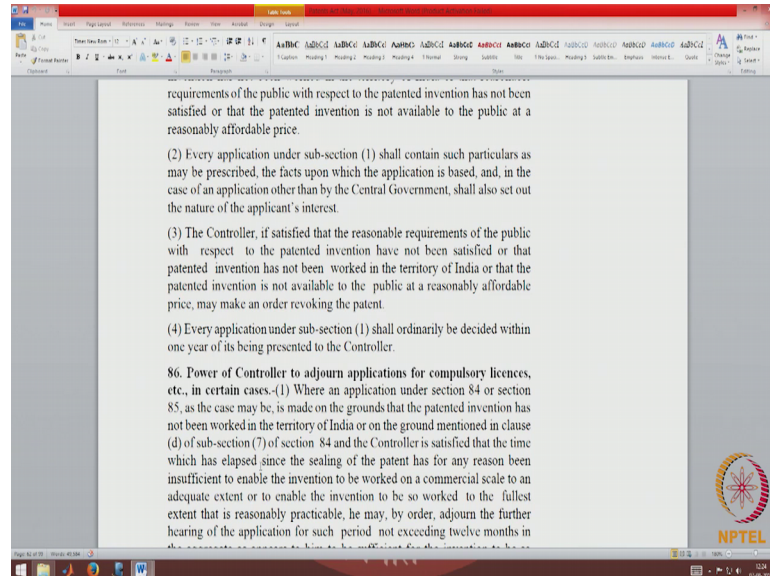
Now 85 1 states that we are in respect of a pattern depart compulsory license has been granted. So, one of the requirements for 85 the revocation under a d a fight to kick in is that the patent should have been compulsory licensed; which means the patent was granted and after 3 years someone applied for a compulsory license and the compulsory license was granted. The central government or any person interested may after the expiration of two years from the date of ordering the grant of the first compulsory license, applied to the controller for an order revoking the pattern on the ground that the patented invention has not been worked in the territory of India or that reasonable requirements of the public with respect of the patented invention have not been satisfied or that the patented invention is not available to the public at a reasonably affordable price.

So, the patent was granted and after 3 years a compulsory a license was applied for and the compulsory license was granted, and still after the grant of the compulsory license two years after the grant, the patent was not worked it was not made available to the public at the reasonable requirements of the public were not satisfied, and it was not available to the public at an affordable price. Though 85 is titled as non working, it also incorporates other grounds. So, we saw that in 84 there could be three grounds reasonable requirements of the public have not been met, to the patented invention is not available at an affordable price and nonworking.

85 though the title of 85 says that it pertains to non working, it also applies to the two other conditions. Now 2 years after the expiration of the compulsory license, any person any interested person or the central government can apply to the controller for an

working the patent, on the ground that the conditions on which the compulsory license was granted were still not satisfied.

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Now in a normal case if a compulsory license is granted we would expect that the compulsory license would address the grounds that were raised in the application, it would address the issue of reasonable requirements of the public being met it will address the issue of the price being affordable and it will also address the issue of local working.

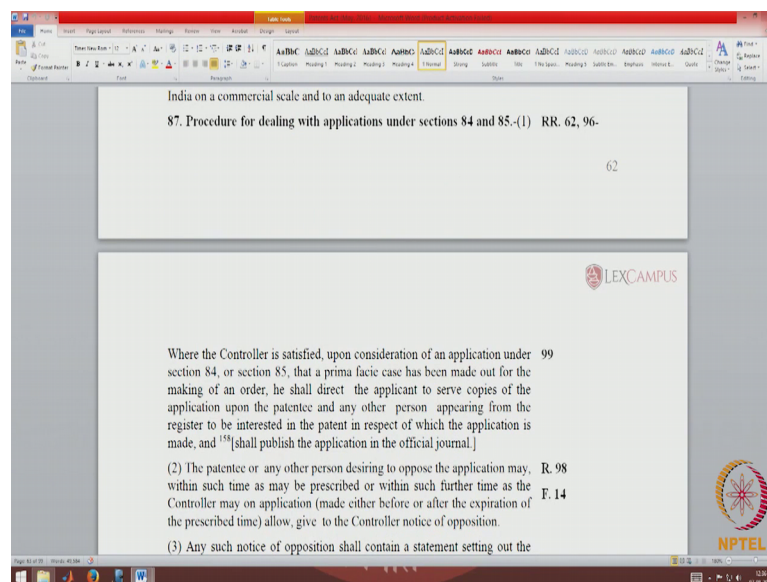
Now, even after the compulsory license is granted if these issues are not met, what could be the hrickos? One ricos could be to file another compulsory license, but that does not make sense because the first compulsory license itself has not been put into effect. So, law provides for a measure by which the pattern can be revoked and any person could then work the invention. 85 2 every application under subsection 1 shall contain such particulars as may be prescribed the facts upon which the application is based, and in the case of an application other than by the central government shall set out the persons interest.

Now, these are requirements for making any application by a person interested; and we had seen this even in the case of post grant opposition, you have to describe there has to be a statement of facts you have to show your interest.

3 the controller if satisfied that the reasonable requirements of the pattern with respect to the patented invention have not been satisfied, or the patented invention has not been worked in the territory of India, or that the patented invention is not available to the public as a reasonable price, we make an order revoking the patent.

Now, if 2 years after the grant of the compulsory license the grounds on which the compulsory license was sought for still remain. Requirements not met if not available at affordable price and it is not worked in India, then the controller can if an application is being made to revoke the patent. 4 every application at a subsection or shall ordinarily be decided within one year of it being presented to the controller. So, here is a limit timeline given to the controller that the application has to be decided within one year.

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Procedure for dealing with applications under section 84 and 85; now 84 and 85 are connected because 84 comes into operation only after going through the steps of 84. The 84 an application was made under 84 and compulsory license was granted, and then it was not worked for 2 years or it was not made available at a reasonable affordable price or it was not least the reasonable requirements of the public, were not met. Now in those situation 85 operates.

So, one of the prerequisites for 85 is that there is a grant of a compulsory license under 84, that is why you find the procedure common for 84 and 85. 87 1 where the controller is satisfied upon the consideration of an application under 84 or 85, that a prima facie

case has been made out for making an order. The prima facie stands for an preliminary case or something which is evident on the face of the record. He shall direct the applicant to serve copies of the application upon the patentee and any other person appearing from the register to be interested in the patent in respect of which the application is made and shall publish the application in the official journal.

So, when an application for compulsory license is filed and the controller is satisfied on the record that there is in case an arguable case. Preliminary case has been made of the controller is satisfied by looking at the application, then the controller will ask the applicant to serve copies on the patentee and the people persons whose name appear in the register and shall publish the application in the official journal. 2. The patentee or other person deciding to oppose the application may within such time as may be prescribed or within such further time as the controller may allow, gives the controller notice of opposition.

Now, we saw that in many proceedings under the patents act there is a mechanism of opposition. Amendments can be opposed restoration of lapse, patterns can be opposed surrender of patents can be opposed a compulsory license application can also be opposed. But in this case the opposition will be done by the patentee or the person who are interested in the patent continuing. So, the patentee will give the controller a notice of opposition and this is in form 14.

This is not the notice of opposition which a person would give for post grant opposition. There is a different no trace of opposition there is a common form for various other proceedings so, form 14 will be used. Any such notice of opposition shall contain a statement setting out the grounds on which the epic application is a post where any such notice of opposition is duly given the controller shall notify the applicant, and shall give the applicant and the opponent an opportunity of being heard before deciding the case. So, the notice of opposition will be communicated to the applicant, the person who is applied for the compulsory license and the controller shall hear both the parties before deciding the case.