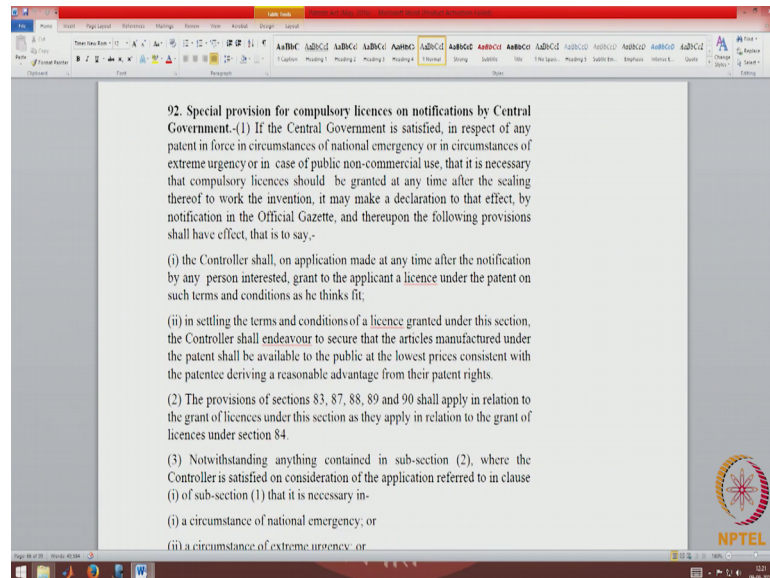


Patent Law for Engineers and Scientists
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Lecture - 66
Compulsory License on Notification by Central Government

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Now, we come to the third type of compulsory license which is mentioned in section 92. 92 deals with a special compulsory license. And this is a special provision and then something is mentioned as a special provision we understand that as an exception. It cannot be the rule. So, 84 is the rule and 91 could again be a general application wherever somebody requires a license to a related invention that could again be considered as of general application. 92 comes into play only under special circumstances. 92 deals with special provision for compulsory licenses on notification by the central government.

The prerequisite for 92 to kick off is the fact that the central government should make a notification. Where as 84 we saw that, 84 is market initiated a person who has the capacity to manufacture can approach the controller with a license so it is market driven.

91 is also market driven in the sense that a competitor can approach the controller seeking a compulsory license as and when there is a need again that is market driven. 92 is not market driven. 92 the central government has to first pass a notification. So, the

power to initiate a 92 license should first begin with the central government issuing a notification, and only then 92 can be even implemented. So, you cannot make an application under 92 directly to the government which was done recently in a case and rightly the government rejected it. Because the prerequisite for a 92 license is that the government has to issue a notification. You can ask the government or request the government to issue a notification site citing the need, but you cannot make an application till such notification is issued. So, if a question is asked can a compulsory license under such to be filed by a party.

If the party feels that the conditions under 80 for all the 3 conditions are satisfied can a party seek or 92 license. The answer is no, a 92 license can only be sought for after the government has issued a notification. So, unless the government issues a notification you cannot approach the controller with a 92 license. So, that is the key distinction between an 84 license and an 92 license. An 84 license does not require a government notification, 92 license you cannot do anything unless there is a government notification.

Now, let us look at the details 92 1. If the central government is satisfied in respect of any patent enforce in circumstances of national emergency, that is the first condition or in circumstances of extreme emergency. Now what is a national emergency an extreme urgency? We will look at that soon. Or in case of public non commercial use, that it is necessary that compulsory licenses should be granted at any time after the ceiling again the word ceiling should be read as after the grant, thereof to work the invention it may make a declaration to that effect by notification in the official gazette and thereupon the following provision shall have effect that is to say. So, the first step for 92 to be activated or for seeking a compulsory license under 92, the first step would be to look at whether the government has issued a notification under in the official gazette.

So, the condition for a 92 is that there has to be a declaration. By notification in the official gazette the official gazette is the official record by which government makes public Announcements.

So, something is published in the official gazette it is a record that something has been published by the government. So, a notification in the official gazette is a requirement. Once the notification is made, now what are the conditions for that to trigger that notification? One in respect of a patent that is in force. There is a circumstance either of

national emergency. 2, there is a circumstance of extreme urgency or there is a case of public non commercial use. We will explain these things soon, but in these circumstances compulsory license can be granted after the grant of the patent anytime there is no 3 year limit. If the government makes a notification to that effect saying that there can be a compulsory license in lieu of national emergency extreme urgency or public non commercial use. Whatever the condition the government can make a notification only then the procedure under 92 can actually be initiated.

Now, let us look at the procedure after the notification. So, let us assume that a notification is there, now the controller shall one says that the controller shall on application made at any time after the notification by any person interested grant the applicant are licensed under the patent on such terms as he thinks fit.

So, once the notification is made any person interested shall make an application and the controller can grant. In settling the terms and conditions of the license granted under this section the controller shall endeavor to secure that the articles manufacturer under the patent shall be available to the public at the lowest prices consistent with the patentee deriving a reasonable advantage for their patent rights. So, once the notification is in place somebody files an interested person files an application for compulsory license. The controller shall grant the compulsory license. 2 in settling the terms he shall ensure that that article that patented article is available at the lowest price and also ensure that the patentee gets a royalty.

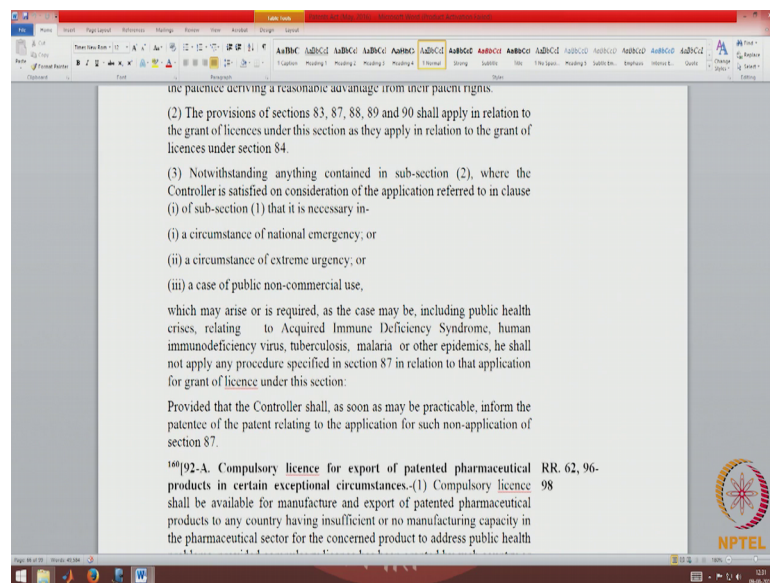
Because in every compulsory license what the controller is in effect allowing is the use the manufacture and sale of the patented product by a third party other than the patentee. This is the effect of a compulsory license. When a compulsory license is granted on the terms that controller decides, the controller is in effect allowing a third party to manufacture and sell the patented invention at a price which will; obviously, be lesser than the price at which the patentee is selling.

Now, whatever price the controller fixes? The controller will also ensure that a royalty is paid back to the patentee. This is a part of any license. A license would allow you to use another person's patent in lieu of a royalty. So, royalty is the consideration for using the license. So, similarly this is the case in a voluntary or a normal license. Even in the compulsory license the dynamics that is why we call it a license. You are allowed to use

the technology, though not by the patentee by an order of the controller. So, that is why we call it compulsory. You are allowed to use the technology and because you are using the technology you have to pay back a royalty to the patentee. So, the controller shall ensure that the lowest price is fixed at the same time by fixing the lower price a reasonable royalty an advantage here the word advantage is used is also given to the patentee.

Provisions of section 83, 83 other terms on which general terms for the grant of compulsory license - 87, 88, 89 90 shall apply with regard to this section as it applies to a section under 84. So, the terms how he fixed the controller fixes the terms. And all those things whether it can be non assignable whether it can be exclusive nonexclusive, all those terms will govern even the grant of 90 to license. But the grounds under 84 will not apply rather the grounds are different here the only ground is that they should be a notification by the official gazette. And that notification should be in the light of a national emergency and extreme emergency or public noncommercial use.

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Subsection 3 is that notwithstanding anything contained in subsection 2, where the controller is satisfied on consideration of the application referred to in clause one of subsection 1, that it is necessary in and circumstance of national emergency or a circumstance of extreme emergency or a case of public non commercial use the 3 cases. Which may arise or is required as the case may be including public health crisis relating

to aids acquired immunodeficiency syndrome, human immunodeficiency virus, tuberculosis, malaria or other epidemics. He shall not apply any procedure specified in 87. Section 87 in relation to that application for the grant of a license under this section. Provided the controller shall as soon as may be practicable inform the patentee of the pattern relating to the application for such non application of 87.

Now, 87 is the procedure to be followed in 85 and 84. Now if you have seen that the controller makes a prima facie assessment that there is a case, and then he asks the party to serve copies on the patentee. The patentee can oppose notice of opposition is given the PHA the controller hears both the sides and then passes an order. Now this is the procedure under 87. Now in certain cases the controller can ensure and know what are those cases it includes a public health crisis, relating to AIDS human immunodeficiency virus, tuberculosis, malaria and other epidemics, he can ensure that the procedure of 87 is not followed which means he need not ask the applicant to serve copies on the patentee he need not entertain an opposition from the patentee the notice of opposition and he did not hear the parties.

Now, but what is envisaged here in the proviso is that as soon as may be practicable inform the patentee on the non application of section 87. But the controller has to inform the patentee that there is an application that has come there is and patentee will definitely be informed because once the notification is in place the patentee will be put to notice that they could anybody can now seek an apt license and it is going to be a process and whether it involves AIDS human immunodeficiency virus tuberculosis malaria or other epidemics the patentee will certainly know what is the what is the surrounding circumstances under which the notification was issued.

So, the moment the controller informs the patentee the patentee may intervene or may seek legal recourse to protect it is rights. So, all that is required under section 92 is to inform the patentee, that is it there is no need to entertain opposition, there is no need to pass hear them and there is no need to pass orders based on the hearing. So, this is a special category of license, and we saw that in certain circumstances even the procedure laid out in 87, 88, 89, 90 need not be followed. More specifically the procedure in 87, because 88 89 90 are more on terms and the powers of the controller. 87 requires hearing the patentee the patentee giving and patentee an opportunity to file an opposition. So,

there is no need to follow that in the case of a license under 92. So, 92 is the third type of license.