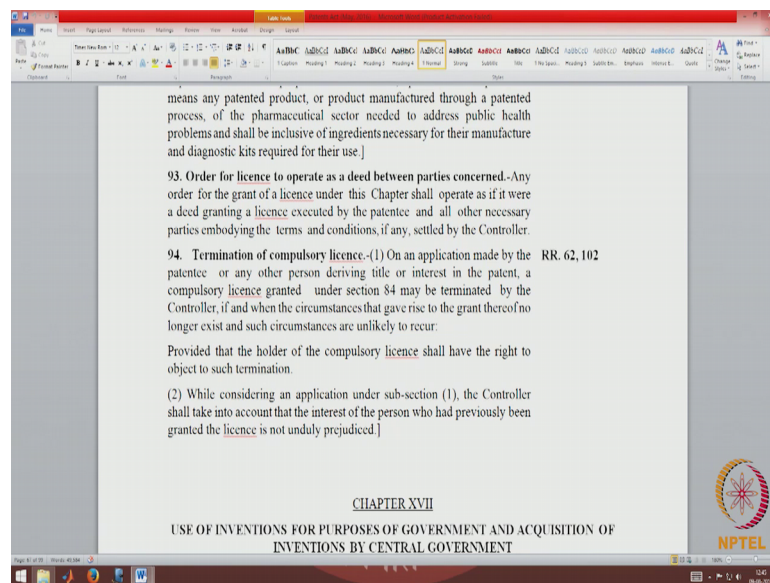


Patent Law for Engineers and Scientists
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Lecture – 68
Compulsory Licensing
Termination of Compulsory License, Related Rules

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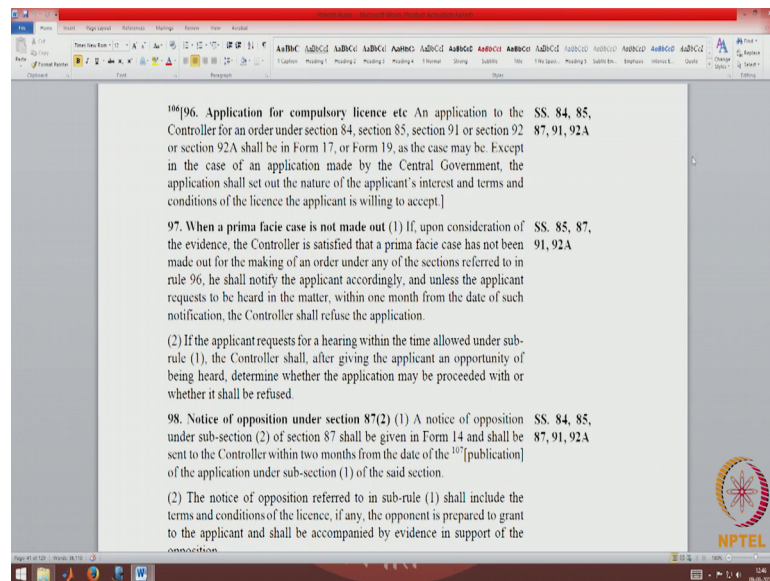


Now, 94 talks about termination; termination of a licence, one on an application made by the patentee or any other person deriving title or interest in the patent the compulsory licence granted under 84 may be terminated by the controller, if and when the circumstances that give rise to the grant thereof no longer exist and such circumstances are unlikely to recur.

So, the patentee can approach if the circumstances of grant no longer exist. See if the only ground which the grant occurred was the fact that it was not locally manufactured and the patentee after a year or so, starts local manufacture then the patentee can approach the patent controller to say that now that local manufacturer said this by me the grant can be revoked, provided that the holder of the compulsory licensing shall have the right to object to such termination. So, again there some kind of an opposition proceeding here.

Is the patentee makes an application for termination the right holder the compulsory licensee can oppose it and I can object to it. 2 while considering an application under sub section 1, the controller shall take into account the interest of a person who had previously been granted the licence is not duly prejudiced. So, in looking at the termination it will ensure that the right of a person who is enjoying the licence is not unduly prejudiced.

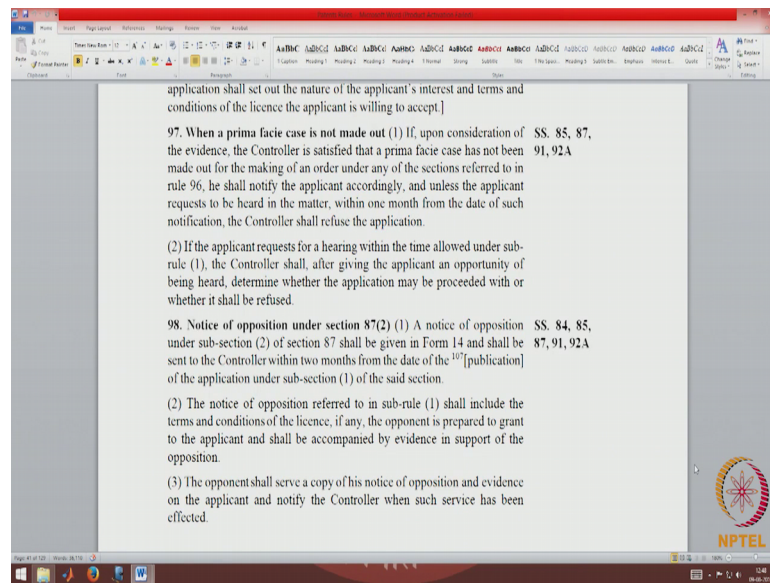
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Now, there are certain rules pertaining to the chapter on compulsory licence, now 96 states that an application for a compulsory licence under section 84 or 85, 91, 92 and 92 A you should understand that section though section 85 is mentioned here section 85 is not an application for a compulsory licence rather it is an application for revocation. But nevertheless since 85 is tie to 84 you find that 85 is also mentioned here. So, shall be informed 17 or form19 as the case may be. So, there are two forms form 17 and form 19 expect in the case of an application made by central government the application terms set out the nature of the persons interest, and the terms and conditions the applicant is willing to acc accept

So, if a government makes an application there is no need to mention the interest, if a person or a party other than the government makes an application then the terms and conditions he is willing to accept and he should set out the interest involved in the patent.

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Now, 97 states when a prima facie case is not made out. Now we saw that in section 87 the procedure dealing with the grant of compulsory licences, the first requirement is that the controller has to be satisfied that a prima facie case has been made out for making an order. So, the prima facie or preliminary or initial satisfaction by the controller is a requirement for proceeding with an application under 84 or 85.

If the controller is satisfied that the prima facie case has not been made out, for making an order under any of the sections referred to in rule 96 with other 5 sections, he shall notified to applicant accordingly and unless the applicant request to be heard in the matter within one month from the date of such notification, the controller shall refuse the application.

So, the procedure for rejecting an application for compulsory licence is that if the controller is of the opinion that it is not satisfy the requirement under 97, then which is the prima facie case is not made out, then he shall notify the applicant and if the applicant wants to be heard he will hear the applicant and within one month from the date of such notification the controller shall refuse the application. So, this is a requirement for the controller if the controller feels that a prima facie case is not made out then this is what this is the procedure that he will follow. He should notify here the applicant if the applicant wants to be heard and within one month of the notification he can pass an order of refusal.

97 2 if the applicant request for a hearing within the time allowed under sub rule 1, the controller shall after giving the applicant opportunity of being heard determine whether the application may be preceded with or whether it shall be refused. So, he shall hear the applicant and then decide whether to proceed or to refuse. 98 we had seen that there is an opposition preceding (Refer Time: 05:29) 87 the patentee can oppose an application for a compulsory licence on his patent.

Now, we also saw that the normal form is form 14 for any other opposition other than an opposition under the post grand provisions which is form 7. A notice of opposition under sub section 2 of 87 shall be given in form 14 and shall be sent to the controller within two months from the date of publication of the application under sub section 1 of the said section.

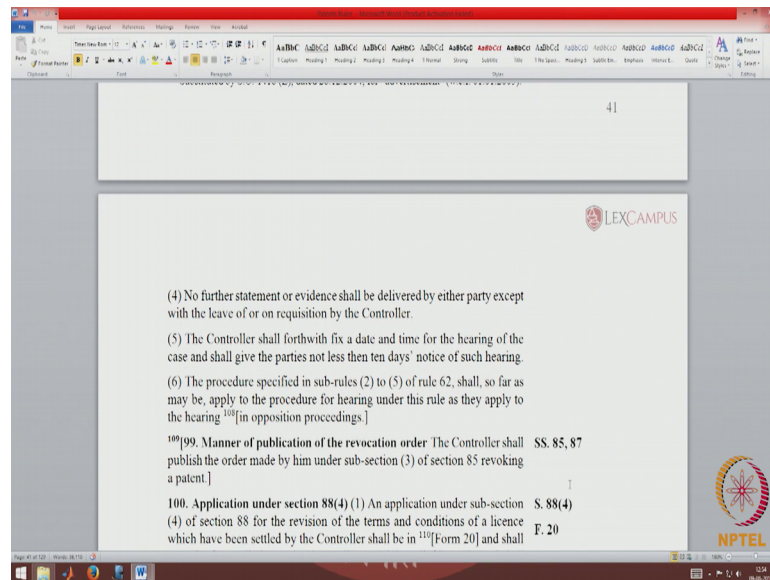
The publication mentioned here is when the controller feels that the prima facie case has been made out he will direct the applicant to serve copies on the patentee, and shall published the application in the official journal. So, official journal is different from the gazette official journal is the journal of the patent office which is published every Friday and an online version is available in the website patent office website. So, when an is made for a compulsory license, and the controller is satisfied there is a prima facie case the he would publish the application in the official journal.

Now, once this publication happens the notice of opposition shall go to the controller within two months from the date of this publication that is a timeline given for the patentee to oppose. 2 the notice of opposition refer to in sub rule one shall include terms and conditions of the licence if any, the opponent is prepared to grant to the applicant and shall be accompanied by evidence in support of your position. Now when the patentee opposes the patentee can also state the terms on which he is willing to grant licence. In some cases licensee or an applicant will approach for a compulsory licence because he is not able to get a licence from the patentee or the patentee is not willing to give it on reasonable as the applicant feel.

Now, if there is a different between the two parties, the patentee wants to (Refer Time: 07:45) the licence and the applicants who wants to take the licence with regard to the royalty rates, then by opposing the application for compulsory licence the patentee can also indicate what are the terms that he wants. So, so that the con controller can you also

consider if a licence is to be granted what are the on which the patentee is willing to granted. So, while sending the notice of opposition, the opponent that is a patentee can also include what are the terms and conditions that he wants to get into the licence.

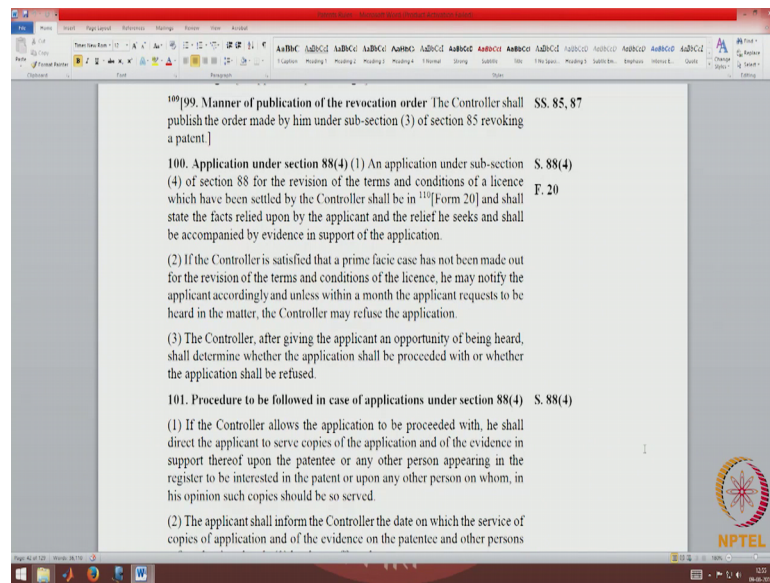
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Three the opponent shall serve a copy of the notice of an opposition end of it and evidence to on the applicant and notify the control when the services been affected. 4 no further statement shall be delivered by either party except by leaf of our own requisition by the controller. So, once the opponent serves his statement and evidence they would not be any further evidence, the controller shall fix a date and time for hearing of the case and shall parties not less than 10 days' notice of such hearing this is the normal practice and the pleadings are completed when the evidences in place, a controller shall notify and give ten days of notice for hearing.

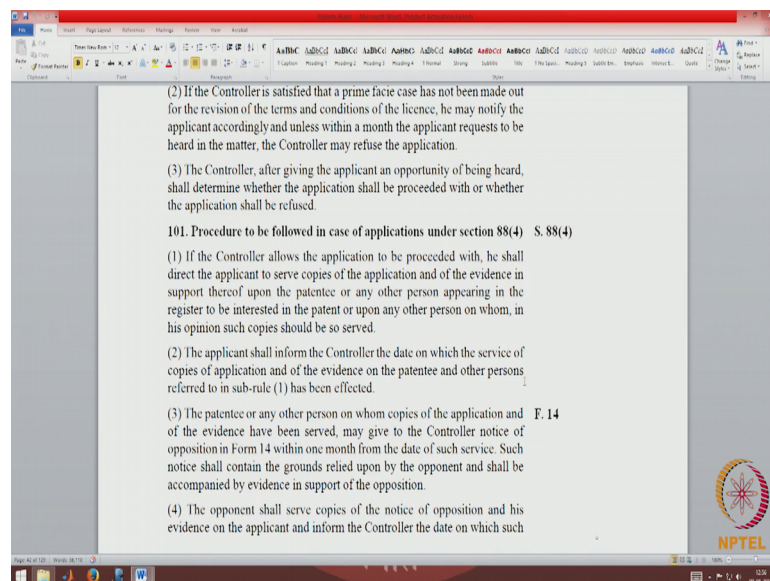
The procedure specified in sub rule 2 to 5 of rule 62 shall so far as may be apply to the procedure for hearing under this rule, as he applied to the hearing in a position proceeding and we have seen that the provisions for post grants oppositions will normally apply for every other position. Now the manner of making a publication of revocation under section 85, shall publish the order made by him under subsection 3 or (Refer Time: 09:34) revoked patent. So, a revocation under 85 shall be published.

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Now, 100 101 deal with the procedure to be followed when under section 88.

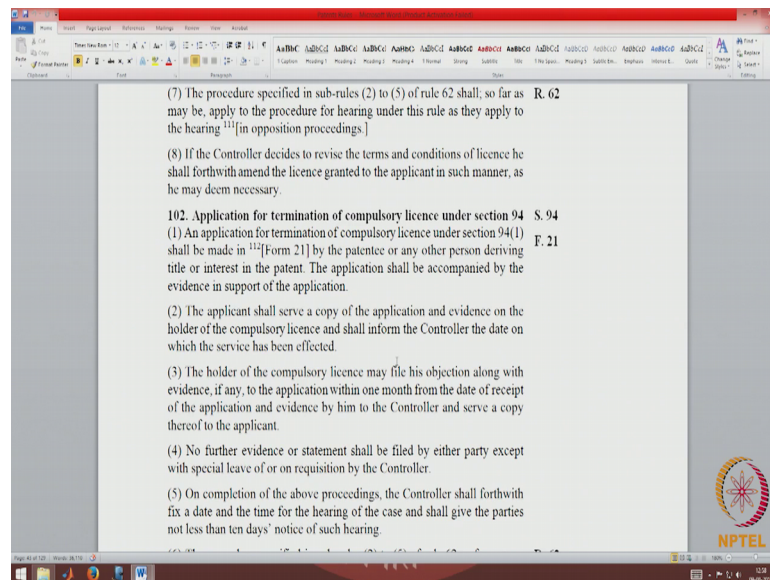
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in section 88 describes the powers of the controller in granting compulsory licences; under 84 then the and an 88is also relevant for the other types of compulsory licence, now the controller shall take into factor whether the person is an existing licensee or if he is an existing licensee whether to keep the existing licensee license impact or to cancel it, there are various powers that the controller has

The a 100 101 details the procedure to be followed when there is an application under 88 4. 88 4 pertains to the revision of terms of an compulsory licence that has already been granted. We had already mentioned that once a compulsory licence is granted the licensee will have to work it for at least one year, and after one year that is 12 months he can approach the controller on to revise the terms and conditions because on the ground that the terms of prove to be onerous and he is not able to work the invention except as a at a loss. So, 88 4 deals with a revision of terms of a compulsory licence and the app there is an application under form 20 and there is a procedure. So, 100 and 101 have one cover the application and the procedure when you need to seek a revision of the terms of a compulsory licence that has already been granted.

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Now, 94 we saw that a compulsory licence granted can be terminated; there is an application for termination which is form 21 and the procedure that has to be followed is detail in rule 102.