

Study Question – 2025 – Explanatory Note

Compulsory licensing

The very existence of a compulsory licence system, which undermines the patentee's exclusive property rights, may appear inappropriate, or even dangerous, as it calls into question the patent law system based on the monopoly granted to the patentee in return for the disclosure of his invention.

However, the concept of a compulsory licence has existed in patent law in the Paris Convention since 1900 (Brussels Act). It is also provided for in the 1994 TRIPS agreements. The purpose of compulsory licensing is to remedy extreme situations, where the exclusivity conferred by a patent is too bluntly contrary to the general interest. Compulsory licensing is therefore an exception; it must be subject to strict conditions.

AIPPI has not conducted any Study Question on the general regime of compulsory licensing, even if some past Study Questions addressed various issues relating to compulsory licensing, resulting in e.g. the Resolution Q202 on The Impact of Public Health issues on Exclusive Patent Rights - Boston 2008; the Resolution Q3 on Restrictions of the Rights of the Patentee for Reasons of Public Interest - Stockholm 1958; and the Resolution Q39 on Reasons for Which the Rights of the Patentee Can be Restricted - Tokyo 1966.

This is the purpose of this Study Question: to study the general compulsory licensing regime.

This topic needs to be addressed because extended compulsory licensing are now routinely proposed in particular sectors, for instance for COVID-related therapeutics and in other areas, such as cleantech, etc.

Issues that may be considered as part of this Study Question may include:

- What overriding interests should justify the granting of a compulsory licence (public health, environment, etc.)?
- What should be the conditions for applying for a compulsory licence (absence or inadequacy of exploitation by the patentee, excessive prices for the patentee's products, refusal of licence by the patentee, offer of licence on dissuasive legal or economic terms, etc.) ?
- What should be the characteristics of a compulsory licence?
 - o duration, territoriality, fields, etc.



Patents - Option 1

- o free or against payment, in which case, how should the royalty rate be assessed?
- o transferable or not, etc.