

Managing Intellectual Property

The Global IP Resource

TURKEY: COMPULSORY LICENSING IN THE DRAFT IP LAW

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The draft Industrial Property Law in Turkey was passed by the main and sub commissions of the Science, Industry and Technology Ministry with minor amendments on May 5 2016. As shared in the issue of May 25 2016, one of the most debated issues was the international exhaustion principle, accepted for any kind of IP rights.

Another much debated issue of the draft law is about compulsory licensing provisions in the patent part of the draft law.

The Patent Decree Law in force also rules on compulsory licensing and mainly points out limited situations where a compulsory licence over a patent right can be demanded and granted. These situations are (i) non-use of the patent, (ii) dependency of subject matter of patents, (iii) public interest and ruled under relevant provisions of the Decree Law.

The failure to work a patent has been ruled in an extended way, despite the strong objections of NGOs during the commission meetings, in relation to the working requirement of a patent and the grant of a compulsory licence. The new provision of the draft law on compulsory licence in case of failure to work of a patent, Article 130, reads:

At the end of three years after publication of a patent grant in the Bulletin or at the end of four years after the patent application date – whichever date expires later – any interested party can request the issue of a compulsory licence, claiming that as of the date of the demand for the compulsory licence, the invention subject to the patent has not been started to be used or no serious and real measures have been taken to use the patented invention or *the use of the invention does not reach a level to satisfy the national market's needs* (emphasis added).

It is important to note that "public interest" is not a pre-condition for granting a compulsory licence as per Article 130 of the draft law. Compulsory licence in case of public interest is ruled in Article 132 of the draft law as a separate situation for a compulsory licence.

At the commission meeting, a spokesman for TPI stated that Article 130 is completely in line with the Paris Convention and as the international convention rules in the same way about compulsory licences over patents there should not be any discussion. However Article 5 of Paris Convention mentions about "failure to work or insufficient working" and clearly does not mention about "satisfying local market's needs".

Apparently the Ministry and the TPI wants "insufficient working" to be interpreted as "satisfying local market's needs" in Turkey without preconditioning "public interest".

In our opinion, the legislator should literally follow the wording of Article 5 of the Paris Convention and use "non-working or insufficient working" expressions, especially considering the lack of "public interest" condition and if the true aim is preventing the abuses which might result from the exercise of the exclusive rights conferred by the patent. It is also clear that such wording would enable the IP courts to interpret whether the patent is worked or not by considering the characteristics of each matter.



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