

TURKEY: IS A PUBLIC INTEREST COMPULSORY LICENCE ON THE WAY?

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Compulsory licensing (CL) has been one of the most important concepts in the new Turkish IP Law which entered into force in 2017. Although the concept is not new, the new Article 129, among others, provides the following possible conditions for granting a CL:

(i) failure to work or insufficient working that does not meet the national market needs before the expiration of a period of four years from the date of filing of the patent application or three years from the date of publication of the grant of the patent (EPO Bulletin), whichever period expires later;

(ii) for reasons of public interest.

After the Law came into force, the Turkish Patent and Trademark Office published a list of patents for which no use declaration was made within the time period referenced in (i). The list implied that a CL opportunity may exist for those patents. A CL for reasons of non-working or insufficient working must be demanded from an IP court in Turkey. Even if the term mentioned in (i) has expired and justification for not working is not submitted, it does not lead to an automatic CL as the patentee may prove working or justify not working during court proceedings.

While the focus has been on failure to work or insufficient working criteria, the Turkish Medicines and Medical Devices Agency has issued, for the first time, a letter to a pharmaceutical company regarding a CL for reasons of public health. While the letter talks about the reasons that may be considered under public health, it also opens the door for a voluntary licence. Therefore the letter is vague in terms of whether a CL will ultimately be implemented or not.

In circumstances where a CL is sought due to failure to work or insufficient working, the person seeking a CL must request a voluntary licence under reasonable commercial conditions and a licence must not have been given within a reasonable period of time. However, there are no

such requirements in cases where CLs are a result of public interest. The Law provides that for reasons of public health or security, if starting, increasing or extending/generalising the work of the invention is a matter of great importance or lack of working or insufficient working in terms of quality and quantity causes serious damage to Turkey's economic or technological development, the President of Turkey shall decide on a CL, upon a proposal from the relevant ministry. In these circumstances, the IP Law does not provide any chance for the patentee to justify its reasons for not working or insufficient working of the invention.



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