

India compulsory licensing consultation

The IP Federation represents IP-intensive companies in the United Kingdom (see list of members attached). This includes companies which are active in India, both as local manufacturers, with research and development bases in India, and importers to India. Thus the members of the Federation, although all based in the UK, have extensive knowledge of the Indian market and patent system, as well as being contributors to the Indian economy.

A Discussion Paper dealing with the subject of Compulsory Licensing of Patents has been issued by the National Informatics Centre (NIC) of the Government of India. Views and suggestions are invited by 30 September 2010. Although the paper refers mainly to the pharmaceutical industry, it indicates that the policies that may be adopted can be adapted to any other sector where the issue of a compulsory licence may be viewed as desirable. Thus the adoption of any recommendations could have far reaching implications for members of the IP Federation. For that reason, the Federation feels it appropriate to make some general comments.

The tenor of much of the paper is that extensive, indeed systematic, compulsory licensing, particularly with a view to reducing prices of patented products, is in the public interest. We do not accept this. Patents are intended to stimulate innovation by rewarding those who engage in costly and risky innovation with various exclusive rights (including rights to make and sell the product) for a limited time. The grant of a compulsory licence to a party who has not contributed to the process of innovation, for the purpose of reducing prices or to stimulate local production, will generally undermine this incentive.

Granting compulsory licences will also usually have detrimental consequences for the country concerned in that it will:

1. reduce incentives for foreign direct investment;
2. reduce incentives for non-Indian companies to partner with local companies; and
3. reduce incentives for local companies to innovate.

Each of these consequences could be significant for a country such as India which has such potential for economic growth and innovative strength.

The Discussion Paper also suggests that the local working requirement in Indian patent law implies that unless there is manufacture within the territory of India, a compulsory licence may be granted. It is not appropriate for us to comment on whether this interpretation of the law is correct.

However, it is clear from TRIPs that working may be met by importation. Any other interpretation would be in contravention of TRIPs. We believe it would also represent bad policy because, as Indian industry becomes increasingly innovative, it will wish to see locally produced products sold into other markets. If India introduces a policy requiring local manufacture, other countries may do the same, undermining the export prospects of Indian industry.

In conclusion, this Federation believes that the grant of a compulsory licence to reduce prices or stimulate local production is rarely an appropriate policy tool and should only be contemplated in extraordinary circumstances.

IP Federation
27 September 2010

IP Federation members 2010

The IP Federation (formerly TMPDF), represents the views of UK industry in both IPR policy and practice matters within the EU, the UK and internationally. Its membership comprises the innovative and influential companies listed below. It is listed on the European Commission's register of interest representatives with identity no: 83549331760-12.

ARM Ltd
Babcock International Ltd
BAE Systems plc
BP p.l.c.
British Telecommunications plc
British-American Tobacco Co Ltd
BTG plc
Delphi Corp.
Dyson Technology Ltd
Eli Lilly & Co Ltd
ExxonMobil Chemical Europe Inc
Ford of Europe
Fujitsu Services Ltd
GE Healthcare
GKN plc
GlaxoSmithKline plc
Hewlett-Packard Ltd
IBM UK Ltd
Infineum UK Ltd
Kodak Ltd
Merck Sharp & Dohme Ltd
Nokia UK Ltd
Nucletron BV
Pfizer Ltd
Philips Electronics UK Ltd
Pilkington Group Ltd
Procter & Gamble Ltd
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