

2025 AIPPI World Congress – Yokohama  
Adopted Resolution  
16 September 2025

## **Resolution**

### **2025 – Study Question – Patents**

#### **Compulsory licensing**

---

##### **Background:**

- 1) For the purposes of this Resolution, "compulsory licensing" refers to governmental or court (granting authority) authorization for use of a patented invention without the consent of the patentee.
- 2) For the purpose of this resolution, the term patentee includes patent applicants, utility model holders, and SPC holders where relevant.
- 3) The focus of the present resolution is on compulsory licenses granted based on a specific overriding interest and not solely based on dependency of patents or lack of working of an invention in the absence of an overriding interest. It is acknowledged that compulsory licensing includes different regimes in which granting authorities override patent rights so that governments can practice a patented invention without the consent of the rights holder. For example, crown licenses and government use allow the government to practice patent rights. Each may have its own requirements and restrictions.
- 4) The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement), which has been agreed to by all WTO members, offers a recognized framework for exceptions to rights conferred (Article 30) and for other use without authorization of the right holder (Articles 31 and 31*bis*). However, compulsory licensing regimes implemented under Articles 31 and 31*bis* differ significantly across jurisdictions. There are variations among countries in granting and enforcing compulsory licenses, remuneration, and procedural requirements for obtaining compulsory licenses.
- 5) Greater recognition of a standardized global framework would enhance predictability and fairness.

- 6) The TRIPS Agreement requires that the party seeking a compulsory license must first try to obtain authorized use from the rights holder on reasonable terms, although this requirement may be waived during a national emergency.
- 7) 38 Reports were received from AIPPI's National and Regional Groups and Independent Members providing detailed information and analysis regarding national and regional laws relating to this Resolution. These Reports were reviewed by the Reporter General Team of AIPPI and distilled into a Summary Report (which can be found at [www.aippi.org](http://www.aippi.org)).
- 8) At the AIPPI World Congress in Yokohama in 2025, the subject matter of this Resolution was further discussed within a dedicated Study Committee, and again in a full Plenary Session, following which the present Resolution was adopted by the Executive Committee of AIPPI.

**AIPPI resolves that:**

- 1) The provisions of the TRIPS Agreement regarding compulsory licenses under Article 31 and 31*bis* remain of the utmost importance and should be used as the framework within which this resolution is to be applied. In particular, the rights of patentees under the TRIPS Agreement should be ensured.
- 2) There is a need for a harmonized framework for application of Articles 31 and 31*bis* of the TRIPS Agreement to enhance legal certainty and predictability. However, each compulsory license should be independently evaluated by the granting authority prior to grant on a case-by-case basis, based on the facts, to determine whether the criteria to grant a compulsory license are met.
- 3) Compulsory licensing should be seen as an exceptional measure, only to be used in a case of specific Overriding Interests. The term "Overriding Interest", as used in this resolution, should be understood as situations where public interests – rather than private interests – are at stake, such as national or regional emergency or other circumstances of extreme urgency. There is no need to distinguish between different technical fields when considering Overriding Interests.
- 4) Further factors to be considered in an application for a compulsory license should include the public interest in providing access to an invention during the period of the Overriding Interest and whether the granting of the compulsory license is reasonably necessary to address the Overriding Interest. For example, the party to whom the license is granted must have the ability and capacity to provide adequate supply in order to meet the Overriding Interest.

**Q293-RES-P-2025**

- 5) Granting authorities should further weigh the potential impact on innovation and investment, along with the patentee's rights, against the Overriding Interest justifying the compulsory license.
- 6) Compulsory licenses should only be available for patents and for patent applications for which an injunction is available prior to grant. Compulsory licenses should extend to all forms of extensions of patent terms, including Patent Term Extensions (PTEs) and Supplementary Protection Certificates (SPCs), and should also be available for utility models.
- 7) Compulsory licenses should always be non-exclusive and generally non-transferable. The scope of a compulsory license should be clearly defined, e.g., with respect to duration (i.e., existence of the Overriding Interest), territory, products/processes/technologies, quantities, and specific uses of the patented invention.
- 8) Compulsory licensing should only be applicable to the territory where the compulsory license is granted, without prejudice to the specific cross-border mechanism allowed under Article 31*bis* of the TRIPS Agreement.
- 9) The applicant for the compulsory license has the burden of proof of establishing that the conditions for the grant of a compulsory license are met.
- 10) Prior to applying for - or in the case of government use granting - a compulsory license, there should be a requirement for good faith efforts by the applicant or, where relevant, the government over a reasonable period of time to obtain a voluntary license on reasonable commercial terms and conditions.
- 11) The patentee should be informed and be given an opportunity to be heard by the granting authority, prior to the granting of a compulsory license.
- 12) The patentee has a right to reasonable compensation. No cap to the compensation to which the patentee is entitled should be set by law. The compensation should be determined by the granting authority on a case-by-case basis considering all relevant factors (e.g., the patent's value, average royalty rates in the industry, and compensation for loss of exclusivity), under the understanding that compensation due under a compulsory license for a patent application would be contingent upon the application coming to grant. The compensation should be subject to review by the granting authority to ensure it remains appropriate throughout the duration of the compulsory license.
- 13) A compulsory license should be wholly or partially terminable by a competent authority (which may or may not be the same as the granting authority) on its own

**Q293-RES-P-2025**

motion or on the request of the patentee in the case of breach of the terms of the compulsory license (including non-payment of licensing fees). Damages should be available to compensate the patentee in the case of breach of the terms of the compulsory license, and fines may also be imposed on the breaching party.

- 14) The compulsory license should be terminated when the Overriding Interest has ceased to exist.
- 15) The patentee should have the right to audit the use under, and compliance with, the terms of the compulsory license. The compulsory licensee should be required to provide the patentee with periodic reporting of the use under the license with sufficient information to enable the patentee to audit the use under, and compliance with, the terms of the compulsory license. The granting authority may ensure that both the reporting and the auditing processes are conducted in accordance with the principles of confidentiality and impartiality.
- 16) Compulsory licensing applies only to patent rights as defined in paragraph 6. The patentee should not be required to provide to the compulsory licensee any trade secrets, confidential information, other secret know-how, or technical assistance in connection with the compulsory license.