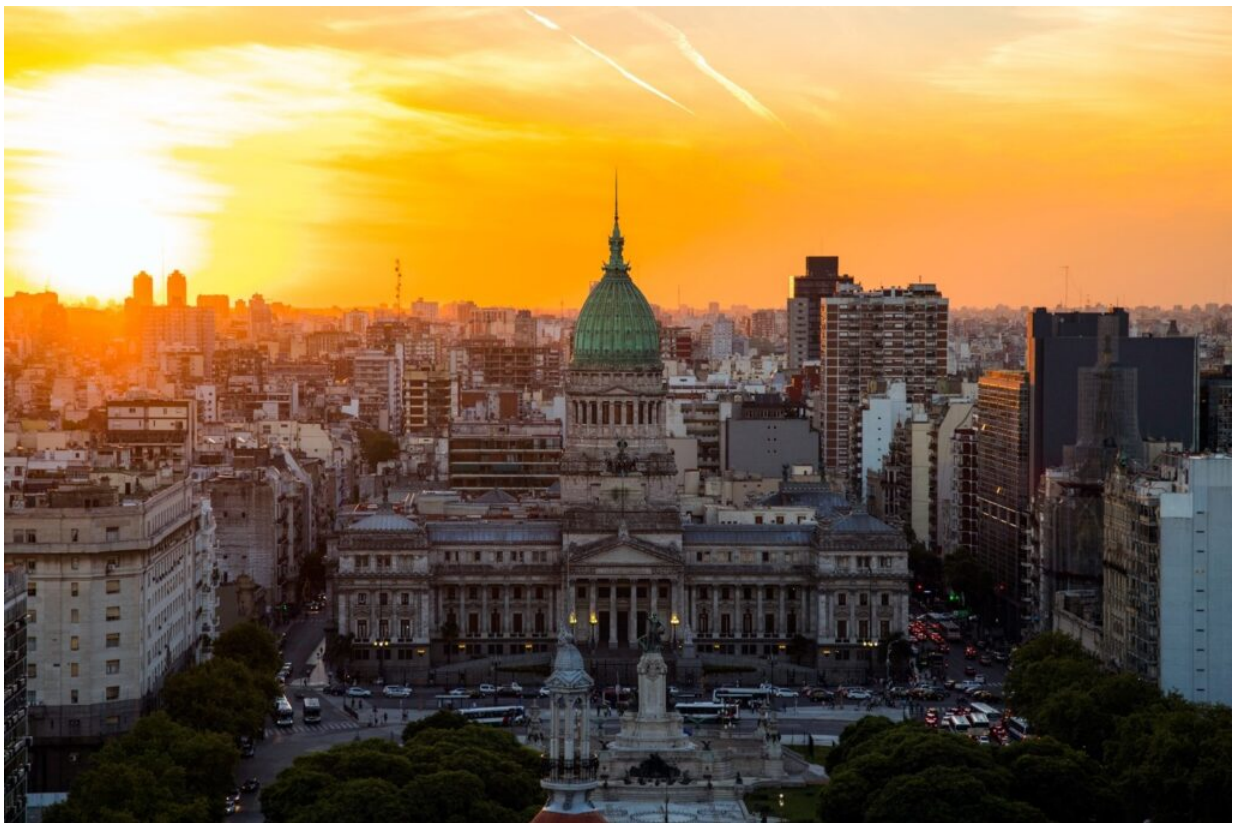


Kluwer Patent Blog

Compulsory Licensing Argentina

Liat Sanz Martinez (University of Illinois at Chicago, John Marshall Law School) · Monday, June 21st, 2021



Legal basis

The legal basis for compulsory licenses under Argentine patent law is Decree No. 260/1996 of March 20, 1996, which approves the ordered text of Law No. 24.481 on Law of Patents of Invention and Utility Models (Patent Law). The provisions for compulsory licenses are under Articles 42 to 51 of the Patent Law. The grounds for issuing a compulsory license in Argentina are:

- Non-working or insufficient working of the patented invention
- Refusal to grant licenses on reasonable terms
- Anti-competitive practices and/or unfair competition
- Public Health
- National Security
- National Emergency and/or extreme urgency

- Dependent patents[1]

Specific Language from Article 43:

If after 3 months have elapsed since the grant of the patent or 4 months since the filing of the application, the invention has not been exploited, except in cases of force majeure, or if no genuine and effect preparations have been made for the exploitations or where such exploitation has been interrupted for more than 1 year, any person may apply for authorization to use the invention without seeking the permission of the owner thereof.

As established under Article 43, if the time period for an invention has elapsed and the invention has not been exploited (or has an exception), any person may apply to the National Institute of Industrial Property (e.g. Argentina Patent and Trademark Office) for the grant of a compulsory license. This application can be for the manufacture and sale of the patented product or the use of the patent procedure.

COVID-19 Regulations and Proposals

No recent specific laws or regulations have passed in response to COVID-19.

Requirements for obtaining a Compulsory License

A person may request the National Institute of Industrial Property (e.g., Argentina Patent and Trademark Office) to grant a compulsory license for the manufacture and sale of a patented product or the use of a patented procedure. A person must prove they attempted to obtain the grant of a voluntary license from the patent holder before requesting a grant for a compulsory license. The license request will be processed by the National Institute of Industrial Property and it may grant or deny the request.

Procedure for Granting a Compulsory License

Pursuant to Chapter VII, the National Institute of Industrial Property has the authority to grant a compulsory license and any person may make a request for a license. To obtain a license, an invention cannot have been exploited and it must be proven that there was an attempt to receive the grant of a voluntary license from the patent holder. The license request will then be processed by the National Institute of Industrial Property and sent to the patent holder. The patent holder will then have ten business days to respond and provide more information about the compulsory license request. The National Institute of Industrial Property may reject the information provided. If rejection occurs, the patent holder must produce more evidence within forty days. If the response is accepted or more evidence is accepted, the National Institute of Industrial Property will determine whether to grant or reject the compulsory license request. The National Institute of Industrial Property will set a remuneration the patent owner will receive and is determined on a case by case basis.

Appeal/Review

The compulsory license decision from the National Institute of Industrial Property may be appealed before the Federal Civil and Commercial Courts with ten days of receiving notification of the decision. Once a decision has been made, the National Institute of Industrial Property will order the publication of a notice in the Official Patent Gazette and in a national circulating newspaper

informing the public of its decision. Third parties interested in obtaining a compulsory license will then have thirty days to make a request and the National Institute of Industrial Property will decide on whether to grant or deny the license request. Granting a compulsory license is determined by the circumstances of each request.

Jurisprudence

Currently there have been no cases involving compulsory licenses in Argentina.

Input by: Gastón Richelet (RICHELET & RICHELET)

[1] Dependent patents are granted to an existing patented invention and are improvements to a patent by a third-party inventor. A compulsory license for a third-party inventor allows for the use of invention without potential issues of infringement.

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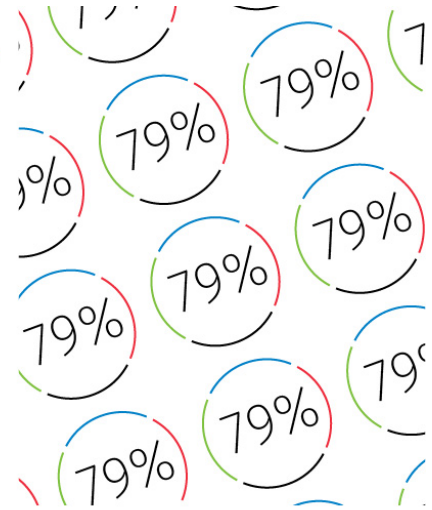
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