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STATUTORY INSTRUMENTS

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**2002 No. 247**

**The Patents and Plant Variety Rights  
(Compulsory Licensing) Regulations 2002**

**PART II**

**COMPULSORY PATENT LICENCES**

**Applications**

**3.—**(1) Where a person cannot acquire or exploit plant breeders' rights or a Community plant variety right in a new variety without infringing a prior patent, he may apply in accordance with rules to the Comptroller General of Patents for a licence under the patent and on such application shall pay the prescribed fee.

(2) An application under paragraph (1) shall be accompanied by particulars which seek to demonstrate that—

- (a) the applicant cannot acquire or exploit plant breeders' rights or a Community plant variety right without infringing a prior patent,
- (b) the applicant has applied unsuccessfully to the proprietor of the prior patent concerned for a licence to use that patent to acquire or exploit plant breeders' rights or a Community plant variety right, and
- (c) the new plant variety, in which the applicant wishes to acquire or exploit the plant breeders' rights or Community plant variety right, constitutes significant technical progress of considerable economic interest in relation to the invention protected by the patent.

(3) If and so far as any agreement purports to bind any person not to apply for a licence under paragraph (1), it shall be void.

**Proceedings before controllers**

**4.** On receipt by the Comptroller General of Patents of an application under regulation 3(1) and payment of the prescribed fee, the controllers shall consider and process the application in accordance with rules.

**5.—**(1) The proprietor of the patent concerned or any other person wishing to oppose an application under regulation 3(1) may, in accordance with rules, give to the Comptroller General of Patents notice of opposition and on giving such notice shall pay the prescribed fee.

(2) On receipt of a notice of opposition under paragraph (1) and payment of the prescribed fee, the controllers, in deciding whether to grant an application under regulation 3(1), shall consider and process any opposition in accordance with rules.

## Grant

6. Where, having considered the application made under regulation 3(1), the controllers are satisfied that—

- (a) the applicant cannot acquire or exploit plant breeders' rights or a Community plant variety right without infringing a prior patent,
- (b) the applicant has applied unsuccessfully to the proprietor of the patent concerned for a licence to use the prior patent to acquire or exploit plant breeders' rights or a Community plant variety right, and
- (c) the new plant variety, in which the applicant wishes to acquire or exploit the plant breeders' rights or Community plant variety right, constitutes significant technical progress of considerable economic interest in relation to the invention protected by the patent,

the controllers shall order the grant to the applicant (or, where the applicant is a government department, shall order the grant to any person specified in the application) of a licence to use the invention protected by the prior patent in so far as the licence is necessary for the exploitation of the new plant variety on the conditions set out in regulation 7 and on such other terms as the controllers think fit.

## Conditions

7.—(1) A compulsory patent licence shall—

- (a) not be exclusive,
- (b) entitle the proprietor of the patent concerned to an appropriate royalty, and
- (c) entitle the proprietor of the patent concerned to a cross licence on reasonable terms to use the new plant variety.

(2) Where the controllers order the grant of a compulsory patent licence to a person who has been granted plant breeders' rights in the new plant variety, the proprietor of the patent concerned may request, a cross licence on reasonable terms of the plant breeders' rights to use the new plant variety in respect of which the compulsory patent licence has been granted and, on such request, the controllers shall order the grant of such a cross licence to that proprietor (or, where the proprietor of the patent is a government department, to any person specified in the request).

(3) Where the controllers order the grant of a compulsory patent licence to a person who has yet to acquire plant breeders' rights in the new plant variety, the proprietor of the patent concerned may request a cross licence on reasonable terms of the plant breeders' rights to use the new plant variety in respect of which the compulsory patent licence has been granted and, on such request, the controllers shall order the grant of such a cross licence to that proprietor (or, where the proprietor of the patent is a government department, to any person specified in the request), and the cross licence shall come into effect on the grant to the holder of the compulsory patent licence of plant breeders' rights in the new plant variety.

(4) Where the controllers order the grant of a compulsory patent licence to a person who has been granted a Community plant variety right in the new plant variety, if the proprietor of the patent wishes, the compulsory patent licence shall be subject to the grant to the proprietor of the patent concerned (or, where the proprietor of the patent is a government department, to any person the proprietor specifies) of a cross licence of the Community plant variety right on reasonable terms to use in the UK the new plant variety in respect of which the compulsory patent licence has been granted.

(5) Where the controllers order the grant of a compulsory patent licence to a person who has yet to acquire a Community plant variety right in the new plant variety, the order for grant shall, if the proprietor of the patent wishes, include a condition that, on the grant of the Community plant variety right to such person in the new plant variety in respect of which the compulsory patent licence

has been granted, the proprietor of the patent concerned (or, where the proprietor of the patent is a government department, such person as the proprietor specifies) shall be granted a cross licence on reasonable terms to use in the UK the new plant variety in respect of which the compulsory patent licence has been granted.

### **Variation**

**8.**—(1) On application at any time by a party to the Comptroller General of Patents in accordance with rules, the controllers may extend, limit or in any other respect vary an order for grant of a—

- (a) compulsory patent licence, or
- (b) cross licence under regulation 7(2) or 7(3),

and extend, limit or in any other respect vary the licence granted under the order.

(2) On receipt of an application under paragraph (1), the controllers shall consider and process the application in accordance with rules.

### **Revocation**

**9.**—(1) A party may, at any time, apply to the Comptroller General of Patents in accordance with rules to revoke an order for grant of—

- (a) a compulsory patent licence, or
- (b) cross licence under regulation 7(2) or 7(3),

if the circumstances which led to the order for grant have ceased to exist or are unlikely to recur.

(2) On receipt by the Comptroller General of Patents of an application under paragraph (1), the controllers shall consider and process the application in accordance with rules and if the controllers are satisfied that the circumstances which led to an order for grant of a—

- (a) compulsory patent licence, or
- (b) cross licence under regulation 7(2) or 7(3),

have ceased to exist or are unlikely to recur, the controllers may revoke the order and terminate the licence granted under the order, subject to such terms and conditions as they think necessary for the protection of the legitimate interests of the holder of the compulsory patent licence or the cross licence ordered to be granted under regulation 7(2) or 7(3).

**10.** In regulations 8 and 9, “party” means the proprietor of the patent concerned or the applicant, as the case may be, in an application under regulation 3(1) or their respective successors in title.

**Changes to legislation:**

There are currently no known outstanding effects for the The Patents and Plant Variety Rights (Compulsory Licensing) Regulations 2002, PART II.