

Patents Act, 1970

Section 88 - (6) In considering the application filed under this section, the Controller shall take into account,—

(i) the nature of the invention, the time which has elapsed since the sealing of the patent and the measures already taken by the patentee or any licensee to make full use of the invention; (ii) the ability of the applicant to work the invention to the public advantage; (iii) the capacity of the applicant to undertake the risk in providing capital and working the invention, if the application were granted; (iv) as to whether the applicant has made efforts to obtain a licence from the patentee on reasonable terms and conditions and such efforts have not been successful within a reasonable period as the Controller may deem fit: Provided that this clause shall not be applicable in case of national emergency or other circumstances of extreme urgency or in case of public non-commercial use or on establishment of a ground of anti-competitive practices adopted by the patentee, but shall not be required to take into account matters subsequent to the making of the application. 1 [Explanation. For the purposes of clause (iv), reasonable period shall be construed as a period not ordinarily exceeding a period of six months.] (7) For the purposes of this Chapter, the reasonable requirements of the public shall be deemed not to have been satisfied (a) if, by reason of the refusal of the patentee to grant a licence or licences on reasonable terms, (i) an existing trade or industry or the development thereof or the establishment of any new trade or industry in India or the trade or industry of any person or class of persons trading or manufacturing in India is prejudiced; or (ii) the demand for the patented article has not been met to an adequate extent or on reasonable terms; or (iii) a market for export of the patented article manufactured in India is not being supplied or developed; or (iv) the establishment or development of commercial activities in India is prejudiced; or (b) if, by reason of conditions imposed by the patentee upon the grant of licences under the patent or upon the purchase, hire or use of the patented article or process, the manufacture, use or sale of materials not protected by the patent, or the establishment or development of any trade or industry in India, is prejudiced; or (c) if the patentee imposes a condition upon the grant of licences under the patent to provide exclusive grant back, prevention to challenges to the validity of patent or coercive package licensing, or (d) if the patented invention is not being worked in the territory of India on a commercial scale to an adequate extent or is not being so worked to the fullest extent that is reasonably practicable, or (e) if the working of the patented invention in the territory of India on a commercial scale is being prevented or hindered by the importation from abroad of the patented article by (i) the patentee or persons claiming under him; or (ii) persons directly or indirectly purchasing from him; or