

QUESTION 3

Restrictions of the rights of the patentee for reasons of public interest

Yearbook 1956, New Series No. 3, 59th Year , pages 134 - 135
22nd Congress of Washington, May 28 - June 2, 1956

Q3

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Restrictions of the rights of the patentee for reasons of public interest

5 - Regulations concerning compulsory licences

The Congress recommends that Article 5A of the Convention be completed by the following provision:

Compulsory licences will only be granted to qualified applicants.

These licences shall be subject to equitable compensation to the patentee. In the absence of agreement, this equitable compensation shall be determined by the competent authority, and should, at least as a last resort, be considered by a court.

Compulsory licences will be non-exclusive and can only be transferred, even as grant of sublicences, together with the portion of the business concerned with the application of these compulsory licences.

7 - Restrictions on the rights of patentees on the ground of public interest

The Congress:

1. adopts the principle that measures, other than the granting of compulsory licences, restricting the rights of a patent can only be passed by the countries members of the Union when the compelling requirements of public interest are not satisfied by the granting of a compulsory licence; these measures shall only be passed provided that the patentee receives equitable compensation. In the absence of agreement, this equitable compensation shall be determined by the competent authority and should, at least as a last resort, be considered by a court.
2. instructs the Executive Committee to undertake a complementary study of the matter.
3. recommends the addition to Art. 5 A of a provision stipulating that failure to work should not in itself be considered as a monopoly abuse.

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Restrictions of the rights of the patentee for reasons of public interest

Yearbook 1958, New Series No. 5, 61st Year, page 253
Executive Committee of Oslo, June 10 - 13, 1957

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QUESTION Q3

Restrictions of the rights of the patentee for reasons of public interest

Resolution

I. The Executive Committee of OSLO, at the end of a probing discussion, has formed the following opinion:

1. It should first be brought to mind, following the suggestion of the British Group, that impairments to the rights of the patentee are prejudicial to public interest.
2. It is desirable to insert into the Convention a rule to control the restrictions of the rights of the patentee for reasons of public interest.

Any such rule should be made the subject of a provision dissociated from article 5 A.

3. The reasons of public interest should not be actually defined; they should be designated by the expression "reasons other than those provided in article 5 A".

The modalities of execution of the restrictions should conform with the system adopted at WASHINGTON.

II. Consequently, the Executive Committee of OSLO has unanimously decided to recommend the following resolution:

"The Congress:

Considering that the continued success of the patent system as a means of encouraging invention is dependent upon the maintenance of the fundamental principle that the patent confers exclusive rights upon the patentee, and that any infraction of this fundamental principle by way of excessive restrictions of the rights of patentees would be detrimental to the general interest of the public, proposes that a new Article 5 quater be introduced into the PARIS Convention in the following terms:

Any measure restricting the exclusive rights of a patentee for a cause other than those provided for in Article 5 A, shall not be taken by a Union country except if an amicable agreement has not been possible.

In the event of such a measure compelling the patentee to grant a licence, the latter shall not be exclusive.

Restricting measures more rigorous than the granting of a licence shall only be imposed if it is shown that the granting of a licence is not sufficient.

Any such measure shall be subject to an equitable compensation being paid to the patentee and shall include for the patentee the possibility of appeal to the courts at least in the last resort."

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QUESTION 3

Restrictions of the rights of the patentee for reasons of public interest

Yearbook 1958, New Series No. 6, 61st Year, page 41
23rd Congress of Stockholm, May 26 - 31, 1958

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QUESTION Q3

Restrictions of the rights of the patentee for reasons of public interest

Resolution

The Congress,

considering that the continued success of the patent system as a means of encouraging invention is dependent upon the maintenance of the fundamental principle that the patent confers exclusive rights upon the patentee, and that any infraction of this fundamental principle by way of excessive restrictions of the rights of patentees would be detrimental to the general interest of the public,

1. expresses the wish that a new article 5quater with the following wording should be introduced into the Union Convention:

„Any measure restricting the exclusive rights of a patentee for a cause other than those provided for in article 5 A, shall not be taken by a Union country except if an amicable agreement has not been possible.

In the event of such a measure compelling the patentee to grant a licence, the latter shall not be exclusive.

Restricting measures more rigorous than the granting of a licence shall only be imposed if it is shown that the granting of a licence is not sufficient. Any such measure shall be subject to an equitable compensation being paid to the patentee and shall include for the patentee the possibility of appeal to the courts at least in the last resort.“

2. invites the Execution Committee again to take up the study of a definition of the causes for which restrictions of the rights of a patentee might be made.

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QUESTION 3

Restrictions of the rights of the patentee for reasons of public interest

Yearbook 1960, New Series No. 10, 2nd Part, 63rd Year, page 11
24th Congress of London, May 30 - June 4, 1960

Q3

QUESTION Q3

Restrictions of the rights of the patentee for reasons of public interest

Resolution

The Congress,

1. reverts to and confirms the resolution adopted at the Stockholm Congress 1958 expressing the wish that a new article 5quater with the following wording should be introduced into the Union Convention:

„Any measure restricting the exclusive rights of a patentee for a cause other than those provided for in article 5A, shall not be taken by a Union country except if an amicable agreement has not been possible.

In the event of such a measure compelling the patentee to grant a licence, the latter shall not be exclusive.

Restricting measures more rigorous than the granting of a licence shall only be imposed if it is shown that the granting of a licence is not sufficient. Any such measure shall be subject to an equitable compensation being paid to the patentee and shall include for the patentee the possibility of appeal to the courts at least in the last resort.“

2. refers back to the Executive Committee for subsequent study the grounds on which the rights of the patentee may be restricted.

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