



EU report criticises Taiwanese compulsory licensing practices for compact discs

A European Commission report released today concludes that the Patent Law of Taiwan and certain decisions made under it, are inconsistent with WTO rules on intellectual property. The report recommends that the Commission should start WTO proceedings if Taiwan does not take concrete steps to amend its Patent Law and reverse the compulsory licence decisions against the European company Philips within 2 months.

EU Trade Commissioner Peter Mandelson said: "The EU fully supports the use of compulsory licensing in specific circumstances, in particular to facilitate access to medicines. However, we cannot accept the abuse of this system. I hope that the Taiwanese authorities will move quickly to bring their law and practice into line with WTO rules. I cannot rule out seeking WTO dispute settlement if they do not."

Following the launch of the Global Europe trade strategy in October 2006 the EU has stepped up its focus on removing barriers to trade and improving market access for EU exporters. A key part of this work focuses on the effective protection of European intellectual property rights, which are vital for European competitiveness in a global economy.

The report follows a Trade Barriers Regulation investigation launched in March 2007 following a complaint by Philips.

The issue

- A compulsory license is a decision by a government which permits another producer to use a patent without the consent of the patent holder. The conditions for the grant and use of compulsory licenses are regulated in the WTO TRIPs Agreement.
- In this case, Philips had agreed licences with 8 Taiwanese companies. Because of contractual disputes it did not grant a license to the Taiwanese company named Gigastorage. Gigastorage then applied to the Taiwanese authorities for a compulsory licence and this was granted. The Taiwanese law permits the authorities to give a compulsory licence on the basis of a refusal to grant the license, but the TRIPs agreement grants patent holders discretion to withhold licenses if they wish, except in overriding circumstances.
- Although the compulsory licences were terminated with effect from 1 June 2007, the termination was not retroactive, so the decisions still set a precedent. The Commission believes that the Taiwanese interpretation of the procedural safeguards for the grant of compulsory licences was wrong and views it as necessary to have the Patent Law amended and the effects of the decision reversed.

An executive summary of the report, and the full non-confidential version of the report is available at: http://ec.europa.eu/trade/issues/respectrules/tbr/cases/cht_ele.htm

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