

AMENDING PORTIONS OF REPUBLIC ACT NO. 165 OTHERWISE KNOWN AS THE PATENT LAW.

PRESIDENTIAL DECREE NO. 1263, December 14, 1977

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WHEREAS, certain provisions of Republic Act No. 165, otherwise known as the Patent Law, have become obsolete and are inadequate to meet the demands of our primordial goal of industrial and overall national economic development;

WHEREAS, this goal can, to a significant extent, be promoted through the licensing of patents;

NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Philippines, by virtue of the powers vested in me by the Constitution, do hereby order and decree the following:

SECTION 1. Chapter VIII of Republic Act Numbered 165 is hereby amended to read as follows:

"CHAPTER VIII — Licensing

"ARTICLE ONE. — Voluntary Licensing

"SEC. 33-A. Voluntary License Contracts. — (1) All voluntary license contracts as well as renewals thereof involving payment of royalty for the use of patents, transfer of technology, or furnishing of services respecting patents shall, whenever entered into between residents and non-residents, be submitted to the Technology Resource Center for prior approval and registration.

"(2) The royalty to be granted in all license contracts involving manufacturing (including actual transfer of technology services such as secret formulae, processes, technical know-how and the like) shall, whenever entered into between an alien licensor and a Filipino licensee, not exceed five per cent (5%) of the net wholesale price of the articles manufactured under the royalty agreement and shall be equally distributed to all the patentees in cases where more than one patent similar to that contemplated in Section 34-C hereof are involved.

"(3) The term "net wholesale price" means the gross amount billed for the patented product subject to royalty less;

"(a) Trade, quantity, or cash discounts, and broker's or agent's commission, if any, allowed or paid;

"(b) Credits or allowances, if any, given or made on account of rejection or return of the patented product previously delivered; and

"(c) Any tax, excise or other government charge, included in such amount, on, or measured by, the production, sale, use or delivery of the patented product.

"(4) Unless and until approved and registered in accordance with paragraph (1) of this section, the license contract contemplated therein may not be the subject of an application filed with either the Board of Investment or the Central Bank of the Philippines, Neither will it have an effect against third persons until such registration.

"SEC. 33-B. Rights of Licensor. — (1) In the absence of any provision to the contrary in the license contract, the grant of a license shall not prevent the licensor from granting further licenses to third persons nor from exploiting the invention himself.

"(2) Without prejudice to the grant of a compulsory license in accordance with Section 34- hereof, the grant of an exclusive license shall prevent the licensor from granting licenses to third persons and, unless otherwise expressly provided in the license contract, from exploiting the invention himself.

"SEC. 33-C. Rights of Licensee. — (1) The license shall be entitled to exploit the invention during the whole duration of the patent in the entire territory of the Philippines through any application of the invention, and in respect of all acts referred to in Sections 37 and 42.

"(2) Clauses of fane following tenor contained in license contracts shall be null and void:

"(a) Those which impose upon the licensee the obligation to acquire from a specific source capital goods, intermediate products, raw materials, and other technologies, or of permanently employing personnel indicated by the licensor;

"(b) Those pursuant to which the licensor reserves the right to fix the sale or resale prices of the products manufactured on the basis of the license;

"(c) Those that contain restrictions regarding the volume and structure of production;

"(d) Those that prohibit the use of competitive technologies;

"(e) Those that establish a full or partial purchase option in favor of the licensor;

"(f) Those that obligate the licensee to transfer to the licensor the inventions or improvements that may be obtained through the use of the licensed technology;

"(g) Those that require payment of royalties to the owners of patents for patents which are not used;

"(h) Those that prohibit the licensee to export the licensed product; and

"(i) Other clauses with equivalent effects.

"ARTICLE TWO. — Compulsory Licensing

"SEC. 34. Grounds for Compulsory Licensing. — (1) Any person may apply to the Director for the grant of a license under a particular patent at any time after the expiration of two years from the date of the grant of the patent, under any of the following circumstances;

"(a) If the patented invention is not "being worked within the Philippines on a commercial scale, although capable of being so worked, without satisfactory reason;

"(b) If the demand for the patented article in the Philippines is not being met to an adequate extent and on reasonable terms;

"(c) If, by reason of refusal of the patentee to grant a license or licenses on reasonable terns, or by reason of the conditions attached by the patentee to licensee or to the purchase, lease or use of the patented article or working of the patented process or machine for production, the establishment of any new trade or industry in the Philippines is prevented, or the trade or industry therein is unduly restrained;

"(d) If the working; of the invention within the country is being prevented or hindered by the importation of the patented article; or

"(e) If the patented invention or article relates to food or medicine or manufactured products or substances

which can be used as food or medicine, or is necessary for public health or public safety.

"(2) In any of the above cases, a compulsory license shall be granted to the petitioner provided that he has proved his capability to work the patented product or to make use of the patented product in the manufacture of a useful product, or to employ the patented process.

"(3) The term "worked" or "working" as used in this section means the manufacture and sale of the patented article, of the patented machine, or the application of the patented process for production, in or by means of a definite and substantial establishment or organization in the Philippines and on a scale which is reasonable and adequate under the circumstances. Importation shall not constitute "working".

"SEC. 34-A. Products or Processes Vital to National Defense, Economy or Health. — The National Economic Development Authority may, by order, provide that for certain patented products or processes, or for certain categories of such products or processes, which are declared in such order to be of vital importance to the country's defense or economy or to public health, compulsory license may be granted under the conditions provided in the next preceding section even before the expiration of the period mentioned therein.

"SEC. 34-B. Product, Substances or Processes Subject of Project Approved by the Board of Investments. — (1) All products or substances and/or processes involved in any industrial project approved by the Board of Investments under the Investment Incentives Act shall be deemed products or substances and/or processes vital to the national defense or economy or to public health. If the proponent of the project is neither a patentee nor a licensee of any of the products, substances or processes involved therein, a compulsory license may, upon application by the proponent or endorsement made by the Board of Investments, be issued in his favor by the Director of Patents without need of complying with the provisions of Section 34 and 34-A.

"(2) In cases falling under the foregoing paragraph, the requirements of Sections 34-D and 34-E shall be complied with, but no hearing shall be necessary except to determine the identity of the patent owner of the products, substances or processes subject of the application or endorsement. If two or more patents exist for the same product, substance or process, the license shall be granted under all subsisting patents involved.

"SEC. 34-C. Compulsory License Based Upon Interdependence of Patents. — If an invention protected by a patent within the country cannot be worked without infringing rights derived from a patent granted on a prior application or benefiting from an earlier priority, a compulsory license may, upon application and without necessity of complying with the requirements of Section 34, be granted under the conditions specified in Section 35 to the registered owner of the latter patent, to the extent necessary for the working of his invention and insofar as such invention serves industrial purposes different from those of the invention forming the subject of the earlier patent, or constitutes noteworthy technical progress in relation to it.

"SEC. 34-D. Form and Contents of Petition. — The petition for compulsory licensing must be in writing and verified by the petitioner and accompanied by the required filing fee. It shall give the name and address of the petitioner as well as those of the necessary party or parties respondent; and shall state the number and date of issue of the patent in connection with which compulsory license is sought; the name of the patentee; the title of the invention; the statutory ground or grounds upon which compulsory license is sought; the ultimate facts constituting the petitioner's cause of action; and the relief prayed for.

"SEC. 34-E. Notice of Hearing. — (1) Upon filing of a petition under Section 34, a notice shall be given in the same manner and form as that provided in Section 31, Chapter VII hereof. The resident agent or representative appointed in accordance with the rules of practice before the Patent Office in patent cases shall be bound to accept service of notice of the filing of the petition within the meaning of this section.

"(2) In every case, the notice shall be published in a newspaper of general circulation in the country three times for three consecutive weeks.

"SEC. 35. Grant of License. — (1) If the Director finds that a case for the grant is a license under Section 34

hereof has been made out, he shall, within one hundred eighty days from the date the petition was filed, order the grant of an appropriate license. The order shall state the terms and conditions of the license which he himself must fix in default of an agreement on the matter manifested or submitted by the parties during the hearing.

"(2) A compulsory license sought under Section 34-B shall be issued within one hundred twenty days from the filing of the proponent's application or receipt of the Board of Investment's endorsement.

"SEC. 35-A. Rights of Compulsory Licensee. — The compulsory license shall give the licensee the rights of patentees referred to in Section 37 and 42 hereof.

"SEC. 35-B. Terms and Conditions of Compulsory License. — (1) A compulsory license shall be non-exclusive, but this shall be without prejudice to the licensee's right to oppose an application for a new such license.

"(2) The terms and conditions of a compulsory license, fixed in accordance with Section 35, may contain obligations and restrictions both for the licensee and for the registered owner of the patent.

"(3) A compulsory license shall only be granted subject to the payment of adequate royalties commensurate with the extent to which the invention is worked, However, royalty payments shall not exceed five per cent (5%) of the net wholesale price (as defined in Section 33-A) of the products manufactured under the license. If the product, substance, or process subject of the compulsory license is involved in an industrial project approved by the Board of Investments, the royalty payable to the patentee or patentees shall not exceed three per cent (3%) of the net wholesale price (as defined in Section 34-A) of the patented commodity and/or commodity manufactured under the patented process; the same rate of royalty shall be paid whenever two or more patents are involved, which royalty shall be distributed to the patentees in rates proportional to the extent of commercial use by the licensee giving preferential values to the holder of the oldest subsisting product patent.

"SEC. 35-C. Transfer of Compulsory License. — A compulsory, license can only be transferred with the undertaking of the licensee or with that portion of his undertaking which uses the patented invention. Any such transfer shall, on pain of invalidity, require the authorization of the Director of Patents and its registration in accordance with Section 33-A.

"SEC. 35-D. Amendment and Cancellation. — (1) Upon request of the registered owner of the patent or of the licensee, the terms of the compulsory license may be amended by the Director of Patents when new facts justify it, in particular when the registered owner of the patent grants contractual licenses on terms more favorable to the contractual licensees.

"(2) At the request of the registered owner of the patent, the compulsory license may be cancelled if the licensee does not comply with the prescribed terms of the license.

"(3) The provisions of Sections 33-A and 35 shall apply with respect to amendments and cancellations of compulsory licenses."

"ARTICLE THREE — Common Provision

"SEC. 35-E. Licensee's Exemption from Liability. — (1) Any one who works a patented product, substance and/or process under a license granted under this Chapter shall be free from any liability for infringement, provided that in the case of a voluntary licensee no collusion with the licensor is proven. This is without prejudice to the right of the rightful owner of the patent to recover from the licensor whatever he may have received as royalties under the license.

"(2) The existence of o conflict between two or more patents shall in no way affect the right of the licensee under this Chapter to work the invention, and no injunction or other court process shall be valid and enforced which interferes with this right. Any person violating this provision shall be punished by a fine not less than

Five Thousand Pesos but not exceeding Thirty Thousand Pesos or by imprisonment of not less than one year but not exceeding five years.

"SEC. 2. Section 75 of the same Act is hereby amended to read as follows:

"SEC. 75. Fees. — The following fees shall be paid for filing an application for patent which shall include the cost of publication in the Official Gazette, Four Hundred Pesos, if it is an invention patent and Two Hundred Pesos, if it is a utility model or a design patent, upon filing each application and, if it is on invention patent, Twenty-Five Pesos for each claims in excess of five claims presented on filing or at any other time.

"For issuing each original invention patent, One Hundred Pesos.

"For annual fees due at the beginning of the fifth and each succeeding year, Two Hundred Pesos each; for surcharge for delayed payment of annual fee, Fifty Pesos; for reinstating a lapse patent, Two Hundred Pesos; for filing a petition for cancellation, except when filed by the Solicitor General, One Hundred Pesos; for filing a petition for compulsory license, Two Hundred Pesos; for copies of records of the Office, Two Pesos per photostat or xerox copy sheet and Two Pesos per hundred words of typewritten copy;

"For each certification of copy of any record, Twenty Pesos;

"For recording assignment, and other documents relating to title and license, Twenty Pesos;

"For notice of appeal to the Court of Appeals from the order or decision of the Director, or for Notice of Appeal to the Director from an order or decision of the Chief Patent Examiner, Fifty Pesos;

"For renewing a design or utility model patent, One Hundred Fifty Pesos;

"For surcharge of delayed renewal of a design or utility model patent, Forty Pesos; and

"For services not otherwise specified, the Director shall provide, by regulation, the fees therefore.

"The Director may by rule fix higher fees for nationals from the developed countries.

"The Philippine Inventors Commission shall be exempt from paying the above fees but only with respect to application filed by it in behalf of indigent inventors."

"SEC. 3. The same Act is further amended by inserting between Sections eighty-two and eighty-three the following new section:

"SEC. 82-A. The Director shall be authorized to use and spend a portion not to exceed fifty per cent of the Office's total income for the improvement of facilities and services as well as for equipment outlay, for implementation of this Act including expenses for participation in the World Intellectual Property Organization and similar organizations concerned with international cooperation in the expeditious processing of patent applications."

"SEC. 4. This Decree shall become effective after thirty days following its promulgation.

Done in the City of Manila, this 14th day of December, in the year of Our Lord, nineteen hundred and seventy-seven.

(Sgd.) FERDINAND E. MARCOS
President of the Philippines

By the President:

(Sgd.) JACOBO C. CLAVE

Presidential Executive Assistant

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