



REPUBLIC OF SOUTH AFRICA



# Regional Seminar for Certain African Countries on the Implementation and Use of Several Patent-Related Flexibilities

*Topic 10: The Use of Compulsory Licenses*

**Durban, South Africa  
January 29 to 31, 2013**

---

**REGIONAL SEMINAR FOR CERTAIN AFRICAN COUNTRIES ON  
IMPLEMENTATION AND USE OF SEVERAL PATENT-RELATED  
FLEXIBILITIES. DURBAN SOUTH AFRICA**

**USE OF COMPULSORY LICENSE: COUNTRY PRESENTATION ON GHANA**

Samuel Anum,  
Local Project Coordinator, Swiss-Ghana IP Project ( Ministry of Trade and  
Industry)  
January 2013

---

---

# Outline of Presentation

- ❑ Background
- ❑ Introduction
- ❑ Use of compulsory license

---

# Background

- Ghana is modernising the administration of the IP rights system as a result of Ghana's Trade Policy Prescriptions.
  - Bringing Ghana's IP system in line with TRIPs
  - Undertaken under the Swiss Ghana IP (SGIP) Project
  - Project execution: Ministry of Justice and Attorney General's Department, Ministry of Trade and Industry , the Registrar General's Department ( Ghana Government Department) and the Swiss Federal Institute of Intellectual Property (Technical partners)

---

## Background (cont'd)

- Outputs of the SGIP project
  1. National Intellectual Property Policy Articulated
  2. Legislation in all areas of the TRIPS Agreement is fully operable, update and completed
  3. Public awareness and understanding of intellectual property has increased
  4. Judiciary continuously sensitized on intellectual property issues
  5. Patent information is utilised by the public and the private sector for knowledge-based decisions concerning technology
  6. Intellectual property of offices fully operational
- WIPO has supported the Government of Ghana with some activities from outputs 1,4 and 5 based on request made from the Government of Ghana

## Background (cont'd)

PERIOD	PATENT SYSTEM
Prior to 1992	Patent system was only a re-registration system govern by the Patents Registration Ordinance, 1925 and Patents Registration (Amendment) Decree 1972. <b>To protect an invention from Ghana, the invention would have to be first protected in UK and subsequently registration of the invention in Ghana. Under this system you cannot obtain a direct patent from Ghana.</b>
1992-2003	Enactment of Patent Law , 1992 (PNDCL 3205A). Under this system you <b>obtain a Ghanaian patent directly or through the PCT or through ARIPO</b>
2003 to date	Patents Act, 2003 (Act 657), <b>takes into consideration some provisions of TRIPS.</b> The current patent system in Ghana is based on this Act. Under this system you <b>obtain a Ghanaian patent directly or through the PCT or through ARIPO</b>

Review of Patents Act, 2003(Act 657) began in 2010

---

## Background (cont'd)

- Some activities taken into considerations in reviewing the Patent Act
  1. Identifying and analyzing gaps where flexibilities in WTO-TRIPS Agreement could be incorporated
  2. Identifying the flexibilities in the context of the existing relevant legislation, taking into account work already done in this area.
  3. Identifying and analyzing existing policy or legislation deficiencies that may be impeding the effective implementation of the TRIPS agreement
  4. Identifying and analyzing existing best practices in the use of TRIPS flexibilities

---

# Introduction

Granting of compulsory license in Ghana is covered under Section 13 of Ghana's Patents Act ( Patents Act, 2003 (Act 657))

**Conditions for issuing compulsory license**

- i. Public interest**
- ii. National Security**
- iii. Nutrition**
- iv. Health**
- v. Development of other vital sectors of the national economy**
- vi. To remedy anti competitive practices so declared by a judicial or administrative process**



---

## Introduction (cont'd)

- ❑ **Defect in Section 13:** Ghana's Patents Act was drafted when the General Council of the WTO had not yet taken its decision on implementing paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health
- ❑ **Review of Section 13:** Amended to reflect the 30<sup>th</sup> August 2003 Decision of the General Council of WTO

---

## Use of Compulsory License

- Ghana issued a government use order for public health reasons
  - was issued on 26<sup>th</sup> October, 2005
  - Issued under emergency situation with regards to HIV/AIDS within the National HIV/AIDS programme
  - Was for the importation of Generic ARVs from India
  - The ARVs were patented by GlaxoSmithKline (GSK)
  - Duration of license was for 3 years
  - Royalties was not paid although the Government was prepared to make such payment
  - The cost of the ARVs dropped by almost 50%

---

## Use of Compulsory License (cont'd)

- ❑ In the issuance of a compulsory license, there is the need for coordinated administrative infrastructure (administrative procedures, including procedures for effective coordination of different state agencies)
- ❑ There was coordination amongst the following institutions:
  - Ministry of Justice and Attorney General's Department
  - Registrar General's Department
  - Ministry of Health
  - Food and Drugs Board
- ❑ The Ministry of Health and the Food and Drugs Board developed administrative guidelines for the issue of compulsory license for pharmaceutical products in Ghana

---

## Use of Compulsory License (cont'd)

- ❑ Determination of status of patents is key, the legal status search was done at ARIPO
- ❑ Other Institutions that may be involved during the issuance of compulsory licensing depending on the scenario
  - Ministry of Finance and Economic Planning
  - Ministry of Trade and Industry
  - Ghana Revenue Authority ( Customs Division)

---

**Thank You**