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Green Technology Newsletter March 2011

PROTECTING THE UNIVERSE OF "GREEN" IDEAS

Volume 2, Issue 1

Date - March 1, 2011

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Compulsory Licensing - What is it and Where does it stand?

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The Pros and Cons of Compulsory Licensing for Green Technology

“Compulsory licensing” can generally be described as a government-compelled grant of a patent license to a third party without the authorization of the patent holder.¹ Put another way, a compulsory license is a government authorized breach of intellectual property (“IP”) rights for the perceived public good. While most of the recent international implementation of compulsory licensing has been associated with pharmaceuticals in a public-health context, there has also been international pressure to use compulsory licensing to encourage the sharing of green technology.

Many developing countries have argued that climate change justifies diluting the IP rights (namely, patents) of developed countries in order to facilitate “technology transfer” to the developing countries.² Thus they propose making any new green technology subject to compulsory licensing, forcing the patent owner to grant licenses on the patented subject matter, sometimes royalty free.

While a compulsory license imposed on a patent owner could benefit the public at large by, for example, conserving the natural environment and resources, it is also likely to devalue the IP rights of the owner. Arguably, compulsory licensing directly contradicts the premise behind the U.S. patent system, which is “To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.”³

Compulsory licensing could also detract from green technology initiatives already under way.

2 See, e.g., Lawrence Kogan, Climate Change: Technology Transfer or Compulsory License? (January 15, 2000), available at http://www.itssd.org/news_archive.html (follow “National Standards

Institute (ANSI) hyperlink); Tim Wilson, Undermining mitigation technology: Compulsory licensing, patents and tariffs (August 2008), available at http://www.apec.org.au/docs/08_IPAAASC_MT.pdf.