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improve the chances to use dependent inventions based on a compulsory licence.

EU biotech law changes compulsory licensing rules

As reported in the April issue of *MIP*, the implementation of the so-called biotech directive (EU directive 98/44/EC) into the German Patent Act (GPA) has become effective. This implementation, however, does not only affect material patent law with respect to biotechnological inventions, but also led to a change of §24 GPA regulating the requirements of compulsory licences.

In accordance with the previous §24(2) GPA, a compulsory licence could be granted, if new patented inventions representing significant technical progress of considerable economic interest could not be used without infringing an older patent, under the provision that the “licensee’s” efforts to obtain a licence from the patent owner failed, and provided that it was in the public interest to grant a compulsory licence.

According to Recitals (52) and (53) of the biotech directive, however, access must be guaranteed, in the field of exploitation and use of new plant varieties and plant characteristics. This may be achieved, by payment of a fee, in the form of a compulsory licence where, in relation to the genus or species concerned, the plant variety or plant characteristics represent significant technical progress of considerable economic interest compared to the invention claimed in the patent.

The prerequisite of “public interest” is not required under the biotech directive, which resulted in a rewording of §24(2) GPA. Due to equity reasons, however, this adjustment not only applies to plant-related inventions, but to inventions in all technical fields.

The amendment might be important, because “public interest” was up till now considered to be the main obstacle in the grant of compulsory licences. Owners of younger dependant patents, who are not able to reach an agreement by negotiation, now only have to show the significant technical progress and considerable economic interest of their inventions, which will be easier than proving public interest. This might