



## SCREENING CHAPTER 7 on INTELLECTUAL PROPERTY LAW

### **AGENDA ITEM XVIII: COMPULSORY LICENCING**

**Country Session: The Republic of TURKEY  
2-3 March 2006**

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## 1. THE LEGAL FRAMEWORK

- Decree-Law No:551 Pertaining to the Protection of Patent Rights in force as from 27 June 1995
- By-law implementing the Decree-Law in force as from 5 November 1995 (as amended on 6 December 1998)

## **2. THE COMPETENT AUTHORITY**

### **Courts**

- Failure to use the patented invention
- Dependency of subject matters of patents

### **The Council of Ministers**

- Public interest

### **3. THE REQUIREMENTS FOR GRANTING COMPULSORY LICENCE**

**(Article 99, DL No:551)**

- **Failure to use the patented invention in accordance with Article 96**
- **Dependency of subject matters of patents as mentioned in Article 79**
- **Public interest as mentioned in Article 103**

### **3. THE REQUIREMENTS FOR GRANTING COMPULSORY LICENCE (cont.)**

**Failure to use the patented invention in accordance with Article 96;**

- **Obligation to use the invention under patent protection**
- **The obligation must be realized within three years as from the date of publication of the mention of the grant of the patent**



### **3. THE REQUIREMENTS FOR GRANTING COMPULSORY LICENCE (cont.)**

**Dependency of subject matters of patents as mentioned in Article 79.**

- **A patented invention can not be used without using an earlier patented invention**
- **Neither the right holder of the earlier patent nor the right holder of the latter patent may use the patent of the other party without his consent, during the term of validity of his patent**

### **3. THE REQUIREMENTS FOR GRANTING COMPULSORY LICENCE (cont.)**

**Public interest as mentioned in Article 103.**

- **The Council of Ministers may decide that the subject matter of a patent or a patent application be put into use on grounds of public interest.**



## **4. EXPORTATION AS A GROUND FOR COMPULSORY LICENCE**

**(Article 102, DL No:551)**

**Exportation of a patented invention shall not constitute a ground for compulsory licence.**

**Technical studies for alignment in this field are underway.**

## **5. MEDIATION BY THE TURKISH PATENT INSTITUTE**

**(Article 104, DL No:551)**

**A person willing to apply for a compulsory licence may in the first instance request TPI's mediation with a view to obtaining a contractual licence.**

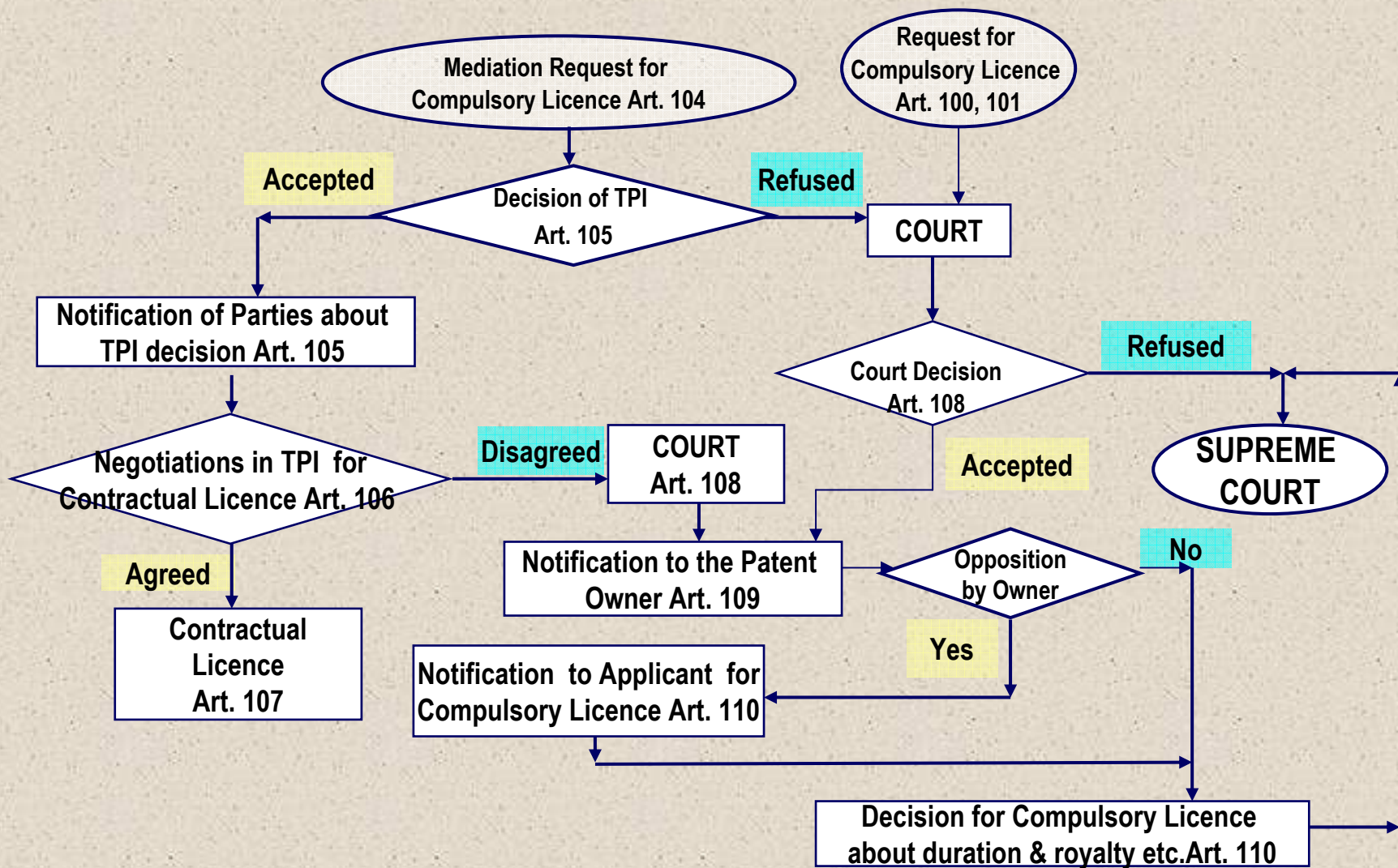
## **6. REQUEST FOR COMPULSORY LICENCE**

**(Article 108, DL No:551)**

**The court may be requested to grant compulsory licence:**

- **Upon expiry of a term of three months**
  - **as from the expiry of the term given by TPI to the parties to agree to conclude a licence agreement**
  - **as from the date of the decision of TPI refusing the request for mediation**
- **when the parties fail to agree to conclude the licence agreement within the term of the mediation activity conducted by TPI**

## 7. THE PROCEDURE FOR COMPULSORY LICENCE ON FAILURE TO USE AND DEPENDENCY



## **8. LEGAL NATURE OF COMPULSORY LICENCE**

**(Article 114, DL No:551)**

### **Exclusivity**

**Compulsory licence shall not be exclusive.**

**Exception: Public interest provided that exclusivity is not contradictory to the purpose of compulsory licence.**

### **Right to Import**

**The licensee has no right to import the subject matter of the patent.**

**Exception: Public interest provided that the licensee has been authorized to import.**





**THANK YOU FOR YOUR ATTENTION**