

Compulsory Licensing and Patent Protection: A North-South Perspective

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Abstract

In a stylized model involving two agents - a developing country (called South) and a foreign patent-holder - we analyze how the incidence and social value of compulsory licensing (CL) depends upon the South's patent protection policy. We show that if the South is free to deny patent protection, not only does CL fail to arise in equilibrium, but the option to use it makes both parties worse off. Furthermore, being able to use CL reduces the South's incentive for patent protection. However, if the South is obligated to offer patent protection (say due to its membership in an international organization such as the WTO), CL occurs in equilibrium and can even make both parties better off. CL is more likely to occur if price is negotiated between the two parties compared to when it is set unilaterally by the patent-holder. If the South can impose a price control, the patent-holder is willing to sell at a lower price if its patent is protected relative to when it is not. Thus, the ability to dictate price makes patent protection more attractive to the South while the option to use CL has the opposite effect

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