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# Invoking Article 31 for Climate Emergency: The Viability and Limitations of Compulsory Licensing Under Sections 84 and 92 of the Indian Patents Act for Clean Energy Technologies

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**ABSTRACT**

Patents may protect a range of clean-energy technologies, including hydrogen systems, smart grids, battery storage, solar technologies and wind technologies. Exclusivity can reward innovation, but it may also create access problems where supply is inadequate, licensing is unduly restrictive, the patentee declines to license, or the price places the invention beyond the reach of public programmes. This paper examines the legal routes for using patented clean-energy technologies without the patentee's consent under Article 31 of the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and sections 84 and 92 of the Patents Act 1970. It argues that climate urgency does not create an automatic exception to patent rights, but clean-energy patents are not excluded from compulsory licensing. Section 84 provides an applicant-initiated route based on specified statutory grounds, while section 92 operates following a Central Government declaration in cases of national emergency, extreme urgency or public non-commercial use. The Natco-Bayer, BDR Pharmaceuticals and Lee Pharma matters demonstrate the importance of evidence, genuine licensing efforts and applicant capability. The Enercon litigation separately illustrates the importance of know-how and technology-transfer contracts. This research has not identified a reported Indian decision granting a compulsory licence for a clean-energy patent. A carefully targeted and proportionate approach may improve access while preserving legitimate incentives for innovation.

**KEYWORDS:** Compulsory Licensing; Climate Emergency; Clean Energy Technologies; TRIPS Agreement; Patents Act 1970; Technology Transfer; Solar Energy; Wind Energy; Battery Storage; India

**Scope of the Paper**

This paper examines the legal and practical viability of compulsory licensing for patented clean-energy technologies in India. It focuses on Article 31 of the TRIPS Agreement and sections 83–94 and 100 of the Patents Act 1970, with particular attention to solar, wind, battery-storage, smart-grid and hydrogen technologies. The analysis is confined to patent-related barriers to deployment and distinguishes those barriers from constraints arising from finance, infrastructure, procurement, access to critical minerals and technical know-how.

**Central Argument**

India's compulsory-licensing framework can support clean-energy deployment only where a particular patented invention materially obstructs a defined public purpose and the statutory conditions for intervention are established. Section 84 is an applicant-driven route for persistent access failures; section 92 is a government-led route for national emergency, extreme urgency or public non-commercial use. Both require a proportionate, evidence-based approach that recognises the patentee's entitlement to remuneration and the practical capacity of the proposed licensee.

## INTRODUCTION

Energy policy must respond to public welfare and resilience in the context of climate change. Heat, floods, cyclones and water insecurity can disrupt electricity systems that support hospitals, water utilities, telecommunications, agriculture and industry. Decarbonisation is therefore connected with life, health, equality and sustainable development. The legal issue is whether, in a particular case, control over a patented invention materially obstructs a defined public response and whether the Patents Act provides a lawful route for authorising its use without the patentee's consent. [1]

There are legitimate reasons for patent protection. Disclosure in return for time-limited exclusivity can incentivise investment in research and development. However, exclusivity may also restrict diffusion where a patentee offers very few licences, imposes restrictive conditions, or charges a price that places the invention beyond the reach of a public programme. The central question is whether the exercise of patent rights is preventing reasonable access in circumstances that satisfy the statutory grounds for intervention. [2]

Compulsory licensing permits the use of a patented invention without the patentee's consent, but it does not cancel the patent or transfer ownership. Instead, it authorises a defined use subject to statutory safeguards, including appropriate remuneration. The reference in this paper to Article 31 is to Article 31 of the WTO TRIPS Agreement, not Article 31 of the Constitution of India. The argument is that Article 31 and sections 84 and 92 provide routes to access through a patent-specific and proportionate process.

## DISCUSSION

### 1. Research Questions and Methodology

The paper asks whether Article 31 TRIPS permits compulsory licensing in the field of clean energy; how sections 84 and 92 provide domestic routes; what evidence is required to establish unmet public requirements, lack of reasonable affordability, non-working, emergency or public non-commercial use; and whether compulsory licensing can secure meaningful access where energy systems also depend on know-how, other patents, finance and infrastructure. It proceeds on the premise that section 84 may respond to persistent access failures, while section 92 may be relevant where the Central Government

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United Nations Framework Convention on Climate Change (adopted 9 May 1992, entered into force 21 March 1994) 1771 UNTS 107, art 4(1)(c), 4(5); Paris Agreement (adopted 12 December 2015, entered into force 4 November 2016) art 10.

Agreement on Trade-Related Aspects of Intellectual Property Rights (adopted 15 April 1994, entered into force 1 January 1995) 1869 UNTS 299, arts 7, 8 and 27(1); Keith E Maskus, 'Differentiated Intellectual Property Regimes for Environmental and Climate Technologies' (OECD Environment Working Papers No 17, 2010).

identifies a statutory emergency, extreme urgency or public non-commercial purpose. Neither provision creates a general exception merely because climate change is urgent.

The research adopts a doctrinal and analytical method. It examines the TRIPS Agreement and the Patents Act 1970, particularly sections 83–94 and 100, alongside Patent Office decisions and Indian judgments. Natco-Bayer, BDR Pharmaceuticals and Lee Pharma are direct compulsory-licensing materials; Enercon concerns wind-energy know-how and technology agreements; and M.K. Ranjitsinh and Vellore Citizens provide constitutional and environmental context rather than patent-law precedents. The analysis also draws on the IPCC's assessment of climate-technology innovation and transfer. [4]

**2. Access to Climate Technology and the Patent Policy Dilemma**

Access to a patent is not equivalent to complete technology transfer. A patent licence does not necessarily provide trade secrets, source code, testing protocols, software updates, supplier networks, training or technical support. Nor does it automatically confer rights under copyright or contract. A licensee may therefore obtain permission to practise a patent yet remain unable to manufacture or safely operate the technology. An applicant should explain how complementary know-how, components, certification and technical support will lawfully be obtained. [5]

**3. Article 31 of the TRIPS Agreement**

Article 31, entitled 'Other Use Without Authorization of the Right Holder', permits a WTO Member's law to authorise use of a patented invention without the patentee's consent, including government use or use by a third party authorised by government. Article 27.1 establishes the general obligation to make patents available for inventions in all fields of technology, subject to the Agreement's conditions; Article 31 provides a regulated flexibility within that framework. Its scope is not limited to medicines or public-health emergencies, and clean-energy patents are not excluded. The Doha Declaration concerns public health and should not be presented as a climate-specific waiver. [6]

Each authorisation must be considered on its individual merits. Ordinarily, the proposed user must first make efforts to obtain a voluntary licence from the patentee on reasonable commercial terms and conditions, and those efforts must remain unsuccessful for a reasonable period. Article 31(b) permits this requirement to be waived in cases of national emergency, extreme urgency or public non-commercial use. In an emergency or other case of extreme urgency, the patentee must be notified as soon as reasonably practicable. The waiver of prior negotiations does not remove the remaining safeguards, including remuneration, limits on scope and duration, non-exclusivity and review. [7]

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Matthew Littleton, 'The TRIPS Agreement and Transfer of Climate-Change-Related Technologies to Developing Countries' (UN Department of Economic and Social Affairs, DESA Working Paper No 71, ST/ESA/2008/DWP/71, October 2008); Wei Zhuang, Intellectual Property Rights and Climate Change: Interpreting the TRIPS Agreement for Environmentally Sound Technologies (Cambridge University Press 2017).

TRIPS Agreement (n 2) art 39(2) (protection of undisclosed information); UNFCCC (n 1) art 4(5); Paris Agreement (n 1) art 10.

TRIPS Agreement (n 2) arts 27(1) and 31; Doha Declaration on the TRIPS Agreement and Public Health, WT/MIN(01)/DEC/2 (14 November 2001) paras 4–5. The Doha Declaration is expressly concerned with public health and should not be treated as a climate-specific waiver.

TRIPS Agreement (n 2) art 31(b). The waiver is confined to national emergency, extreme urgency or public non-commercial use; in cases of emergency or extreme urgency, notification to the right holder is required as soon as reasonably practicable.

An authorised use must be limited in scope and duration to the purpose for which it is permitted, non-exclusive and generally non-assignable. It must ordinarily be authorised predominantly for the domestic market of the Member granting the licence. The patentee must receive adequate remuneration in the circumstances of the case, taking account of the economic value of the authorisation, and both the authorisation and remuneration must be open to independent review. A clean-energy licence should therefore identify the patent claims, field of use, territory, project, quantities, duration and royalty basis. A blanket authorisation covering an entire technology sector would sit uneasily with the requirements of individual consideration and purpose limitation. [8]

**4. The Indian Patents Act: Sections 84 and 92 in Context**

The ordinary route is provided by section 84. After the expiry of three years from the date of grant of a patent, any person interested may apply to the Controller for a compulsory licence on one or more of three grounds: the reasonable requirements of the public have not been satisfied; the patented invention is not available to the public at a reasonably affordable price; or the invention is not worked in the territory of India. The applicant must identify the patent and market concerned and support the asserted ground with evidence. India's renewable-energy targets do not, by themselves, displace every solar, storage or wind-energy patent under section 84. [9]

Affordability is not determined by the headline price alone. Relevant evidence may include the patentee's price, the applicant's proposed price, the purchasing capacity of the relevant public or public purchaser, available substitutes and lifecycle cost. For batteries, lifecycle considerations may include useful life, degradation, replacement, efficiency, safety and maintenance; for solar equipment, output and service life; and for electrolysers, efficiency and operating cost. A cheaper but materially inferior or unsafe alternative may not establish reasonable affordability. Conversely, a price that makes a technology inaccessible to the relevant public programme may support the statutory ground when proved with reliable market evidence.[10]

The working requirement should not be reduced to an absolute rule that every patented component must be manufactured in India. Nor does the fact of importation automatically establish that the invention is not worked in India. Section 83 requires a contextual inquiry into the invention, domestic capability, demand, supply and the patentee's efforts. Where local manufacture is not reasonably practicable, imports may be commercially justified. Where adequate domestic capability exists, the extent and terms of local production, technology transfer and supply may become relevant. This distinction is significant for batteries, power electronics and electrolysers, where localisation may be technically difficult even though forms of technology transfer remain possible. [11]

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TRIPS Agreement (n 2) art 31(c)–(j); Patents Act 1970, s 90. Article 31(h) requires adequate remuneration taking account of the economic value of the authorisation, while arts 31(i) and (j) require independent review of the authorisation and remuneration.

Patents Act 1970, s 84(1)–(2). The three statutory grounds are unmet reasonable requirements of the public, lack of reasonable affordability and non-working in the territory of India.

Bayer Corporation v Union of India (2014) 60 PTC 277 (Bom) (Writ Petition No 1323 of 2013, Bombay High Court, 15 July 2014), discussing the statutory affordability inquiry and the evidence relevant to the price at which the patented invention was made available to the public.

Patents Act 1970, ss 83(a)–(c) and 84(1)(c); Bayer Corporation (n 10), on the need to assess working in India contextually rather than by applying an inflexible rule that every patented article must be manufactured domestically.

Section 84(6) requires the Controller to consider the nature of the invention, the time elapsed since grant, measures already taken by the patentee to make full use of the invention, the applicant's ability to work the invention to the public advantage and the applicant's financial resources. The applicant must ordinarily demonstrate reasonable efforts to obtain a voluntary licence on reasonable terms and conditions, with the relevant period not ordinarily exceeding six months. The statutory exceptions include national emergency, extreme urgency, public non-commercial use and established anti-competitive practices. Even where prior negotiations are excused, the applicant's technical, financial and operational ability to work the invention remains material. For safety-critical energy systems, competence in testing, certification, maintenance and system integration is especially important. [12]

Section 92 applies where the Central Government is satisfied that a compulsory licence should be granted in respect of a patent in force in circumstances of national emergency, extreme urgency or public non-commercial use. The Government may make a declaration to that effect by notification in the Official Gazette. Following the notification, any person interested may apply to the Controller, who may grant a licence on appropriate terms and conditions. In settling those terms, the Controller must endeavour to make the patented articles available to the public at the lowest prices consistent with the patentee deriving a reasonable advantage from the patent rights. The statutory grounds are alternatives: public non-commercial use need not necessarily be accompanied by a national emergency. [13]

**5. Indian Compulsory-Licensing Precedents and Judicial Context**

Natco-Bayer is the leading judicial benchmark for section 84. Natco applied for a licence to manufacture and sell sorafenib tosylate, a patented cancer drug marketed by Bayer as Nexavar. The Controller granted a compulsory licence on 9 March 2012. The Intellectual Property Appellate Board upheld the licence in March 2013 but increased the royalty from six to seven per cent of net sales. On 15 July 2014, the Bombay High Court dismissed Bayer's challenge. The case demonstrates that section 84 can address proven access failures while preserving remuneration for the patentee; it does not establish automatic licensing merely because an invention is expensive. [14]

On the question of reasonable requirements of the public, the Bombay High Court treated the inquiry as one of actual and reasonable demand and whether that demand was being adequately met. The Court recognised that adequacy depends on context: the relevant public need for a life-saving medicine is not identical to demand for a consumer luxury. That distinction should not be copied mechanically into clean-energy cases. An energy applicant should identify the relevant user class, project pipeline, required capacity, utility shortfall and the effect of the patentee's conduct. India's overall renewable-energy target does not, by itself, prove that demand for a particular patented invention is unmet.

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Patents Act 1970, s 84(6)(iv) (reasonable efforts to obtain a voluntary licence, ordinarily within a period not exceeding six months); BDR Pharmaceuticals International Pvt Ltd v Bristol Myers Squibb Company, Compulsory Licence Application No 1 of 2013 (Controller of Patents, Mumbai, 29 October 2013).

Patents Act 1970, s 92(1)–(2). The statutory declaration is made by the Central Government by notification in the Official Gazette; an interested person may thereafter apply to the Controller for a licence.

Natco Pharma Ltd v Bayer Corporation, Compulsory Licence Application No 1 of 2011 (Controller of Patents, Mumbai, 9 March 2012); Bayer Corporation v Natco Pharma Ltd, ORA No 35 of 2012 (IPAB, 4 March 2013); Bayer Corporation v Union of India (2014) 60 PTC 277 (Bom). The Bombay High Court dismissed Bayer's challenge to the compulsory licence.

In Lee Pharma Ltd v AstraZeneca AB, the Controller rejected an application relating to saxagliptin in January 2016 because a prima facie case had not been established on the statutory grounds. The decision emphasises that unmet public requirements, lack of reasonable affordability and non-working must be demonstrated with evidence, not assertion. A clean-energy applicant should therefore provide procurement records, market and supply data, technical alternatives and evidence of the public consequences of restricted access. Merely claiming that a proposed product could be made more cheaply or locally is insufficient. [15]

Enercon (India) Ltd v Enercon GmbH is a useful comparison in the clean-energy context, although it was not a compulsory-licensing case. The Supreme Court dealt with disputes arising from agreements relating to wind-turbine technology, technical know-how, special components and intellectual-property licensing. Its relevance is practical: manufacturing a wind turbine may depend on a package of patent rights, know-how, component supply and contractual arrangements. A compulsory licence over one patent cannot, by itself, reproduce that entire package. An applicant must identify whether the actual obstacle is patent exclusivity, refusal to disclose know-how, interrupted component supply or a contractual dispute. [16]

In M.K. Ranjitsinh v Union of India (2024), the Supreme Court considered the protection of the Great Indian Bustard in the context of overhead power infrastructure in Rajasthan and Gujarat. The Court recognised that Articles 14 and 21 encompass a right against the adverse effects of climate change, while also requiring a careful balance between biodiversity protection, renewable-energy infrastructure and the interests of affected communities. The judgment did not interpret the Patents Act or establish an automatic right to compulsory licensing. Its relevance lies in recognising the constitutional importance of climate-related harm and the need to balance climate action with other rights and environmental interests. [17]

This research has not identified a reported Indian judgment applying sections 84 or 92 to a clean-energy patent, or a judgment deciding whether climate emergency, by itself, warrants such a licence. This absence is a research gap, not a legal bar: neither Article 31 TRIPS nor the domestic provisions are confined to medicines. Pharmaceutical decisions provide a method of analysis, not automatic outcomes. A first clean-energy case would need to establish technical substitutes, lifecycle cost, public need and a causal link between control of the particular patent and the harm or access failure relied upon.

## PROSPECTS FOR CLEAN-ENERGY TECHNOLOGIES IN INDIA

### 1. Applying the Law to Clean-Energy Technologies

For solar technologies, compulsory licensing may be relevant where a patented photovoltaic process, inverter or power-conversion technology materially prevents a defined project from proceeding and no adequate alternative is available. The applicant should identify the patent claims, the delay and the technical bottleneck, and produce evidence of demand, price, supply, project impact and alternatives. It should also demonstrate the ability to reproduce or use the technology safely and to the required quality.

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Lee Pharma Ltd v AstraZeneca AB, Compulsory Licence Application No 1 of 2015 (Controller General of Patents and Designs, 19 January 2016), discussed in Khaitan & Co, 'Lee Pharma's Compulsory License Application for Saxagliptin Rejected by Indian Patent Office' (23 January 2016).

Enercon (India) Ltd v Enercon GmbH (2014) 5 SCC 1, Civil Appeal No 2086 of 2014 (Supreme Court of India, 14 February 2014). The judgment concerned contractual and arbitration questions arising from wind-turbine technology and technical know-how agreements; it was not a compulsory-licensing decision.

M K Ranjitsinh v Union of India 2024 INSC 280 (Supreme Court of India, 21 March 2024), especially the Court's discussion of the right to be free from the adverse effects of climate change under arts 14 and 21 of the Constitution.

If the actual delay arises from land acquisition, grid connection, finance or procurement, compulsory licensing will not solve it.

Battery-storage systems may incorporate patents owned by several parties. A licence for cell chemistry may not cover thermal management, battery software, power electronics or safety controls. Sections 88 and 91 may be relevant to related patents in appropriate circumstances, but they do not resolve every patent thicket or contractual dependency. Patent mapping, interoperability planning and safety assessment are therefore essential. The licensee must also be capable of meeting performance, warranty, recycling and end-of-life obligations.

## LIMITATIONS

The first and most significant limitation is the need to translate a general climate concern into a patent-specific case. Section 84 requires proof of at least one statutory ground; section 92 requires the Central Government to be satisfied that the statutory circumstances justify a declaration. A compulsory licence will not address delays caused by finance, transmission, minerals, land or regulatory approvals. The decision-maker should explain why the patent is a material obstacle, why adequate alternatives are unavailable and why the proposed scope is proportionate.

## RECOMMENDATIONS

India should develop a transparent framework for identifying and assessing climate-critical patents. Applicants should identify the claims, owners, territories, related rights and essential components, and establish public need through demand forecasts, procurement records, supply volumes, project delays, pricing, licence offers and available substitutes. They should demonstrate manufacturing, safety, quality-control and maintenance capacity, including lawful access to necessary know-how. Licence terms should specify field, territory, quantity, duration, remuneration, quality obligations, reporting and review. Government procurement and publicly funded research should encourage interoperability, repairability, reliable delivery and responsible end-of-life management. [18]

## CONCLUSION

Compulsory licensing is viable as a targeted climate instrument, not as a shortcut for industrial policy. Its use requires proof that a particular patent materially obstructs a defined public purpose, that the proposed licensee can use the invention safely and effectively, and that the authorisation is limited, compensated and reviewable. Section 84 is most suitable where persistent access failures are established; section 92 may be appropriate where the Government can explain why urgent public action or a public non-commercial programme requires use of the invention. Applied with evidence and proportionality, these provisions can help reconcile patent incentives with clean-energy deployment. Used indiscriminately, they risk legal uncertainty without delivering technology, know-how or infrastructure.

Intergovernmental Panel on Climate Change, 'Innovation, Technology Development and Transfer' in Climate Change 2022: Mitigation of Climate Change (Working Group III Contribution to the Sixth Assessment Report, Cambridge University Press 2022) ch 16; Ahmed Abdel-Latif, 'Intellectual Property Rights and the Transfer of Climate Change Technologies: Issues, Challenges, and Way Forward' (2015) 15(1) Climate Policy 103–26; Littleton (n 4). These sources emphasise that technology diffusion depends on interacting legal, financial, institutional and technical conditions, not patent licensing alone.

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