



Foreign Direct Investment International Moot Competition

[Home](#) | [Contact](#) | [Advisory Board](#) | [Arbitrators Login](#) | [Case](#) | [Endorsements](#) | [Founders](#) | [Prizes](#) | [Registration](#) | [Rules](#) | [Schedule](#) | [Sponsorship](#) | [Teams](#)

[Forum Index](#) | [My Topics/Replies](#) | [Logout](#)

2009 Clarification Requests plus Responses

46

[Fitzmaurice Question 1](#)

When did MEDBERG first contact the Bergonian IP Office to object to the issuance of the compulsory licence?

761

2009-06-09 13:05:57

Response As the patent holder, MedBerg was notified of the proceedings when they were initiated and responded within the statutory time limits for such proceedings.

45

[Nature of holding company](#)

When was MedX Holdings Ltd incorporated and has there been a change in control at any point?

682

2009-06-09 00:05:39

Response CC123 Holding Ltd" was incorporated by Convenient Companies SARL on 1 January 2003. On 1 December 2003, its name was changed to "MedX Holding Ltd" and it was transferred to MedScience and Dr. Frankensid. Since then there have been no changes in control.

44

[Bergonia background](#)

What is the income level of Bergonia?

682

2009-06-09 00:04:47

Response 2006 GDP per capita was US \$7,535.

43

[MedBerg](#)

Where does the board of MedBerg meet?

682

2009-06-09 00:04:08

Response Almost always in Bergonia.

42

[Compulsory License](#)

Did the Claimant consider the royalty payments collected by the Bergonian IP Office insufficient or did the Bergonian IP office consider the claimant to be overcharging?

682

2009-06-09 00:03:30

Response After terminating the License Agreement with BioLife Co., the Claimant had no immediate plans to license its intellectual property to a third-party in Bergonia. The Claimant believes the royalty rates that have been set by the Bergonian IP Office are inadequate. There is no evidence one way or other as to the Bergonian IP Office view on the Claimant's charging practices.

41

[Domestic Law](#)

Do Bergonia and Conveniencia have domestic laws for determining nationality or do they apply principles of international law?

682

2009-06-09 00:02:29

Response They have domestic nationality laws, which they apply as appropriate.

40

[Nature of technology](#)

What is the nature of the patented medical technology in this dispute and will it help the population of Begonia?

682

2009-06-09 00:01:52

Skadden



Skadden, Arps, Slate Meagher & Flom LLP & Affiliates - [Law Firm Sponsor](#)



Previous competitions - [2008](#)

Response The technology covered by MedBerg's Patent No. AZ2005 is used to produce certain health-related products, which are important for Bergonia's domestic medical needs. In particular, the patent covers a breakthrough treatment (and related products) that certain medical experts believe is useful for treatment of obesity, which has been a serious problem among a large population group in Bergonia. Given the genetic make-up and traditional diet of this population, obesity has been a significant and long-standing issue, causing numerous other associated medical problems.

39

[Compulsory License](#)

Did MedBerg Co. terminate the licensing agreement or refuse to renegotiate because the price of this medical technology was being forced to remain steady, fall, or increase, and what is the resulting impact on MedBerg's finances?

682

2009-06-09 00:01:22

Response MedBerg Co. does not admit that it refused any effort to renegotiate the License Agreement. None of the factors in your question was the reason for terminating the license. MedBerg's revenues decreased after termination of the License Agreement. Medberg's choice to terminate was driven in large part by concerns of parallel exports of the patented treatments and products by BioLife into third-countries other than Bergonia, in a manner that Medberg believed was inconsistent with the terms of the License Agreement. These third-countries are members of a customs union with Bergonia. Local MedX subsidiaries license production and sale of the patented treatments and products in these other countries, which is undermined by the parallel imports from Bergonia.

37

[objections - Annex 3 sec. 9](#)

Were the objections of the claimant (as presented in point 9 of Annex 3) raised with regard to any administrative or judicial proceedings which resulted in any administrative or judicial decision of the last instance and what was stated in that decision?

783

2009-06-06 20:04:00

Response MedBerg raised its objections before the Bergonian IP Office's Patent Review Board, on appeal from the IP Office's administrative decision to issue the compulsory license. The Patent Review Board found the issuance of the compulsory license in conformity with Bergonian law.

36

[economic relations between Laputa and Bergonia](#)

Are there any economic realtions between Laputa and Bergonia and if yes, what kind of realtions are those ?

783

2009-06-06 20:02:06

Response On certain trade issues, there have been tensions between Laputa and Bergonia, and Laputa has imposed sanctions on several occasions.

35

[basic facts on companies](#)

Where MedScience, MedX, MedBerg are incorporated, have their seat of business, seat of control board and in which countries do they have they substantial interests ?

783

2009-06-06 20:01:26

Response They were all incorporated and have their administrative seats in the countries indicated by the problem.

34

[compulsory license](#)

Did the companies (BioLife and five other entities) who received compulsory license use them for commercial purpose ?

783

2009-06-06 20:00:46

Response Yes.

32

[license agreement between BioLife and Claimant](#)

Is license agreement between BioLife and Claimant an exclusive license ?

783

2009-06-06 19:59:13

Response It was.

31

[other license agreements](#)

Were there any other license agreements concluded or under negotiation at the territory of Bergonia at the moment of issuing a compulsory licenses by Bergonian IP Office.

783

2009-06-06 19:58:22

Response No.

30

[compulsory license](#)

Does the compulsory license include allowance for export of products based on Patent n AZ2005 to other countries ?

783

2009-06-06 19:57:39

Response It is silent on this point.

29

[compulsory license](#)

Under Bergonian law, did Claimant have the possibility of getting an independent review of the IP Office's decision? If such is the case, would that independent review be administrative or judicial?

780

2009-06-06 00:03:23

Response Following the IP Office's administrative decision to issue the compulsory license, the Claimant filed an appeal with a Patent Review Board within the IP Office. The Patent Review Board is a quasi-judicial body, which draws upon existing Bergonian judges to sit in particular intellectual property cases and be paid for their services by the Bergonian IP Office.

28

[compulsory license](#)

Aside from BioLife, had any of the companies that invoked the license entered into negotiations with claimant about a license agreement before the compulsory license?

780

2009-06-06 00:01:59

Response None.

27

[compulsory license](#)

What percentage of the products manufactured with the technology covered by the patent was destined to supply the domestic market and what was the percentage that was used for export?

780

2009-06-06 00:01:13

Response Under the original License Agreement with BioLife, MedBerg contends all products and treatments were intended for sale in Bergonian domestic market.

26

[compulsory license](#)

Since when had the state of Bergonia the important medical needs reported in the case, before or after Bergonian Patent No. AZ2005 was granted to Claimant?

780

2009-06-06 00:00:32

Response Bergonia contends that these medical needs became more acute after the License Agreement with MedBerg was terminated. It is well-documented that certain population groups within Bergonia have a genetic pre-disposition toward obesity. Two studies were published supporting the efficacy of the patented products and treatments in treating this type of obesity.

25

[royalties offered](#)

What was the amount or percentage of royalties offered? Was the amount or percentage comparable to royalties which could be obtained at arms' length in the relevant market?

780

2009-06-05 23:59:35

Response The percentage royalty rate was lower than the rate that had been in effect under the terms of the License Agreement between MedBerg and BioLife.

24

[compulsory license](#)

What is the time limit for the compulsory license?

780

2009-06-05 23:58:30

Response 48 months.

23

[patent issuance](#)

If the product was developed by Mr. Frankensid, how did Claimant acquire the right to apply for patent issuance? Was it work made for hire or were the IP rights assigned to Claimant?

780

2009-06-05 23:57:54

Response It was assigned, ultimately, to MedBerg by Dr. Frankensid and MedScience in exchange for shares in MedX.

22

[Nationality of Mr. Frankensid](#)

How and when did Mr. Frankensid acquire dual Amnesian/Bergonian nationality?

780

2009-06-05 23:55:20

Response Dr. Frankensid is a Bergonian national by descent and birth. He was naturalized in Amnesia in 1991.

21

[Regulation of issue of compulsory licenses in Bergonia](#)

What are the conditions for the grant of compulsory license under Bergonian laws?

792

2009-06-05 16:40:16

Response At the time the compulsory license was issued, Bergonia as a WTO member, had enacted a law specifying conditions for the authorization of compulsory licenses. However, similar to the laws that are on the books in many countries, that law has never been "tested" by any challenge to determine whether or not its provisions would be considered in conformity with the TRIPS Agreement, Article 31. Moreover, there is a separate question whether or not Bergonia's implementation of its law would be considered TRIPS Agreement compliant.

20

[Export of patented products](#)

To which countries were the products produced by Bergonian companies utilizing patent No. AZ2005 exported (e.g. are such countries least-developed country members of WTO and have they made notifications to the Council of TRIPS in terms of paragraph 6 of Doha declaration).

792

2009-06-05 16:39:41

Response No notification has been made to the TRIPS Council.

19

[Impact of compulsory licenses](#)

What is the impact of issue of compulsory licenses in Bergonia on MedBerg's business (e.g. in terms of sales volumes, pricing etc.)?

792

2009-06-05 16:39:11

Response Currently, MedBerg sells directly only very limited quantities of its obesity treatment and products in Bergonia and has not accepted any royalties from the six firms. The units sold by the six firms invoking the compulsory license is 155 % of that sold previously by BioLife alone. Total sales revenue for the six firms (including BioLife) is higher than it was for BioLife under the License Agreement.

18

[Corporate governance in MedX Holding](#)

What are the corporate governance rights of each of MedScience and Dr. Frankensid in MedX Holding (e.g. are the voting rights divided in the same way as ownership, do any of the parties have veto rights, what is the mechanism of deadlock resolution)?

792

2009-06-05 16:38:45

Response Voting rights are the same as ownership rights. Deadlocks are resolved by negotiation. Dr. Frankensid would like to continue in the employment of MedScience.

17

[Control over MedScience Co](#)

Nationals of which countries control MedScience Co.?

792

2009-06-05 16:38:17

Response MedScience is publicly traded, but it can be assumed that the majority of its shareholders are Laputan

14

[Treatment of MedBerg as foreign national](#)

Whether MedBerg Co. was at any time treated by the Bergonia's government as a foreign / foreign-controlled business (e.g. in terms of special registrations, investment agreements, taxation, privileges, patent application fees/procedures)?

792

2009-06-05 16:36:28

Response No, not in any of these ways.

13

Remuneration

What were the terms for remuneration between Biolife and Medberg Co.?

768

2009-06-05 13:30:01

Response We know that BioLife paid a royalty to Medberg based on sales, but the specific details are not available.

12

relationship between Medberg Co. and Bergonia

Have Medberg Co. and Bergonia signed any sort of agreement or have engaged in direct negotiations?

768

2009-06-05 13:28:28

Response No, not outside the compulsory license proceedings conducted by the IP Office.

6

relation of companies

What is the relation between Medscience co., MedxHoldings Ltd and MedBerg Co. i.e. whether these companies are owned by a single person or not?

766

2009-06-02 15:09:18

Response See that chart in annex 3 of the problem.**Add A Request**