

## Norwegian Industrial Property Office

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### Section 1: General

1. As background for the exceptions and limitations to patents investigated in this questionnaire, what is the legal standard used to determine whether an invention is patentable? If the standard for patentability includes provisions that vary according to the technology involved, please include examples of how the standard has been interpreted, if available. Please indicate the source of law (statutory and-or case law) by providing the relevant provisions and/or a brief summary of the relevant decisions.

*There is a common legal standard for all inventions, stated in statutory law. Patents Act Sections 1 and 2.*

*The invention has to be considered as an invention*

*-technical effect*

*-technical character*

*-reproducible be new ("novelty")*

*differ essentially from prior art*

*be susceptible of industrial application*

Correspondingly, please list exclusions from patentability that exist in your law. Furthermore, please provide the source of those exclusions from patentability if different from the source of the standard of patentability, and provide any available case law or interpretive decisions specific to the exclusions.

*Patents Act Sections 1 (2), (4)-(6). Patents Act Sections 1a and 1b.*

2. As background for the exceptions and limitations to patents investigated in this questionnaire, what exclusive rights are granted with a patent? Please provide the relevant provision in the statutory or case law. In addition, if publication of a patent application accords exclusive rights to the patent applicant, what are those rights?

*Exclusive rights granted with a patent are stated in the Patents Act Section 3 (1) and (2).*

*Publication of a patent application does not accord exclusive rights to the patent applicant.*

3. Which exceptions and limitations does the applicable law provide in respect to patent rights (please indicate the applicable exceptions/limitations):

*Private and/or non-commercial use;  
Experimental use and/or scientific research;  
Preparation of medicines;  
Prior use;  
Use of articles on foreign vessels, aircrafts and land vehicles;  
Acts for obtaining regulatory approval from authorities;  
Exhaustion of patent rights;  
Compulsory licensing and/or government use;  
Exceptions and limitations related to farmers' and/or breeders' use of patented inventions.*

## **Section 2: Private and/or non-commercial use**

4. If the exception is contained in statutory law, please provide the relevant provision(s):

*Patents Act Section 1(1):  
Within any technical field, any person who has made an invention which is susceptible of industrial application, or his successor in title, shall, in accordance with this Act, have the right on application to be granted a patent for the invention and thereby obtain the exclusive right to exploit the invention commercially or operationally.*

*Private /non-commercial use is not included in the term "industrial" and is therefore exempted.*

*Also see Patents Act Section 3:*

*The exclusive right shall not include:  
Exploitation outside the course of professional activity.*

5. If the exception is provided through case law, please cite the relevant decision(s) and provide its(their) brief summary:

*Not relevant.*

6. (a) What are the public policy objectives for providing the exception?

(b) Where possible, please explain with references to the legislative history, parliamentary debates and judicial decisions:

*The term "exploit" implies certain limitations regarding the kinds of activities comprised by the patent protection. Patent rights only aim to protect the right holder against commercial exploitation of the invention. There is a common interest in keeping non-commercial use in the public domain. The right holder is therefore not protected against exploitation of the invention as a knowledge base for research, experimenting or education. However, if the invention is aiming at use in connection with research or education, for instance a measuring device, such use of the invention will be included in the patent protection.*

7. If the applicable law defines the concepts "non-commercial", "commercial" and/or "private", please provide those definitions by citing legal provision(s) and/or decision(s):

*No express definition in applicable law.*

8. If there are any other criteria provided in the applicable law to be applied in determining the scope of the exception, please provide those criteria by citing legal provision(s) and/or decision(s):

*Criteria as to determine the scope of the exception:*

*There are no other criteria stated in statutory law or case law. However case law may give guidelines as to how statutory law shall be interpreted.*

9. Is the applicable legal framework of the exception considered adequate to meet the objectives sought (for example, are there any amendments to the law foreseen)? Please explain:

*The applicable legal framework is considered adequate.*

10. Which challenges, if any, have been encountered in relation to the practical implementation of the exception in your country? Please explain:

*[Note from the Secretariat: response was not provided]*

### **Section 3: Experimental use and/or scientific research**

11. If the exception is contained in statutory law, please provide the relevant provision(s):

*Patents Act Section 3 (3) No. 3:*

*The exclusive right shall not include (...) exploitation by experiment relating to the subject matter of the invention."*

12. If the exception is provided through case law, please cite the relevant decision(s) and provide its(their) brief summary:

*Not relevant.*

13. (a) What are the public policy objectives for providing the exception?

(b) Where possible, please explain with references to the legislative history, parliamentary debates and judicial decisions:

*The exclusive right conferred by a patent right is only meant to include the commercial value of the invention, not the use of the invention as a knowledge basis for further research and development.*

*The main public policy objective providing this exception is to encourage further innovation.*

14. Does the applicable law make a distinction concerning the nature of the organization conducting the experimentation or research (for example, whether the organization is commercial or a not-for-profit entity)? Please explain:

*No.*

15. If the applicable law defines the concepts "experimental use" and/or "scientific research", please provide those definitions by citing legal provision(s) and/or decision(s):

*No.*

16. If the purpose of experimentation and/or research is relevant to the determination of the scope of the exception, please indicate what that purpose is:

*determine how the patented invention works  
determine the scope of the patented invention  
determine the validity of the claims  
seek an improvement to the patented invention*

*invent around the patented invention*

17. If any of the following criteria is relevant to the determination of the scope of the exception, please indicate:

*Research and/or experimentation must be conducted on or relating to the patented invention ("research on")*

18. If the commercial intention of the experimentation and/or research is relevant to the determination of the scope of the exception, please indicate whether the exception covers activities relating to:

*A non-commercial purpose  
A commercial purpose*

19. If the applicable law makes a distinction between "commercial" and "non-commercial" purpose, please explain those terms by providing their definitions, and, if appropriate, examples. Please cite legal provision(s) and/or decision(s):

*No distinction.*

20. If the applicable law provides for other criteria to be applied in determining the scope of the exception, please describe those criteria. Please illustrate your answer by citing legal provision(s) and/or decision(s):

*The experiment must relate to the subject matter of the invention.*

21. Is the applicable legal framework of the exception considered adequate to meet the objectives sought (for example, are there any amendments to the law foreseen)? Please explain:

*The applicable legal framework is considered adequate.*

22. Which challenges, if any, have been encountered in relation to the practical implementation of the exception in your country? Please explain:

*[Note from the Secretariat: response was not provided]*

#### **Section 4: Preparation of medicines**

23. If the exception is contained in statutory law, please provide the relevant provision(s):

*Patents Act Section 3 (3) No. 4:*

*The exclusive right shall not include: (...) preparation in a pharmacy of a medicine in accordance with a prescription in individual cases, or acts carried out with a medicine so prepared."*

24. If the exception is provided through case law, please cite the relevant decision(s) and provide its (their) brief summary:

*Not relevant.*

25. (a) What are the public policy objectives for providing the exception? Please explain:

*[Note from the Secretariat: response was not provided]*

(b) Where possible, please explain with references to the legislative history, parliamentary debates

and judicial decisions:

*Preparation of medicines in pharmacies should be possible regardless of patent rights, as long as the preparation happens in connection with a prescription. Such practice is not common in Norway.*

26. Who is entitled to use the exception (for example, pharmacists, doctors, physicians, others)? Please describe:

*Not specified in the law. Authorized personnel in a Pharmacy.*

27. Does the applicable law provide for any limitations on the amount of medicines that can be prepared under the exception?

*No*

28. If the applicable law provides for other criteria to be applied in determining the scope of the exception, please describe those criteria. Please illustrate your answer by citing legal provision(s) and/or decision(s):

*No*

29. Is the applicable legal framework of the exception considered adequate to meet the objectives sought (for example, are there any amendments to the law foreseen)? Please explain:

*This Section is not in use, since preparation of medicine in pharmacies is no longer common in Norway.*

30. Which challenges, if any, have been encountered in relation to the practical implementation of the exception in your country? Please explain:

*No challenges.*

## **Section 5: Prior use**

31. If the exception is contained in statutory law, please provide the relevant provision(s):

*Patents Act Section 4.*

32. If the exception is provided through case law, please cite the relevant decision(s) and provide its (their) brief summary:

*Not relevant.*

33. (a) What are the public policy objectives for providing the exception? Please explain:

*[Note from the Secretariat: response was not provided]*

(b) Where possible, please explain with references to the legislative history, parliamentary debates and judicial decisions:

*An invention which has been used secretly by one person may be patented by another. If we did not have the exemption for prior use, the person who had used the invention secretly would have to stop using it, because the use would be in conflict with the patent right. The prior user's investments would be lost, and this is unfavorable in the light of community economy. To avoid this Section 4 states that the person who exploited the invention when the application was filed may continue the use, within certain limits.*

34. How does the applicable law define the scope of “use”? Does the applicable law provide for any quantitative or qualitative limitations on the application of the “use” by prior user? Please explain your answer by citing legal provision(s) and/or decision(s):

*The scope of “use” is not expressed in Section 4 but in the legislative history. The use may consist of one or several of the kinds of utilization listed in Section 3 (see Question 2). The scale of the utilization is not relevant, as long as the use is “continued exploitation”. Import may also give grounds for continued right of exploitation. Prior use carried out of experimental purposes only will not fall within the scope of “use”.*

*A fundamental condition for continued use of the invention is that the exploitation does not “constitute an evident abuse in relation to the applicant or his predecessor in title”.*

35. Does the applicable law provide for a remuneration to be paid to the patentee for the exercise of the exception? Please explain:

No

36. According to the applicable law, can a prior user license or assign his prior user’s right to a third party?

*License – No.*

*Assign – Yes. See Question 37.*

37. In case of affirmative answer to question 36, does the applicable law establish conditions on such licensing or assignment for the continued application of the prior use exception?

*Assignment – Yes.*

If yes, please explain what those conditions are:

*Patents Act Section 4 (2):*

*“The right provided for in the first paragraph may only be transferred to others in conjunction with the enterprise in which it has arisen or in which the exploitation was intended.”*

38. Does this exception apply in situations where a third party has been using the patented invention or has made serious preparations for such use after the invalidation or refusal of the patent, but before the restoration or grant of the patent?

Yes

If yes, please explain the conditions under which such use can continue to apply:

*Patents Act Section 74:*

*Where a patent application which has been made available to the public in accordance with section 22 has been shelved or refused or if a patent has lapsed and the rights of the applicant are re-established according to the provisions of sections 72 or 73, the Norwegian Industrial Property Office shall publish a notice to that effect.*

*Where anyone, after final refusal of the application, expiration of the time limit for the resumption of the shelved application or after the lapse of the patent, but before the publication in accordance with the first paragraph has been made, has started to exploit the invention commercially in this country in good faith, he may, notwithstanding the patent, continue the exploitation whilst retaining*

*its general character. Such right of exploitation shall also, on similar conditions, be enjoyed by anyone who has made substantial preparations to exploit the invention commercially in this country.*

*The right referred to in the second paragraph may only be transferred to others in conjunction with the enterprise in which it has originated or in which the exploitation was intended.*

39. If the applicable law provides for other criteria to be applied in determining the scope of the exception, please describe those criteria. Please illustrate your answer by citing legal provision(s) and/or decision(s):

*Not relevant.*

40. Is the applicable legal framework of the exception considered adequate to meet the objectives sought (for example, are there any amendments to the law foreseen)? Please explain:

*The applicable legal framework is considered adequate.*

41. Which challenges, if any, have been encountered in relation to the practical implementation of the exception in your country? Please explain:

*[Note from the Secretariat: response was not provided]*

## **Section 6: Use of articles on foreign vessels, aircrafts and land vehicles**

42. If the exception is contained in statutory law, please provide the relevant provision(s):

*Norwegian Patents Act Section 5:*

*An invention may, notwithstanding a patent, be utilized on a foreign vehicle, vessel or aircraft in connection with the use of such means of transportation during their temporary or accidental stay in this country.*

*See also Regulations to the Norwegian Patents Act (Patent Regulation) Section 101: "Section 101. Spare Parts and Accessories for Aircraft*

*Notwithstanding any granted patent, spare parts and accessories for aircraft may be imported into Norway and used in Norway for the repair of aircraft registered in a foreign state that is a party to the Convention on International Civil Aviation of December 7, 1944 (the Chicago Convention) and that is either a party to the Paris Convention on Protection of Intellectual Property of March 20, 1883, or has patent legislation that recognises inventions made by nationals of another state that is a party to the Chicago Convention and that provides such inventions with a level of protection that is essentially in conformity with the protection provided under the Paris Convention."*

43. If the exception is provided through case law, please cite the relevant decision(s) and provide its (their) brief summary:

*Not relevant*

44. (a) What are the public policy objectives for providing the exception? Please explain:

*[Note from the Secretariat: response was not provided]*

(b) Where possible, please explain with references to the legislative history, parliamentary debates and judicial decisions:

*The Patents Act Section 5 shall ensure that patent rights do not obstruct international transport.*

45. The exception applies in relation to :

*Vessels;  
Aircrafts;  
Land vehicles.*

*The Section does not explicitly apply to spacecrafts. However it may be interpreted to include spacecrafts if the situation should occur.*

46. In determining the scope of the exception, does the applicable law apply such terms as “temporarily” and/or “accidentally” or any other equivalent term in relation to the entry of foreign transportation means into the national territory? Please provide the definitions of those terms by citing legal provision(s) and/or decision(s):

*Yes. Patents Act Section 5 uses the term “temporary or accidental stay” in this country.*

47. Does the applicable law provide for any restrictions on the use of the patented product on the body of the foreign vessels, aircrafts, land vehicles and spacecraft for the exception to apply (for example, the devices to be used exclusively for the needs of the vessel, aircraft, land vehicle and/or spacecraft)? Please explain your answer by citing legal provision(s) and/or decision(s):

*No*

48. If the applicable law provides for other criteria to be applied in determining the scope of the exception, please describe those criteria. Please illustrate your answer by citing legal provision(s) and/or decision(s):

*There is no other criteria.*

49. Is the applicable legal framework of the exception considered adequate to meet the objectives sought (for example, are there any amendments to the law foreseen)? Please explain:

*The applicable legal framework is considered adequate.*

50. Which challenges, if any, have been encountered in relation to the practical implementation of the exception in your country? Please explain:

*No.*

### **Section 7: Acts for obtaining regulatory approval from authorities**

51. If the exception is contained in statutory law, please provide the relevant provision(s):

*Patents Act Section 3 (3) No. 5:*

*The exclusive right shall not include (...)*

*Trials, experiments and similar of a patented medicine that are required to obtain a marketing authorization for a medicine in a state that is a contracting party to the agreement of 15 April 1994 on the establishment of the World Trade Organization (The WTO Agreement).*

52. If the exception is provided through case law, please cite the relevant decision(s) and provide its (their) brief summary:

*Not relevant*

53. (a) What are the public policy objectives for providing the exception? Please explain:

*[Note from the Secretariat: response was not provided]*

(b) Where possible, please explain with references to the legislative history, parliamentary debates and judicial decisions:

*The EEA agreement obliged Norway to harmonize its Patents Act to take account of Article 10(6) of Directive 2004/27/EC, amending Directive 2001/83/EC on the Community code relating to medicinal products for human use, cf. EEA agreement Protocol 28 Article 3 No. 4.*

54. Who is entitled to use the exception? Please explain:

*Not specified in the law.*

55. The exception covers the regulatory approval of:

*Patented medicines.*

56. Please indicate which acts are allowed in relation to the patented invention under the exception?

*According to the legislative history to the provision, the following acts are permitted under Section 3 (3) No. 5: Any tests, clinical trials and similar of a patented medicine that are required to obtain a marketing authorization for a medicine in a state that is a contracting party to the WTO agreement. The exception only limits the exclusive right of the patented medicine itself, and does not encompass patented methods, equipment or other tools necessary to the process. However, the exception applies regardless of whether the test in question relates to generic, further developed, or newly developed medicines. Under the exception, one can also produce any amount necessary to fulfill any documentation requirements needed to obtain the marketing authorization in the particular WTO member state. The party seeking authorization will have the burden of proof.*

57. If the applicable law provides for other criteria to be applied in determining the scope of the exception, please describe those criteria. Please illustrate your answer by citing legal provision(s) and/or decision(s):

*Not relevant.*

58. Is the applicable legal framework of the exception considered adequate to meet the objectives sought (for example, are there any amendments to the law foreseen)? Please explain:

*The applicable legal framework is considered adequate.*

59. Which challenges, if any, have been encountered in relation to the practical implementation of the exception in your country? Please explain:

*No particular challenges.*

## **Section 8: Exhaustion of patent rights**

60. Please indicate what type of exhaustion doctrine is applicable in your country in relation to patents:

*Regional*

If the exception is contained in statutory law, please provide the relevant provision(s):

*Patents Act Section 3 (3) No. 2:*

*The exclusive right shall not include:*

*Exploitation of products protected by the patent which have been put on the market in the European Economic Area by the patent holder or with his consent, if this is not determined differently by regulation laid down by the King.*

*Patents Regulations Section 100*

*Limited Exhaustion for Medicinal Products Marketed in Individual EEA Member States:*

*A patent holder may refuse exploitation in Norway of patented medicinal products that have been brought on the market in Bulgaria, Estonia, Latvia, Lithuania, Poland, Rumania, Slovakia, Slovenia, the Czech Republic or Hungary by the patent holder himself or with the patent holder's consent if patent protection or a supplementary protection certificate cannot be obtained for the medicinal product in the country in question at the time at which the application for such protection was filed in Norway, cf. Section 3, third paragraph, no. 2, of the Patents Act.*

*Anyone who wishes to import into Norway a patented medicinal product in accordance with the first paragraph shall notify the patent holder or his successor in title hereof not later than one month before the application for a marketing license is filed, cf. Section 4- 8 b of Regulations No. 1559 of December 22, 1999 relating to medicinal products.*

61. (a) What are the public policy objectives for adopting the exhaustion regime specified above? Please explain:

*[Note from the Secretariat: response was not provided]*

(b) Where possible, please explain with references to the legislative history, parliamentary debates and judicial decisions:

*We used to have a rule of national exhaustion of patent rights. However, the EEA Agreement obliged Norway to extend the applicability of the rule to all products put on the market in the European Economic Area. See the EEA Agreement Article 11 and 13, which correspond to Article 34 and 36 of the Treaty on the Functioning of the European Union. Patent rights should not be an obstacle to the free movement of goods. The patent owner should by the first sale have a return on investment. However he/she should not be able to control later trade of the same good; such control is not considered necessary to give him return on investments and an incentive for further innovation. The patent owner's control of later sales may lead to artificial market sharing in the inner market.*

62. Does the applicable law permit the patentee to introduce restrictions on importation or other distribution of the patented product by means of express notice on the product that can override the exhaustion doctrine adopted in the country?

No

63. Has the applicable exhaustion regime been considered adequate to meet the public policy objectives in your country? Please explain:

*The applicable legal framework is considered adequate.*

64. Which challenges, if any, have been encountered in relation to the practical implementation of the applicable exhaustion regime in your country? Please explain:

*[Note from the Secretariat: response was not provided]*

## **Section 9: Compulsory licenses and/or government use**

### *Compulsory licenses*

65. If the exception is contained in statutory law, please provide the relevant provision(s):

*Patents Act Section 45 – 50a. Patent Regulations Section 97 – 100.*

66. If the exception is provided through case law, please cite the relevant decision(s) and provide its (their) brief summary:

*Not relevant*

67. What grounds for the grant of a compulsory license does the applicable law provide in respect to patents (please indicate the applicable grounds):

*Non-working or insufficient working of the patented invention*

*Refusal to grant licenses on reasonable terms*

*Anti-competitive practices and/or unfair competition*

*Public health*

*National security*

*National emergency and/or extreme urgency*

*Dependent patents*

*Plant varieties (Patents Act Section 46a).*

68. (a) What are the public policy objectives for providing compulsory licenses in your country? Please explain:

*[Note from the Secretariat: response was not provided]*

(b) Where possible, please explain with references to the legislative history, parliamentary debates and judicial decisions:

*The main objective is to meet important public interests. The patented invention should benefit the technical development and society. These objectives will not be met if the patentee represses the exploitation of the invention.*

69. If the applicable law provides for the grant of compulsory licenses on the ground of “nonworking” or “insufficient working”, please provide the definitions of those terms by citing legal provision(s) and/or decision(s):

*Patents Act Section 45.*

70. Does the importation of a patented product or a product manufactured by a patented process constitute “working” of the patent? Please explain your answer by citing legal provision(s) and/or decision(s):

*The term “work” refers to manufacturing activities like the production of the patented product or the use of the patented process. Import of the patented product from another country will consequently not necessarily prevent the grant of a compulsory license.*

*However, in the case of import, the patentee may have legitimate reasons for the failure to work the invention in Norway.*

71. In case of the grant of compulsory licenses on the grounds of non-working or insufficient

working, does the applicable law provide for a certain time period to be respected before a compulsory license can be requested?

Yes

If yes, what is the time period?

*Patents Act Section 45: "Where three years have elapsed from the grant of the patent and four years from the filing of the patent application without the invention being worked in this country to a reasonable extent"*

72. In case of the grant of compulsory licenses on the grounds of non-working or insufficient working, does the applicable law provide that a compulsory license shall be refused if the patentee justifies his inaction by legitimate reasons?

Yes

If yes, what are "legitimate reasons"?

*This is an objective assessment. If the patentee had difficulties in providing raw material or has been struggling with lack of resources, this cannot be considered as legitimate reasons. If the working of the invention has been impeded by public regulations, there might be legitimate reasons.*

73. If the applicable law provides for the grant of compulsory licenses on the ground of refusal by the patentee to grant licenses on "reasonable terms and conditions" and within a "reasonable period of time", please provide the definitions given to those terms by citing legal provision(s) and/or decision(s):

*Patents Act Section 49 (1):*

*A compulsory license may only be granted to someone who has made efforts to obtain a license on reasonable business terms by agreement, without achieving it in reasonable time, and may be presumed able to exploit the invention in a manner which is acceptable and which is in compliance with the terms of the license.*

*See also Patent Regulations Section 98.*

74. If the applicable law provides for the grant of compulsory licenses on the ground of anticompetitive practices, please indicate which anti-competitive practices relating to patents may lead to the grant of compulsory licenses by citing legal provision(s) and/or decision(s):

*Patents Act Sections 50 and 50a.*

75. If the applicable law provides for the grant of compulsory licenses on the ground of dependent patents, please indicate the conditions that dependent patents must meet for a compulsory license to be granted:

*Patents Act Section 46:*

*The holder of a patent for an invention, the use of which is dependent on a patent owned by someone else, may obtain a compulsory license to use the invention protected by the latter patent provided that the former invention involves an important technical advance of considerable economic significance in relation to the latter invention.*

*The holder of the patent for the invention to which the compulsory license applies shall be entitled to obtain a compulsory license on reasonable terms to use the other invention.*

76. Does the applicable law provide a general policy to be followed in relation to the remuneration to be paid by the beneficiary of the compulsory license to the patentee? Please explain:

*Patents Act Section 50 (1)-(2):*

*The court shall grant a compulsory license in accordance with this section, and the Norwegian Competition Authority in accordance with Section 50 a.*

*In a decision considering a compulsory license, the court shall also determine to what extent the invention may be exploited and stipulate the compensation and the other terms of the license. The compensation shall be appropriate, taking into account the circumstances in each case. The value of the license shall be taken in consideration when assessing the compensation.*

77. If the applicable law provides for the grant of compulsory licenses on the ground of "national emergency" or "circumstances of extreme urgency", please explain how the applicable law defines those two concepts and their scope of application, and provide examples:

*Patents Act Section 47:*

*Any person who wants to exploit an invention commercially, which has been patented by someone else, may be given a compulsory license*

- 1. when required by important public interests.*
- 2. when the patent rights are exploited in a way that significantly limits competition.*

78. Please indicate how many times and in which technological areas compulsory licenses have been issued in your country:

*No compulsory licenses have been granted in Norway for the last 40 years.*

79. Is the applicable legal framework for the issuance of compulsory licenses considered adequate to meet the objectives sought (for example, are there any amendments to the law foreseen)? Please explain:

*The applicable legal framework is considered adequate.*

80. Which challenges, if any, have been encountered in relation to the use of the compulsory licensing system provisions in your country? Please explain:

*See Question 78.*

*Government use*

81. If the exception is contained in statutory law, please provide the relevant provision(s):

*Patents Act Sections 47 and 70.*

*Act of 26th June 1953, relating to inventions which have significance for the defense of the kingdom Section 6 (1) og (2):*

*"Demand may be made, according to the decision of the King, that inventions which the King deems to have significance for the defense of the Kingdom be ceded to the authorities or other persons, when this is found desirable, in order that the invention may have the maximum utility for the defense. The same applies to the right to utilize such invention for a certain specified time.*

*For the same purpose the King may prohibit the owner of the right to dispose of an invention as*

*mentioned in the first paragraph in a certain specified manner in this Kingdom or abroad, or enjoin on him certain specified duties in connection with the utilization. Prohibition or injunction pursuant to this paragraph holds good for such time as the King may determine.”*

82. If the exception is provided through case law, please cite the relevant decision(s) and provide its (their) brief summary:

*Not relevant.*

83. What grounds for the grant of government use does the applicable law provide in respect to patents (please indicate the applicable grounds):

*National security*

*National emergency and/or extreme urgency*

*Specification: when required by important public interests, may include Public health.*

84. (a) What are the public policy objectives for providing government use in your country?

*[Note from the Secretariat: response was not provided]*

(b) Where possible, please explain with references to the legislative history, parliamentary debates and judicial decisions:

*Patents Act Section 70: Societal needs during wartime.*

*Act relating to inventions which have significance for the defense of the Kingdom Section 6 (1) og (2):*

*This Act was passed to secure the government the right to full disposal of an invention, which has significance for the defense of the Kingdom, in order for the invention to provide maximum benefit for the defense of the Kingdom.*

85. If the applicable law provides for the grant of government use on the ground of “national emergency” or “circumstances of extreme urgency”, please explain how the applicable law defines those two concepts and their scope of application, and provide examples:

*Patents Act Section 70: “war or danger of war and situations of crisis connected therewith”*

86. Please indicate how many times and in which technological areas government use has been issued in your country:

*Patents Act Section 70: Act relating to inventions which have significance for the defense of the Kingdom Section 6 (1) og (2): Apparently never, according to legal commentators.*

87. Is the applicable legal framework for the issuance of government use considered adequate to meet the objectives sought (for example, are there any amendments to the law foreseen)? Please explain:

*The applicable legal framework is considered adequate.*

88. Which challenges, if any, have been encountered in relation to the use of the government use mechanism in your country? Please explain:

*See question 86.*

**Section 10: Exceptions and limitations related to farmers' and/or breeders' use of patented inventions**

89. If the exception is contained in statutory law, please provide the relevant provision(s):

*Patents Act Section 3b (1) and (3):*

*(1) If plant-propagating material is sold or transferred, with the consent of the patent holder, to a farmer for agriculture use this shall imply authorization for the farmer to use the product of his harvest for propagation or multiplication on his own farm notwithstanding Section 3 a paragraphs 1-3.*

*(3) The King may, by regulation, determine the conditions and the extent of the farmer's rights according to this section.*

90. If the exception is provided through case law, please cite the relevant decision(s) and provide a brief summary of such decision(s):

*Not relevant*

91. (a) What are the public policy objectives for providing the exception related to farmers' use of patented inventions? Please explain:

*[Note from the Secretariat: response was not provided]*

(b) Where possible, please explain with references to the legislative history, parliamentary debates and judicial decisions:

*This exception allows farmers the right to use the product of their harvest for propagation or multiplication, even though the product is the harvest of protected varieties. This is an exhaustion rule implemented in 2003. The farmer should not have to pay remuneration to the patentee for the harvest of protected varieties.*

92. Please explain the scope of the exception by citing legal provision(s) and/or decision(s) (for example, interpretation(s) of statutory provision(s) on activities allowed by users of the exception, limitations on their use, as well as other criteria, if any, applied in the determination of the scope of the exception):

*Patent Regulations Section 89-91*

93. Is the applicable legal framework of the exception considered adequate to meet the objectives sought (for example, are there any amendments to the law foreseen)? Please explain:

*Adequate – Yes.*

*Amendments – No.*

94. Which challenges, if any, have been encountered in relation to the practical implementation of the exception related to farmers' use of patented inventions in your country? Please explain:

*No particular challenges.*

95. If the exception is contained in statutory law, please provide the relevant provision(s):

*Patents Act Sections 3b (2) and 46a.*

96. If the exception is provided through case law, please cite the relevant decision(s) and provide a brief summary of such decision(s):

*Not relevant*

97. (a) What are the public policy objectives for providing the exception related to breeders' use of patented inventions? Please explain:

*[Note from the Secretariat: response was not provided]*

(b) Where possible, please explain with references to the legislative history, parliamentary debates and judicial decisions:

*The breeder may use the protected animal or the reproductive material for an agriculture purpose on his own farm notwithstanding the exclusive rights of the patentee. This is an exhaustion rule implemented in 2003. The breeder should not have to pay remuneration to the patentee for such use.*

*The legislative reason for the Norwegian law in Section 46a is the EC Directive 98/44 Article 12.*

98. Please explain the scope of the exception by citing legal provision(s) and/or decision(s) (for example, interpretation(s) of statutory provision(s) on activities allowed by users of the exception, limitations on their use, as well as other criteria, if any, applied in the determination of the scope of the exception):

*Patents Act Section 3b (2):*

*If breeding stock or other animal reproductive material is sold or transferred, with the consent of the patent holder, to a farmer, the farmer shall have the right to use the protected animal or the reproductive material for an agriculture purpose on his own farm notwithstanding section 3a paragraphs 1-3. The last sentence does not provide the right to sell the material referred to as a component of or for the purpose of commercial reproductive activity.*

99. Is the applicable legal framework of the exception considered adequate to meet the objectives sought (for example, are there any amendments to the law foreseen)? Please explain:

*The applicable legal framework is considered adequate.*

100. Which challenges, if any, have been encountered in relation to the practical implementation of the exception related to breeders' use of patented inventions in your country? Please explain:

*No particular challenges.*

## **Section 11: Other Exceptions and Limitations**

101. Please list any other exceptions and limitations that your applicable patent law provides:

*Biological material obtained by multiplication or propagation put on the market in the EEA by the patent owner for that purpose, other than for multiplication or propagation purposes.*

*Use of biological material already existing in nature which is not necessary for the industrial application specified in the patent.*

102. In relation to each exception and limitation, please indicate:

(i) *Source of law*

*Patents Act Section 3a (4):*

*The protection referred to in paragraphs 1-3 shall not extend to biological material obtained from the propagation or multiplication of biological material placed on the market within the EEA by the holder of the patent or with his consent, where the multiplication or propagation necessarily results from the application for which the biological material was marketed, provided that the material obtained is not subsequently used for other propagation or multiplication.*

*Patents Act Section 3c:*

*The protection conferred by a patent on biological material, which already exists in nature, shall only extend to the part of the material that is necessary for the industrial application specified in the patent application. It shall be evident from the patent application how the biological material may be used for industrial purposes.*

*(ii) Public policy*

*Patents Act Section 3a (4):*

*This section defines the scope of the exhaustion rule in Section 3(3) no. 2, as regards reproducible biological material, for instance seeds.*

*The legislative reason for the Norwegian law in Section 3a (4) is the EC Directive 98/44.*

*Patents Act Section 3c:*

*In principle, material already existing in nature is considered as "discoveries" and may not be patented, see Section 1(2) no. 1. Section 3c forms an exception from this main rule. The section aims at precisely defining the scope of the patent protection for biological material already existing in nature.*

*The section corresponds to the rule in Section 1(1) stating that the invention must have technical effect.*

*(iii) Entitlement and scope Entitlement – not defined  
Scope – See the relevant legal texts mentioned in (i)*

*(iv) Adequate – yes. Amendments – no.*

*(v) Challenges – no.*

103. If other mechanisms for the limitation of patent rights external to the patent system exist in your country (for example, competition law), please list and explain such mechanisms:

*Competition law, see answer to question 74.*

[End of Questionnaire]