

## 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.

*According to the Patent Law of the Republic of Lithuania (18 January 1994 No. I-372; as last amended on 23 December 2011 – No. XI-1261 (new wording), patents shall be available for any inventions in all fields of technology, provided that they are new, involve an inventive step and are capable of industrial application (Art. 4(1)).*

*Novelty of an Invention. An invention shall be considered new if it does not form part of the state of the art. The state of the art shall consist of everything which, before the filing date of patent application or where priority is claimed, before the priority date, has been published or was in public use in the Republic of Lithuania or abroad. An invention shall not be considered new if although unknown from the state of the art it had been described in an application for patent of a different applicant having an earlier filing date and published in the Official Bulletin of the State Patent Bureau later or on the same date, that the state of the art had been established (Art. 6).*

*Inventive Step. An invention shall be considered as involving an inventive step if, having regard to the state of the art, it is not obvious to a person skilled in the art (Art. 7).*

*Industrial Applicability. An invention shall be considered industrially applicable if it can be made or used in industry, agriculture, health protection and other spheres (Art 8).*

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.<sup>1</sup>

*According to the Patent Law of the Republic of Lithuania (Art. 4(2), the following shall not be regarded as inventions:*

- 1) discoveries, scientific theories and mathematical methods;*
  - 2) design of products;*
  - 3) schemes, rules and methods of games, intellectual or economic activities, as well as programmes for computers;*
  - 4) presentations of information; and*
  - 5) the human body or its element, including the sequence or partial sequence of a gene, at the various stages of its formation and development. This provision shall not apply to an element isolated from the human body or otherwise produced by means of a technical process, as well as to the sequence or partial sequence of a gene, even if the structure of that element is identical to that of a natural element.*
- Patents shall not be granted for (Art. 5):*

- 1) methods for treatment of the human or animal body by surgery or therapy, and diagnostic and prophylactic methods practised on the human or animal body. This provision shall not apply if an object of invention is equipment or materials utilised for such methods;*
- 2) plant or animal varieties or essentially biological processes for the production of plants or animals. This provision shall not apply to microbiological processes for the production of plants or animals or the products thereof, as well as to plants or animals, if technical implementation of the invention is not restricted to a concrete plant or animal variety;*
- 3) inventions the commercial exploitation of which would be contrary to public interests, principles of*

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<sup>1</sup> This question does not imply that the topic of exclusions from patentability is dealt with in this question exhaustively.

*morality and humanity. Decisions to refuse granting patents may not be adopted merely because the exploitation of such inventions is prohibited by laws or other legal acts. However, the following inter alia shall be considered unpatentable: a) processes for cloning human beings; b) processes for modifying the germ line genetic identity of human beings; c) uses of human embryos for industrial or commercial purposes; d) processes for modifying the genetic identity of animals which are likely to cause them suffering without any substantial medical benefit to man or animal, and also animals resulting from such processes.*

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?

*The Patent Law of the Republic of Lithuania (Art. 35) determines the rights of the owner of a patent. Where the subject matter of a patent is a product, the owner of the patent shall have the exclusive right to prevent third parties not having the owner's consent from the acts of making, using, offering for sale, selling, importing or exporting that product. Where the subject matter of a patent is a process, the owner of the patent shall have the exclusive right to prevent third parties not having the owner's consent from the act of using the process, and from the acts of using, offering for sale, selling, importing or exporting a product obtained directly by that process.*

*Temporary legal protection shall be provided to a published patent application from the date of its publication until the date of patent grant (Art. 26(3)).*

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;<sup>2</sup>*

*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.<sup>3</sup>*

If the applicable law provides for any of the above-listed exceptions and limitations, please fill out those parts of Sections II to X that apply to you. If the applicable law does not contain all of the exceptions and limitations provided in Sections II to X, then you should respond only to the other parts of the questionnaire. If the applicable law includes other exceptions and limitations that are not listed above, please answer the questions under Section XI "Other Exceptions".

Where reference is made to case law, please indicate, if possible, the official source in which the case has been published (for example, the publication number, issue, title, URL, etc.).

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<sup>2</sup> For example, extemporaneous preparation of prescribed medicines in pharmacies.

<sup>3</sup> For example, in some countries where patent rights extend to propagated or multiplied material derived from patented biological material, certain uses by farmers of harvested plant material or of breeding livestock or other animal reproductive material under patent protection on his own farm do not constitute patent infringement. Similarly, in some countries, patent rights do not cover uses by breeders of patented biological material for the purpose of developing a new plant variety (see paragraphs 133 to 137 of document SCP/13/3).

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

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

*The Patent Law of the Republic of Lithuania (Art. 35) regulates that:*

*Where the subject matter of a patent is a product, the owner of the patent shall have the exclusive right to prevent third parties not having the owner's consent from the acts of making, using, offering for sale, selling, importing or exporting that product.*

*Where the subject matter of a patent is a process, the owner of the patent shall have the exclusive right to prevent third parties not having the owner's consent from the act of using the process, and from the acts of using, offering for sale, selling, importing or exporting a product obtained directly by that process. The owner of the patent shall have no right to prevent third parties from performing acts referred to in paragraphs 1 and 2, provided that:*

*1) the act is done privately and for non-commercial purposes and it does not significantly prejudice the economic interests of the owner of the patent.*

5.-10.

N/A

## Section 3: Experimental use and/or scientific research <sup>4</sup>

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

*The Patent Law of The Republic of Lithuania (Art. 35) regulates that:*

*Where the subject matter of a patent is a product, the owner of the patent shall have the exclusive right to prevent third parties not having the owner's consent from the acts of making, using, offering for sale, selling, importing or exporting that product.*

*Where the subject matter of a patent is a process, the owner of the patent shall have the exclusive right to prevent third parties not having the owner's consent from the act of using the process, and from the acts of using, offering for sale, selling, importing or exporting a product obtained directly by that process.*

*The owner of the patent shall have no right to prevent third parties from performing acts referred to in paragraphs 1 and 2, provided that:*

*2) the act is done for experimental purposes or for scientific research, and this does not conflict with a normal exploitation of the patent and does not unreasonably prejudice the legitimate interests of the patent owner.*

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

N/A

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

N/A

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<sup>4</sup> Exceptions and limitations on acts for obtaining regulatory approval are dealt with in Section VII of the questionnaire.

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

*The exception was foreseen in the first edition of the Patent Law of the Republic of Lithuania (1994)*

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:

*The applicable law does not make a distinction concerning the nature of the organization conducting the experimentation or research. It only regulates that the act should be done for experimental purposes or for scientific research, and this should not conflict with a normal exploitation of the patent and should not unreasonably prejudice the legitimate interests of the patent owner.*

15.-22.

N/A

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

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

*The Patent Law of The Republic of Lithuania (Art. 35) regulates that:*

*Where the subject matter of a patent is a product, the owner of the patent shall have the exclusive right to prevent third parties not having the owner's consent from the acts of making, using, offering for sale, selling, importing or exporting that product.*

*Where the subject matter of a patent is a process, the owner of the patent shall have the exclusive right to prevent third parties not having the owner's consent from the act of using the process, and from the acts of using, offering for sale, selling, importing or exporting a product obtained directly by that process.*

*The owner of the patent shall have no right to prevent third parties from performing acts referred to in paragraphs 1 and 2, provided that:*

*3) the act consists of preparing medicines for individual cases in a pharmacy upon the prescription of a physician or if it is indicated how to use the medicines so prepared.*

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

N/A

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

N/A

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

*The exception was foreseen in the first edition of the Patent Law of the Republic of Lithuania (1994)*

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

*See question No. 23.*

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

*No*

If yes, please explain your answer by citing the relevant provision(s) and/or decision(s):

*N/A*

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):

*The applicable law provides that the act consists of preparing medicines for individual cases in a pharmacy upon the prescription of a physician or if it is indicated how to use the medicines so prepared. ....*

29.-30.

*N/A*

## **Section 5: Prior use**

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

*The Patent Law (Art. 40) of the Republic of Lithuania determines the right of prior use. According to this article, natural and legal persons who in good faith were using or were making effective or serious preparations for such use before the filing date or, where priority is claimed, the priority date of a patent application, shall have the right to continue such use or to use the invention as envisaged in such preparations without taking into consideration the will of the owner of the patent. The right of the prior use may only be transferred together with the enterprise or its activities or with that part of the enterprise or its activities in which the use of an invention or preparations for such use have been made.*

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

*N/A*

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

*N/A*

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

*The exception was foreseen in the first edition of the Patent Law of the Republic of Lithuania (1994).*

34.-35.

N/A

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

Yes

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?

Yes

If yes, please explain what those conditions are:

*The Patent Law of the Republic of Lithuania (Art. 40, para. 2):*

*The right of the prior use may only be transferred together with the enterprise or its activities or with that part of the enterprise or its activities in which the use of an invention or preparations for such use have been made.*

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:

*The Patent Law of the Republic of Lithuania (Art. 33, para. 4):*

*A person who was using or was making effective or serious preparations for such use shall have the right to continue such use or to use the invention as envisaged in such preparations for his business or his business needs without paying any remuneration to the patent owner.*

39.-41.

N/A

## **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):

*The Patent Law of The Republic of Lithuania (Art. 41) regulates the rights of the owner of the patent with respect to foreign means of transport. According to this article, the following shall not be considered the violation of the rights of the owner of the patent: 1) the use of the means, which are the subjects of the patent, on any foreign vessel, temporarily or accidentally entering the waters of the Republic of Lithuania provided that such means shall be used exclusively for the needs of the vessel; 2) the use of the means which are the subjects of the patent in the construction of foreign air or land carriers or the exploitation of these means, as well as their use in supplementary constructions thereof, when such means of transport temporarily or accidentally enter the Republic of Lithuania.*

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

N/A

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

N/A

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

*The exception was foreseen in the first edition of the Patent Law of the Republic of Lithuania (1994) following the provisions of the Paris Convention.*

45. The exception applies in relation to:

*Vessels*

*Aircrafts*

*Land Vehicles*

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):

*The Patent Law of The Republic of Lithuania (Art. 41; cited answering question No. 42) provides for two terms: "temporarily" and "accidentally". However, the definitions of these terms are not defined in the law. There are no court decisions on this question as well.*

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):

*The Patent Law of The Republic of Lithuania (Art. 41) regulates the rights of the owner of the patent with respect to foreign means of transport. According to this article, the following shall not be considered the violation of the rights of the owner of the patent: 1) the use of the means, which are the subjects of the patent, on any foreign vessel, temporarily or accidentally entering the waters of the Republic of Lithuania provided that such means shall be used exclusively for the needs of the vessel; 2) the use of the means which are the subjects of the patent in the construction of foreign air or land carriers or the exploitation of these means, as well as their use in supplementary constructions thereof, when such means of transport temporarily or accidentally enter the Republic of Lithuania.*

48.-50.

N/A

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

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

*The Law on Pharmacy of the Republic of Lithuania (22 June 2006 No X-709; as last amended on 6 November 2012 No. X-709) regulates the application of this exception. It claims that: "the performance of necessary studies and trials in order to submit an application for the marketing authorisation in the Republic of Lithuania of a medicinal product according to paragraphs 5, 10 and 11 of this Article or in the Community Code of Medicinal Products according to the requirements laid down in Regulation (EC) No 726/2004 or in other states according to legal requirements of those states and the related practical needs shall be without prejudice to the rights granted by the medicinal product patent or by a supplementary protection certificate provided for in the Patent Law of the Republic of Lithuania and in other legal acts regulating the protection of industrial property" (Art. 11, para. 13).*

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

N/A

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

N/A

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

*The exception was included in the Law on Pharmacy of the Republic of Lithuania following the provisions of the Directive 2004/27/EC of the European Parliament and of the Council of 31 March 2004 amending Directive 2001/83/EC on the Community code relating to medicinal products for human use.*

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

*The aim is defined by the notion "[...] in order to submit an application for the marketing authorization [...]" (mentioned in question No. 51).*

55. The exception covers the regulatory approval of:

*Certain medicinal products*

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

*The necessary studies and tests, related practical needs*

57.-59.

N/A



## 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):

*Article 35 (3)(4) of the Patent Law of the Republic of Lithuania*

*The owner of the patent shall have no right to prevent third parties from performing acts referred to in paragraphs 1 and 2, provided that:*

*4) they are connected with products that have been put on market in European Economic Area by the patent owner or with his consent.*

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

*N/A*

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

*N/A*

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

*The provision was introduced in Lithuanian Patent Law in 2012; before that Jurisprudence of the Court of Justice of the European Union was applicable.*

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*

Please explain your answer by citing legal provision(s) and/or decision(s):

*Generally, principle of free movement of goods within the EU does not allow controlling exhaustion of rights.*

63.-64

*N/A*

## 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):

*Chapter 6 of the Patent Law of the Republic of Lithuania regulates the application of compulsory licences. These are: compulsory cross-licensing when an invention is related to the protected plant variety, compulsory licence for pharmaceutical products, exploitation of an invention with the authorisation of the Government of the Republic of Lithuania.*

*Compulsory cross-licensing when an invention is related to the protected plant variety. The Patent Law of the Republic of Lithuania (Art. 48):*

*Where a breeder cannot acquire or exploit a plant variety right without infringing the exclusive rights protected by a prior patent, he may apply for a compulsory licence for non-exclusive use of the invention protected by the patent inasmuch as the licence is necessary for the exploitation of the plant variety to be protected, subject to payment of an appropriate royalty. Where such a licence is granted, the patent owner will be entitled to a cross-licence on reasonable terms to use the protected variety.*

*Where the owner of a patent concerning a biotechnological invention cannot exploit it without infringing a prior plant variety right, he may apply for a compulsory licence for non-exclusive use of the plant variety protected by that right, subject to payment of an appropriate royalty. Where such a licence is granted, the holder of the variety right will be entitled to a cross-licence on reasonable terms to use the protected invention.*

*Applicants for the licences referred to in paragraphs 1 and 2 of this Article must demonstrate that:*

*1) they have applied unsuccessfully to the owner of the patent of a biological invention or the holder of the plant variety right to obtain a contractual licence;*

*2) the plant variety or the biological invention constitutes significant technical progress of considerable economic interest compared with the invention claimed in the patent or the protected plant variety.*

*The court shall make a decision regarding the granting of licences referred to in paragraphs 1 and 2 of this Article, the amount of royalty and other conditions and extent of a compulsory licence. If the conditions of granting of a compulsory licence change or disappear, at the request of the owner of the patent of a biological invention or the holder of the plant variety right, the court may revoke a compulsory licence or change its conditions.*

*Offices keeping a list of protectable plant varieties and the Patent Register of the Republic of Lithuania shall be responsible for the registration, in the manner prescribed by legal acts, of the licences referred to paragraphs 1 and 2 of this Article.*

*Compulsory licence for pharmaceutical products. The Patent Law of the Republic of Lithuania (Ar. 49): A competent institution authorised by the Government shall grant mandatory licences in compliance with Regulation (EC) No 816/2006 of the European Parliament and of the Council of 17 May 2006 on compulsory licensing of patents relating to the manufacture of pharmaceutical products for export to countries with public health problems.*

*Exploitation of an invention with the authorisation of the Government of the Republic of Lithuania. See questions No. 81 – 84.*

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

N/A

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

See question No. 65.

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

N/A

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

*Compulsory cross-licensing when an invention is related to the protected plant variety. The exception was involved in the Patent Law of the Republic of Lithuania (2005) after joining the European Union. Compulsory licence for pharmaceutical products. The exception was involved in the Patent Law of the Republic of Lithuania in 2007 (in compliance with Regulation (EC) No 816/2006 of the European Parliament and of the Council of 17 May 2006 on compulsory licensing of patents relating to the manufacture of pharmaceutical products for export to countries with public health problems). Exploitation of an invention with the authorisation of the Government of the Republic of Lithuania. See question No. 84 (b)).*

69.-73.

N/A

74. If the applicable law provides for the grant of compulsory licenses on the ground of anti-competitive 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):

*The Law on Competition of the Republic of Lithuania (Art. 35):*

*1. Upon establishing that undertakings have performed actions prohibited under this Law or have otherwise infringed this Law, the Competition Council, following the principles of impartiality and proportionality, shall have the right:*

*1) to obligate the undertakings to discontinue illegal activity, to perform actions restoring the previous situation or eliminating the consequences of the infringement, including the obligation to terminate, amend or conclude contracts, also to set the time limits and conditions for meeting the above obligations.*

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:

N/A

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:

*Compulsory cross-licensing when an invention is related to the protected plant variety. The court shall make a decision regarding the granting of licences, the amount of royalty, other conditions and extent of a compulsory licence.*

*Compulsory licence for pharmaceutical products. The licensee shall be responsible for the payment of adequate remuneration to the rights-holder as determined by the Ministry of Economy of Lithuania.*

*Exploitation of an invention with the authorisation of the Government of the Republic of Lithuania. See question No. 81.*

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:

N/A

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

*Compulsory licenses have not been issued in Lithuania.*

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:

N/A

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

N/A

*Government use*

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

*The Patent Law of The Republic of Lithuania (Art. 50) regulates the exploitation of an invention with the authorisation of the Government of the Republic of Lithuania. According to this article:*

*The Government of the Republic of Lithuania may adopt a resolution to permit a State or municipal institution, natural or legal persons to market, without the consent of the owner of a patent, a patented invention within the territory of the Republic of Lithuania, if:*

*1) an invention protected by a patent is related to public needs, national security and public health protection, development of economically important sectors;*

*2) the court determines that a method of the exploitation of an invention employed by the owner of a patent or licensee is anti-competitive.*

*An invention may be exploited only for the purpose in respect of which the resolution has been adopted.*

*The owner of a patent must, for the exploitation of the invention, be remunerated fairly, taking into consideration economic value of the invention.*

*If the owner of a patent or a person who has authorisation to use an invention, requests, the Government of the Republic of Lithuania may, taking into consideration their reasons, change the conditions of the use of a patented invention, and time limits of the validity of permission.*

*When authorisation to use a patented invention is issued to the owner of a patent which improves a previously patented invention (second invention) and that may infringe the exclusive rights of the owner of the first patent, the Government of the Republic of Lithuania shall, before the adoption of this resolution, take into consideration the following additional conditions:*

*1) the claimed in the second patent shall involve an important technical advance of considerable economic significance in relation to the invention claimed in the first patent;*

*2) the owner of the first patent shall be entitled to a cross-licence (authorisation to each owner to use the patented inventions) to use the invention claimed in the second patent;*

*3) the use authorised in respect of the first patent shall be non-assignable except with the assignment of the second patent.*

*The Government of the Republic of Lithuania may declare the resolution null and void, if the circumstances which led to the authorisation to use a patented invention cease to exist, or if a State or municipal institution, natural or legal persons use a patented invention for the purpose other than that in respect of which the resolution has been adopted.*

*Authorisation to exploit an invention must be non-exclusive, i.e. the owner of a patent shall not lose the right to use a patented invention himself, and it shall not prohibit the owner of a patent to conclude license agreements related to the use of a patented invention as well as to further exploit a patented invention or to implement his rights in other ways.*

*Authorisation to use a patented invention may not be transferred, except when the enterprise (or a part thereof) in which a patented invention is used, is transferred in a manner prescribed by law.*

*Attached to a request to permit the exploitation of a patented invention must be evidences confirming that the person seeking authorisation has requested, but has not received authorisation of the owner of a patent to use the patented invention. This provision shall not apply in the case of a national emergency or other circumstances of extreme urgency or in cases of public non-commercial use of a patented invention. The owner of a patent must be informed in writing about a resolution, which is being drawn up, concerning the authorisation to use a patented invention, and about an intention to use a patented invention for the purposes provided for in subparagraph 1 of paragraph 1 of this Article.*

*Resolutions of the Government of the Republic of Lithuania concerning the authorisation to use a patented invention without the consent of the owner of a patent may be appealed against in court in a manner prescribed by law.*

*Upon the receipt of the resolution of the Government of the Republic of Lithuania concerning the authorisation to exploit an invention, the State Patent Bureau shall publish information on the authorisation in the next issue of its Official Bulletin.*

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

N/A

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

*When an invention protected by a patent is related to public needs, national security and public health protection, development of economically important sectors; 2) the court determines that a method of the exploitation of an invention employed by the owner of a patent or licensee is anti-competitive.*

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

N/A

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

*The exception was involved in the Patent Law of the Republic of Lithuania following the provisions of TRIPS Agreement.*

85.-88.

N/A

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

### *Farmers' use of patented inventions*

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

*According to the Patent Law of the Republic of Lithuania (Art. 35, para. 5, 6) the sale or other form of commercialisation of plant propagating material to a farmer by the patent owner or with his consent for agricultural use shall imply authorisation for the farmer to use the product of his harvest for propagation or multiplication by him on his own farm. The extent and conditions of this derogation shall be laid down by Article 14 of Council Regulation (EC) No 2100/94 of 27 July 1994 on Community plant variety rights. The sale or any other form of commercialisation of a breeding stock or other animal reproductive material to a farmer by the patent owner or with his consent shall imply authorisation for the farmer to use the protected livestock for an agricultural purpose. This shall include making the animal or other animal reproductive material available for the purposes of pursuing his agricultural activity but not sale within the framework or for the purpose of a commercial reproduction activity.*

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

N/A

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

N/A

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

*The exception was foreseen in the Patent Law of the Republic of Lithuania (2005) after joining the European Union.*

92.-93.

N/A

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:

N/A

### *Breeders' use of patented inventions*

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

*The Patent Law of the Republic of Lithuania (Art. 48) regulates the compulsory cross-licensing when an invention is related to the protected plant variety. According to this article, where a breeder cannot acquire or exploit a plant variety right without infringing the exclusive rights protected by a prior patent, he may apply for a compulsory licence for non-exclusive use of the invention protected by the patent*

*inasmuch as the licence is necessary for the exploitation of the plant variety to be protected, subject to payment of an appropriate royalty. Where such a licence is granted, the patent owner will be entitled to a cross-licence on reasonable terms to use the protected variety.*

*Where the owner of a patent concerning a biotechnological invention cannot exploit it without infringing a prior plant variety right, he may apply for a compulsory licence for non-exclusive use of the plant variety protected by that right, subject to payment of an appropriate royalty. Where such a licence is granted, the holder of the variety right will be entitled to a cross-licence on reasonable terms to use the protected invention.*

*Applicants for the licences referred to mentioned above must demonstrate that:*

*1) they have applied unsuccessfully to the owner of the patent of a biological invention or the holder of the plant variety right to obtain a contractual licence;*

*2) the plant variety or the biological invention constitutes significant technical progress of considerable economic interest compared with the invention claimed in the patent or the protected plant variety.*

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

N/A

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

N/A

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

*The exception was foreseen in the Patent Law of The Republic of Lithuania (2005) after joining the European Union.*

98.-100.

N/A

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

101.-103.

*Lithuanian law does not provide for other exceptions and limitations*