

Saudi Patent 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.

From Law of Patents, Layout Designs of Integrated Circuits, Plant Varieties, and Industrial Designs, Chapter Two:

Article (43):

A patent may be issued on an invention, in accordance with the provisions of this Law, if it is new, involves an inventive step, and capable of industrial application. The invention may be a product, a process or relates to either.

Article (44):

(a) An invention is new if it is not anticipated by prior art. In this respect, prior art means all that is disclosed to the public anywhere by means of written or oral disclosure, by use or by any other way through which knowledge of the invention is realized. This has to be prior to the filing date of the patent application or the priority application. The disclosure of the invention to the public shall not count if it takes place during the priority period. The Regulations shall specify other cases of invention disclosure which do not fall within the meaning of prior art and the provisions governing temporary protection of inventions.

(b) An invention is deemed to involve an inventive step if, with regard to prior art related to the patent application, it is not obvious to a person with ordinary skills in the art.

(c) An invention is deemed industrially applicable if it can be manufactured or used in any type of industry or agriculture, including handicrafts, fishing and services.

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.

Chapter Two:

Article (45):

In the application of provisions of this Law, the following shall not be regarded as inventions:

- (a) Discoveries, scientific theories and mathematical methods.*
- (b) Schemes, rules and methods of conducting commercial activities, exercising pure mental activities or playing a game.*
- (c) Plants, animals and processes – which are mostly biological – used for the production of plants or animals, with the exception of micro-organisms, non- biological and microbiology processes.*
- (d) Methods of surgical or therapeutic treatment of human or animal body and methods of diagnosis applied to human or animal bodies, with the exception of products used in any of these methods.*

Chapter Two:

Article (4):

- (a) The protection document shall not be granted if its commercial exploitation violates the Shari'ah. (Islamic law)*
- (b) The protection document shall not be granted if its commercial exploitation is harmful to life, to human, animal or plant health, or is substantially harmful to the environment.*

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?

Chapter Two:

Article (47):

The owner of the protection document may initiate an action before the Committee against any person who infringes his invention by exploiting it in the Kingdom without his consent. The following shall be deemed as exploitation of the invention:

- (a) If it is a product: Its manufacture, sale, offering for sale, use, storage or its importation for any of these purposes.*
- (b) If it is a process: The use of the process, or performing any of the acts referred to in the previous paragraph, in relation to the product which is directly obtained by the use of this process.*

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;

Prior use;

Use of articles on foreign vessels, aircrafts and land vehicles;

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):

Chapter Two:

Article (47):

However, the owner of the protection document's right shall not preclude others from exploiting his invention in non-commercial activities relating to scientific research.

5.-10.

[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):

Chapter Two:

Article (47):

However, the owner of the protection document's right shall not preclude others from exploiting his invention in non-commercial activities relating to scientific research.

12.-22.

[Note from the Secretariat: response was not provided]

Section 4: Preparation of medicines

23.-30.

[Note from the Secretariat: response was not provided]

Section 5: Prior use

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

Chapter One:

Article (20):

If a person, in good faith, manufactures a product, utilizes an industrial process, manufactures an integrated circuit incorporating a layout design or a commodity including such a circuit, exploits a plant variety or makes serious arrangements, before the date of filing the patent application, or the priority application relating to that product or the process, design, plant variety, date of first commercial exploitation of the design anywhere in the world, such a party shall be entitled – despite the issuance of the protection document – to continue to perform these acts without expanding them. This right shall not be assigned or transferred to others except with all parts of the firm or one of them including goodwill.

32.-35.

[Note from the Secretariat: response was not provided]

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:

A prior user "shall not be assigned or transferred to others except with all parts of the firm or one of them including goodwill".

38.-41.

[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):

From Implementing Regulations of the Law of Patents, Layout Designs of Integrated Circuits, Plant Varieties, and Industrial Designs

Part Seven

Provisions for Infringement and Exploitation

Chapter Two:

Article (47):

The following acts shall not be deemed infringement of a patent:

- 1. The use of the means forming the subject of patent the patent aboard ships of other countries of the Paris Union, whether in the body of the ship or its machines or equipments or in any accessories of it when such a ship temporarily or accidentally enters the Kingdom's territorial waters, provided that the use of all these means is limited to the needs of the ship.*
- 2. The use of equipments forming the subject of the patent in the construction or operation of air or land vehicles or their accessories belonging to another country of the Paris Union, when such vehicles enter the Kingdom temporarily or accidentally.*

43.-44.

[Note from the Secretariat: response was not provided]

45. The exception applies in relation to:

Vessels;

Aircrafts;

Land vehicles;

Spacecraft.

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 terms temporarily and accidentally are included in Article (47) from Implementing Regulations of the Law of Patents, Layout Designs of Integrated Circuits, Plant Varieties, and Industrial Designs but the terms are not defined.

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):

Chapter Two:

Article (47):

relating to foreign ship includes the restriction:

- (1) "...provided that the use of all these means is limited to the needs of the ship."
(2) "The use of equipments forming the subject of the patent in the construction or operation of air or land vehicles or their accessories belonging to another country of the Paris Union..."

48.-50.

[Note from the Secretariat: response was not provided]

Section 7: Acts for obtaining regulatory approval from authorities

51.-53.

[Note from the Secretariat: response was not provided]

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

King Abdulaziz City for Science and Technology.

55.-59.

[Note from the Secretariat: response was not provided]

Section 8: Exhaustion of patent rights

60.-64.

[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):

Chapter One:

Article (24):

(a) The City may grant a compulsory license to a third party to exploit an invention covered by the patent or a layout design of an integrated circuit covered by a certificate of design upon an application submitted to it, according to the following:

(1) The application shall be submitted after the elapse of four years from the date of filing the patent application or three years from the date of granting the patent, whichever expires later, without the owner of the protection document exploiting his invention or having exploited it in an inadequate fashion, unless he justifies that with a legitimate excuse.

(2) The applicant for the compulsory license must prove that he has exerted -over a reasonable period of time- efforts in order to obtain a contractual license on the basis of reasonable commercial conditions, and for a reasonable financial compensation. However, this provision and the provision of the preceding paragraph do not apply where the applicant is a government body or a person authorized by it, and the aim was to meet public interest - especially security, health, nutrition or the development other vital sectors of the national economy- or to meet a state of emergency or other very compelling circumstances, or where the aim thereof was public non-commercial purposes. In the latter case, and upon knowledge of the existence of a patent or a certificate of design, their holder shall be promptly informed.

(3) *The compulsory license is basically granted to make the invention or design available in the local markets. But this provision does not apply where the aim of the license is to prevent or restrict practices against which a decision or judgment is issued declaring them to be acts of unlawful competition.*

(4) *The decision granting the license shall specify the scope and term of the license, according to the purpose for which it was granted. The license shall be subject to termination if the conditions for which it was granted cease to exist and their recurrence is not likely, with due regards to the lawful interests of the licensee.*

(5) *The license shall not be exclusive.*

(6) *Each application shall be independently decided.*

(7) *The owner of the protection document or the holder of a certificate of a design shall be awarded a fair compensation. The Committee shall determine the amount of the compensation, and the licensee undertakes to pay it.*

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

[Note from the Secretariat: response was not provided]

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.

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

Compulsory licenses provisions are aimed to ensure the balance between the patentee right and the public interest.

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

[Note from the Secretariat: response was not provided]

69.-70.

[Note from the Secretariat: response was not provided]

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?

Chapter One:

Article (24):

“after the elapse of four years from the date of filing the patent application or three years from the date of granting the patent, whichever expires later, without the owner of the protection document

exploiting his invention or having exploited it in an inadequate fashion, unless he justifies that with a legitimate excuse”.

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”?

No specific reasons, it's measurable case by case.

73.-74.

[Note from the Secretariat: response was not provided]

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:

If the patent involves a significant technological advance with a considerable economic value.

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:

No. Depends on the basis of reasonable commercial conditions, and for a reasonable financial 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:

[Note from the Secretariat: response was not provided]

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

None.

79.-80.

[Note from the Secretariat: response was not provided]

Government use

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

Chapter One:

Article(24):

“where the applicant is a government body or a person authorized by it, and the aim was to meet public interest - especially security, health, nutrition or the development other vital sectors of the national economy- or to meet a state of emergency or other very compelling circumstances, or where the aim thereof was public non-commercial purposes”

From Implementing Regulations of the Law of Patents, Layout Designs of Integrated Circuits, Plant Varieties, and Industrial Designs, Article (48): An application for a compulsory license submitted by any government agency to exploit the inventions shall include a statement of the public interest considerations requiring that. Such considerations shall be provided for in the decision granting such license.

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

[Note from the Secretariat: response was not provided]

83. What grounds for the grant of government use 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.*

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

Compulsory licenses provisions are aimed to ensure the balance between the patentee right and the public interest.

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

[Note from the Secretariat: response was not provided]

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:

[Note from the Secretariat: response was not provided]

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

None.

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:

No.

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

[Note from the Secretariat: response was not provided]

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):

(a) Article (56) (d) The right of patentee shall not extend to acts performed for non-commercial personal purposes, for experimental purposes or for purposes of breeding new varieties.

90.-92.

[Note from the Secretariat: response was not provided]

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:

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:

[Note from the Secretariat: response was not provided]

Breeders' use of patented inventions

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

Article (56) (d) The right of patentee shall not extend to acts performed for experimental purposes or for purposes of breeding new varieties.

96.-98.

[Note from the Secretariat: response was not provided]

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:

No.

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:

[Note from the Secretariat: response was not provided]

Section 11: Other Exceptions and Limitations

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

None.

102.-103.

[Note from the Secretariat: response was not provided]

[End of Questionnaire]