

Registrar General of Intellectual Property Sudan

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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.

According to the Patents Act 1971, article 3(1), the legal standard used to determine whether an invention was patentable 1-novelty 2- inventive step-3-industrial applicability.

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.

According to the Patents Act 1971, article (7), the following are excluded from patentability: principles and discoveries of a scientific nature, patents which contrary to public order or morality. The patents act does not provide the computer program as an exclusion, but it protected by Copyright Act 2013.

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 Patents Act 1971 article 21

The patent shall confer upon its registered owner the right to preclude third parties from doing the following acts:

(a) When patent has been granted in respect of a product:-1-making, importing, offering for sale, selling or using the product.2- stocking such product for the purpose of offering for sale, selling or using.

(b) When the patent has been granted in respect of a process: 1-applying the process. 2-doing any of the acts referred to in clause.

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

Prior use;

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.-10.

[Note from the Secretariat: response was not provided]

Section 3: Experimental use and/or scientific research

11.-22.

[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):

The applicable law does not provide the preparation of medicines as an exception, but article (53), of the Patent Act 1971 related to the above section 1-Subject to any right conferred by patents in force and the provisions of sub-section 2-manufacturing processes or knowledge concerning the use and application of industrial techniques may be freely used by any person.

24. 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]

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

To balance between the interest of the right holders and the users of those rights and protection of 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]

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

Any one entitled to prepare this kind of medicinal products.

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):

[Note from the Secretariat: response was not provided]

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:

The exception was considered to contribute to the promotion of technological innovations and to transfer of technology to the mutual advantages of producers and users.

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

No challenges were encountered in relation to the practical implementation of the exception.

Section 5: Prior use

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

According to the Patents Act 1971, article (24).stipulate that (any person who at the date of filing of the patent application by another person , or at the date of priority validly claimed in respect of such application , was in good faith manufacturing the product or applying the process , the subject of the invention , or had made serious preparations with a view to such manufacture or use, shall, despite the patent ,have the right to continue such acts and with respect to products obtained thereby , to do the other acts referred to in section 21(rights conferred by the patent) , but this right shall be transferable only with the transfer of the undertaking which is the beneficiary of the right.

32. 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]

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

*To save the rights of third parties
To encourage the dissemination of knowledge*

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

[Note from the Secretariat: response was not provided]

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):

Our act does not provide such definitions

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

The patents Act does not state for a remuneration to the patentee

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 activity of prior use has been carried out independently of the inventor and has used it bona fide or took measures for such use in good faith.

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?

[Note from the Secretariat: response was not provided]

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

The applicable law does not include such definitions.

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:

Our draft act will include all required amendments

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.-50.

[Note from the Secretariat: response was not provided]

Section 7: Acts for obtaining regulatory approval from authorities

51.-52.

[Note from the Secretariat: response was not provided]

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

To save 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]

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

Doctors, pharmacists, herbalists, chemists, physicists, etc

55. The exception covers the regulatory approval of:

Pharmaceuticals, pesticides, drugs etc

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

*Making
Using
Selling*

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):

[Note from the Secretariat: response was not provided]

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:

Our act under process to be in conformity with the international agreement.

59. 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 8: Exhaustion of patent rights

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

International

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

According to the applicable law, Patents Act 1971 article 23(1), the rights under a patent shall not extend to acts in respect of the product covered by the patent after the product has been lawfully sold in the country; nevertheless, in so far as the patent also concerns a special application of the product, this application shall continue to be reserved for the register owner.

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]

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

To balance between the interest of the right holders and the users of those rights.

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

[Note from the Secretariat: response was not provided]

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?

Uncertain

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

[Note from the Secretariat: response was not provided]

63.-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):

According to Patents Act 1971, article (34), At any time after the expiration of a period of four years from the date of the filing of an application for a patent, or three years from the date of the filing of an application for a patent, whichever period last expires, any person interested may, in accordance with the conditions specified in section (44), apply for the Grant of a compulsory license upon several grounds.

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

Public health

National emergency and/or extreme urgency

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

Encourage the exploitation and utilization of inventions

Development of industrial and social activities

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

The applicable law does not provide such definitions for those terms.

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):

Not clear

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? Four years from the date of the filing or three years from the date of the grant of a patent.

[Note from the Secretariat: response was not provided]

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”? The patents law does not specify the legitimate reasons, but there is a flexibility in the law, that the application of a compulsory license issued by the court after hearing all parties.

[Note from the Secretariat: response was not provided]

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):

The applicable law does not provide such definitions for those terms.

74.-75.

[Note from the Secretariat: response was not provided]

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:

*According to the Patents Act 1971, article (40)
A compulsory license shall only be granted subject to the payment of adequate royalties commensurate with the extent to which the invention is worked.*

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:

The applicable law does not provide such definitions for those terms.

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

[Note from the Secretariat: response was not provided]

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:

Our draft act will include all required amendments to be compatible with the international Agreements.

80.-88.

[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.-94.

[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):

According to the article 15 of the Sudanese Act (National Seeds and Protection of Varieties) 2010, the breeder shall have the following rights over the protected variety as follows:

Prepare and propagate the degrees of different sees

Marketing

The importation and exportation in accordance with the specified bases and safeguards

Temporary protection within the date of fitting the right of application and the date of

Granting the same

The storing for any purpose mentioned in paras

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

[Note from the Secretariat: response was not provided]

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

*Lay down the general policies and encourage the production of the seeds and its circulation
organize and accredit the production of the seeds, and varieties that organize its business.*

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

[Note from the Secretariat: response was not provided]

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):

Acts done privately for non-commercial personal use.

Acts done for scientific research purposes.

Acts done for the purpose of breeding other varieties.

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 law under process

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:

*Principles and discoveries of a scientific nature shall not be considered to be inventions
Patents cannot be validly obtained in respect of inventions, the publication or exploitation
Of which would be contrary to public order or morality.*

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

(i) the source of law (statutory law and/or the case law) by providing the relevant provision(s) and/or a brief summary of the relevant decision(s):

The Patents Act 1971, articles (3/1) (7)

[End of Questionnaire]