

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.

The Law of the Republic of Tajikistan "On inventions" (Article 6. Conditions for patentability of an invention) states that a technical solution shall be recognized as an invention and granted legal protection, if it is new, involves an inventive step and is industrially applicable.

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.¹

The following shall not be regarded as inventions within the meaning of the provisions of this Law:

*Scientific theories and mathematical methods;
Method of organization and management of economy;
Conventional signs, schedules, rules;
Rules and method for performing mental acts;
Algorithms and programs for computers
Projects and lay-out design of constructions, buildings and territories;
Proposals concerning solely the outward appearance of manufactured articles and intended to satisfy aesthetic requirements;*

The following shall not be recognized as patentable within the meaning of the provisions of this Law:

*Layout designs of integrated circuits;
Plant varieties and animal breeds;
Proposals contrary to public interests, principles of humanity and morality.*

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?

*In accordance with the provisions of Article 26 of the Law of the Republic of Tajikistan "On inventions":
A patent owner shall have an exclusive right to use the invention protected by a patent or a petty patent including the right to manufacture, use, import, sell and in any other way put in commercial use, or store for this purpose a product containing the invention protected by a patent or petty patent, the right to apply a process protected by a patent or petty patent for the invention, and also the right to prohibit use of the above inventions by other persons, except in the cases where such use, in accordance with this Law, does not constitute an infringement of the patent owner's exclusive right.*

*Article 24 of the Law of the Republic of Tajikistan "On inventions" provides for provisional legal protection of an invention, namely:
A claimed invention shall enjoy provisional legal protection within the scope of published claims during the period between the date of publication of the application and the date of publication of the grant of a title of protection.*

An invention, exhibited at an official or officially recognized international exhibition, shall be granted provisional legal protection from the date on which it is displayed at the exhibition up to the date of the

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

first publication of information concerning the grant of a title of protection, provided that the application for this invention has been filed with the Patent Office not later than six months from the date of its display at the exhibition.

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;²
Use of articles on foreign vessels, aircrafts and land vehicles;
Exhaustion of patent rights;
Compulsory licensing and/or government use;*

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".

[Note from the Secretariat: response was not provided]

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.).

[Note from the Secretariat: response was not provided]

Section 2: Private and/or non-commercial use

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

*Article 30 of the Law of the Republic of Tajikistan "On inventions" states:
The following actions shall not be deemed infringements of a patent owners' exclusive right:
[...]
- use of the devices incorporating an invention for needs without aiming to derive any income for personal, domestic and other needs not connected with entrepreneurial activity; [...]*

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

N/A

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:

[Note from the Secretariat: response was not provided]

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 definition

² For example, extemporaneous preparation of prescribed medicines in pharmacies.

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):

No criteria

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:

No such amendments are foreseen

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

None

Section 3: Experimental use and/or scientific research ³

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

Article 30 of the Law of the Republic of Tajikistan "On inventions" states:

The following actions shall not be deemed infringements of a patent owners' exclusive right:

[...]

- scientific research or experiments in academic, educational and research institutions involving devices incorporating inventions;

[...]

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?

[Note from the Secretariat: response was not provided]

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:

Article 30 of the Law of the Republic of Tajikistan "On inventions" limits the nature of the organization conducting the experimentation or research to academic, educational and research institutions

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 definition

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:

Experimentation and/or research should aim to:

³ Exceptions and limitations on acts for obtaining regulatory approval are dealt with in Section VII of the questionnaire.

Article 30 of the Law of the Republic of Tajikistan "On inventions" does not indicate the purpose of the experimentation and/ or research

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")

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

See the answer to Question 11

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:

The Law does not specify any intentions of the experimentation and/or research.

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):

The Law does not specify any purpose of the experimentation and/or research.

20.-21.

N/A

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):

Article 30 of the Law of the Republic of Tajikistan "On inventions" states:

The following actions shall not be deemed infringements of a patent owners' exclusive right:

[...]

- one-time production of medicines in pharmacies on a doctor's prescription; and;

[...]

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

N/A

25.

[Note from the Secretariat: response was not provided]

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

The Law does not specify persons entitled to use this exception

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):

None

29.-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):

*Article 31 of the Law of the Republic of Tajikistan "On inventions" states:
Any natural person or legal entity that, before the priority date of the invention, created and made use on the territory of the Republic of Tajikistan of an identical invention developed independently of the author or made appropriate preparations for such use shall retain the right to continue using such invention free of charge, unless the scope of such use is increased.*

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:
(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):

The Law does not provide for any quantitative or qualitative limitations on the application of the "use" by prior user. The term "use" is defined on Article 26? As follows:

Article 26. Rights of a patent owner

A patent owner shall have an exclusive right to use the invention protected by a patent or a petty patent including the right to manufacture, use, import, sell and in any other way put in commercial use, or store for this purpose a product containing the invention protected by a patent or petty patent, the right to apply a process protected by a patent or petty patent for the invention, and also the right to prohibit use of the above inventions by other persons, except in the cases where such use, in accordance with this Law, does not constitute an infringement of the patent owner's exclusive right. [...]

Placing on the market or storage for this purpose of a product produced directly by the process protected by a patent or a petty patent shall also be recognized as the use of the process. [...]

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

The Law of the Republic of Tajikistan "On inventions" does not provide for such remuneration.

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:

Article 31. Right of prior use [.....]

The right of prior use may be assigned to another natural person or legal entity, but only together with the production operations which involved the use of such identical invention or necessary preparations for such use.

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:

Article 34. Reinstatement of the validity of a title of protection. Right of consequent use [...]

Any person that, during the period between the date of termination and the date of reinstatement of the patent, commenced the use on the territory of the Republic of Tajikistan of the protected invention or that made essential preparations for the commencement of such use during the said period of time shall retain the right to continue using it free of charge unless the scope of its use is enlarged (right of consequent use).

The right of consequent use may be assigned to another person, but only together with the production operations which involved the use of the invention or necessary preparations for such use.

39.-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):

Article 30. Actions not recognized as an infringement of an exclusive right

The following actions shall not be deemed infringements of a patent owners' exclusive right: use of the devices incorporating inventions protected by patents or petty patents in the construction or operation of (land, air, water) vehicles of other countries if such vehicles entered the territory of the Republic of Tajikistan on a temporary basis or by accident and such devices are used for the needs of a vehicle. No such action shall be deemed to constitute an infringement of the patent owner's exclusive rights, provided that the vehicles concerned are owned by natural persons or legal entities of countries granting reciprocal rights to vehicle owners of the Republic of Tajikistan; [.....]

43.-44.

[Note from the Secretariat: response was not provided]

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):

Yes, see the answer to Question 42

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):

Article 30 states that such devices shall be used for the needs of a vehicle

48.-50.

[Note from the Secretariat: response was not provided]

Section 7: Acts for obtaining regulatory approval from authorities

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

No provisions

52.-59.

[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:

National

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

Article 30 of the Law of the Republic of Tajikistan "On inventions" states:

The following actions shall not be deemed infringements of a patent owners' exclusive right: [...] use of the devices incorporating inventions protected by titles of protection if such devices were put to commercial use on a lawful basis in accordance with the rights granted by a patent owner.

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:

(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):

Article 28. Compulsory license

The patent owner shall be obliged to use the invention. In the event that an invention remains unused or insufficiently used by the patent owner for five years after the date of publication of the grant of a title of protection, any person willing and ready to use the invention may, if the patent owner refuses to enter into a license contract with such party on such terms and conditions as are consistent with prevailing practice, go to court to demand the grant thereto of a compulsory license to use such invention.

If the owner of a title of protection fails to prove that he made no or insufficient use of the invention for a valid reason, the court shall make a decision on the grant of a compulsory license

Where a compulsory license is granted on the basis of a court finding, such license shall set limits on the use of the invention the title of protection for which is owned by the other person to the extent which may be necessary to use the invention owned by the person who demanded that grant of such compulsory license, and shall prescribe the amount of royalties, as well as time periods and procedures for their payment.

For national security reasons and in force majeure circumstances (natural disasters, catastrophes, major accidents) the Government of the Republic of Tajikistan shall have the right to authorize the use of an invention subject to payment of a commensurate compensation to the patent owner, whereby the scope and duration of use of the patented invention shall be limited to the purpose for which it was authorized. A compulsory license shall be non-exclusive; it may not be reassigned to another person. Disputes arising as a result of such use shall be settled by the court.

A compulsory license shall be subject to mandatory registration with the Patent Office, without which it shall be deemed invalid.

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):

Non-working or insufficient working of the patented invention

Refusal to grant licenses on reasonable terms

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:

(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):

See the answer to Question 65

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):

Yes.

Article 26. Rights of a patent owner

A patent owner shall have an exclusive right to use the invention protected by a patent or a petty patent including the right to manufacture, use, import, sell and in any other way put in commercial use, or store for this purpose a product containing the invention protected by a patent or petty patent, the right to apply a process protected by a patent or petty patent for the invention, and also the right to prohibit use of the above inventions by other persons, except in the cases where such use, in accordance with this Law, does not constitute an infringement of the patent owner's exclusive right. [...]

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?

Five years after the date of publication of the grant of a title of protection (Article 28 of the Law)

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"?

Decided by the Court

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):

On such terms and conditions as are consistent with prevailing practice (Article 28 of the Law)

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):

N/A

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:

Where a compulsory license is granted on the basis of a court finding, such license shall set limits on the use of the invention the title of protection for which is owned by the other person to the extent which may be necessary to use the invention owned by the person who demanded that grant of such compulsory license, and shall prescribe the amount of royalties, as well as time periods and procedures for their payment. (Article 28 of the Law)

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:

[Note from the Secretariat: response was not provided]

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:

No definition in the Law

78.-79.

[Note from the Secretariat: response was not provided]

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

Government use

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

[Note from the Secretariat: response was not provided]

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):

National security

National emergency and/or extreme urgency

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

The Law does not define these concepts

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

Never

87.-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.-93.

[Note from the Secretariat: response was not provided]

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:

Breeders’ use of patented inventions

95.-100.

[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]