

[English translation by WIPO]

Questionnaire on Exceptions and Limitations to Patent Rights

The answers to this questionnaire have been provided on behalf of:

Country: Burkina Faso
Office: National Directorate of Industrial Property

Person to be contacted:

Name:
Title:
E-mail:
Telephone:
Facsimile:

Section I: General

This section is intended to obtain general information on exceptions and limitations to patent rights that are provided under the applicable laws. For the purpose of this questionnaire, the term “applicable law” refers to relevant national and regional statutory law and, where applicable, case law.

The terms used in the questionnaire are drafted in a general way aiming at providing a broad understanding of each concept used, assuming that the exact wording of these exceptions and limitations might differ under the applicable laws. More detailed explanations of the various exceptions and limitations may be found in the following documents: SCP/13/3, SCP/15/3 and CDIP/5/4.

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.

Annex I, Articles 1 and 2, revised Bangui Agreement.

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.

Annex I, Article 6, revised Bangui Agreement. Discoveries, mathematical and scientific theories and other inventions contrary to public policy or 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?

Annex I, Article 10, revised Bangui Agreement.

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

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

Section II: Private and/or non-commercial use

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

.....
.....
.....

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

.....
.....
.....

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:

.....
.....
.....

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):

.....
.....
.....

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):

.....
.....
.....

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:

.....
.....
.....

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

.....
.....
.....

Section III: Experimental use and/or scientific research

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

Annex I, Article 8, revised Bangui Agreement.

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

.....
.....
.....

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

.....
.....
.....

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

.....
.....
.....

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:

.....
.....
.....

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):

.....
.....
.....

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:

- determine how the patented invention works
- determine the scope of the patented invention
- determine the validity of the claims
- seek an improvement to the patented invention
- invent around the patented invention
- other, please specify:

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”)
- Research and/or experimentation must be conducted with or using the patented invention (“research with”)
- Both of the above

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

.....
.....
.....

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

- A non-commercial purpose
- A commercial purpose
- Both of the above
- The commercial intention of the experimentation and/or research is not relevant

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):

.....
.....
.....

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

.....
.....
.....

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

.....
.....
.....

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

.....
.....
.....

Section IV: Preparation of medicines

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

.....
.....
.....

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

.....
.....
.....

25.(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:

.....
.....
.....

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

.....
.....
.....

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

- Yes
- No

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

.....
.....
.....

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):

.....
.....
.....

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:

.....
.....
.....

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

.....
.....
.....

Section V: Prior use

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

Annex I, Article 8, revised Bangui Agreement.

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

.....
.....
.....

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:

.....
.....
.....

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):

.....
.....
.....

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

No.

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

- Yes
- No

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
- No

If yes, please explain what those conditions are:

.....
.....
.....

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
- No

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

.....
.....
.....

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

.....
.....
.....

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:

.....
.....
.....

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

.....
.....
.....

Section VI: 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):

Annex I, Article 8, revised Bangui Agreement.

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

.....
.....
.....

44.(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:

.....
.....
.....

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):

.....
.....
.....

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):

.....
.....
.....

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

.....
.....
.....

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

.....
.....
.....

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

.....
.....
.....

Section VII: Acts for obtaining regulatory approval from authorities

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

.....
.....
.....

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

.....
.....
.....

53.(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:

.....
.....
.....

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

.....
.....
.....

55. The exception covers the regulatory approval of:

- any products
- certain products. Please describe which products:

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

- Making
- Using
- Selling
- Offering for sale
- Import
- Export
- Other. Please specify:

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):

.....
.....
.....

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:

.....
.....
.....

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

.....
.....
.....

Section VIII: Exhaustion of patent rights

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

- National
- Regional
- International
- Uncertain, please explain:

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

Annex I, Article 8, revised Bangui Agreement.

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

.....
.....
.....

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:

.....
.....
.....

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?

- Yes
- No
- Uncertain

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

.....
.....
.....

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

.....
.....
.....

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

.....
.....
.....

Section IX: Compulsory licenses and/or government use

Compulsory licenses

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

Annex I, Article 49, revised Bangui Agreement.

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

.....
.....
.....

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
- Other, please specify:

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

Annex I, Article 56(1): vital interest to the economy of the country, public health or national defense.

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

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):

*“Non-working” means that “the invention is not being worked on the territory of a Member State”.
“Insufficient working” means that “the working of the invention does not meet, on reasonable terms, the demand for the protected product”*

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):

.....
.....
.....

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
- No.

If yes, what is the time period?

Three years from the date of grant of the patent and four years from the filing date of the patent application (Article 46, revised Bangui Agreement).

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
- No.

If yes, what are “legitimate reasons”?

Non-voluntary license for a dependent patent

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):

.....
.....
.....

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):

Annex I, Article 46, revised Bangui Agreement

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:

- (a) failure to work or insufficient working;*
- (b) refusal by the patentee to grant patents on reasonable terms and conditions;*
- (c) prejudice suffered during commercial or industrial activity on the territory concerned.*

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:

.....
.....
.....

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:

.....
.....
.....

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

.....
.....
.....

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:

A revision process is currently underway that takes into account these various aspects in the revised Bangui Agreement.

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):

Annex I, Article 56, revised Bangui Agreement.

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

.....
.....
.....

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
- Other, please specify: *Vital interest linked to the global economy*

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

Aims of strategic interest linked to public health, national defense or the national economy.

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

.....
.....
.....

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:

.....
.....
.....

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

.....
.....
.....

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

The Bangui Agreement is currently being revised and such aspects will be taken into account.

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

.....
.....
.....

Section X: 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):

These issues come under Annex 10 of the Bangui Agreement on plant varieties.

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

.....
.....
.....

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

.....
.....
.....

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

.....
.....
.....

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

.....
.....
.....

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:

.....
.....
.....

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

.....
.....
.....

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

.....
.....
.....

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

.....
.....
.....

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

.....
.....
.....

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):

.....
.....
.....

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:

.....
.....
.....

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:

.....
.....
.....

Section XI: Other Exceptions and Limitations

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

.....
.....
.....

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):

.....
.....
.....

(ii) the public policy objectives of each exception and limitation. Where possible, please explain with references to the legislative history, parliamentary debates and judicial decisions:

.....
.....
.....

(iii) the entitlement and the scope of the exception and limitation by citing legal provision(s) and/or decision(s):

.....
.....
.....

In addition, in relation to each exception and limitation, please explain:

(i) whether its applicable legal framework is considered adequate to meet the objectives sought (for example, are there any amendments to the law foreseen?):

.....
.....
.....

(ii) if there have been any challenges encountered in the practical implementation of the exception in your country:

.....
.....
.....

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

.....
.....
.....

[End of Questionnaire]