

COMPILATION OF VARIOUS LEGAL PROVISIONS ON THE EXCEPTION REGARDING PRIOR USE

COMPILATION DE DISPOSITIONS JURIDIQUES SUR L'EXCEPTION CONCERNANT L'UTILISATION
ANTÉRIEURE

COMPILACIÓN DE DISPOSICIONES JURÍDICAS SOBRE LA EXCEPCIÓN RELATIVA AL USO ANTERIOR

تجميع للأحكام القانونية المختلفة بشأن الاستثناء المتعلق بالاستخدام السابق

在先使用例外各种法律条款汇编

КОМПИЛЯЦИЯ РАЗЛИЧНЫХ НОРМАТИВНО-ПРАВОВЫХ ПОЛОЖЕНИЙ ОБ ИСКЛЮЧЕНИИ В
ОТНОШЕНИИ ПРЕЖДЕПОЛЬЗОВАНИЯ

TABLE OF CONTENTS

ALBANIA.....	6
ALGERIA.....	6
ANDORRA.....	6
ANTIGUA AND BARBUDA.....	7
ARGENTINA.....	8
ARMENIA.....	8
AUSTRALIA.....	8
AUSTRIA.....	9
AZERBAIJAN.....	10
BAHRAIN.....	10
BARBADOS.....	11
BELARUS.....	11
BELGIUM.....	11
BELIZE.....	12
BENIN.....	12
BHUTAN.....	12
BOLIVIA (PLURINATIONAL STATE OF).....	13
BOSNIA AND HERZEGOVINA.....	13
BRAZIL.....	13
BOTSWANA.....	13
BRUNEI.....	14
BULGARIA.....	14
BURKINA FASO.....	15
CANADA.....	15
CHINA.....	15
HONG KONG, CHINA.....	16
CAMEROON.....	16
CENTRAL AFRICAN REPUBLIC.....	17
CHAD.....	17
COLOMBIA.....	17
COMOROS.....	17
CONGO.....	17
COSTA RICA.....	17
CÔTE D'IVOIRE.....	18

CROATIA	18
CYPRUS	18
CZECH REPUBLIC.....	19
DENMARK.....	19
DOMINICA	19
DOMINICAN REPUBLIC	20
ECUADOR.....	20
EGYPT	21
EL SALVADOR.....	21
EQUATORIAL GUINEA.....	22
FINLAND	22
FRANCE.....	22
GABON.....	22
GEORGIA.....	23
GERMANY	23
GHANA.....	23
GREECE	24
GUINEA.....	24
GUINEA-BISSAU	24
HONDURAS.....	24
HUNGARY	25
ICELAND.....	25
INDONESIA.....	26
IRELAND.....	26
ISRAEL.....	27
ITALY	27
JAPAN	27
KAZAKHSTAN	28
KENYA	28
KYRGYZ REPUBLIC.....	29
LATVIA	29
LIECHTENSTEIN.....	29
LITHUANIA	30
LUXEMBOURG	30
MADAGASCAR	30
MALAYSIA.....	31
MALI	31

MALTA	31
MAURITANIA	32
MAURITIUS	32
MEXICO.....	32
MONTENEGRO.....	33
MOROCCO	33
MOZAMBIQUE.....	33
NETHERLANDS.....	34
NEW ZEALAND.....	34
NICARAGUA	35
NIGER.....	35
NIGERIA	36
NORTH MACEDONIA	36
NORWAY.....	36
OMAN.....	37
PAKISTAN.....	37
PAPUA NEW GUINEA.....	38
PARAGUAY.....	38
PERU	38
PHILIPPINES	38
POLAND	39
PORTUGAL.....	39
QATAR	40
REPUBLIC OF KOREA.....	40
REPUBLIC OF MOLDOVA.....	40
ROMANIA	40
RUSSIAN FEDERATION	41
SAINT LUCIA.....	41
SAO TOME AND PRINCIPE	42
SAUDI ARABIA.....	42
SENEGAL.....	43
SERBIA	43
SINGAPORE	43
SLOVAK REPUBLIC	44
SPAIN	44
SRI LANKA.....	44
SWEDEN.....	45

SWITZERLAND.....	45
TAJIKISTAN.....	46
THAILAND.....	46
TRINIDAD AND TOBAGO.....	46
TOGO.....	47
TUNISIA.....	47
TURKEY.....	47
UGANDA.....	48
UKRAINE.....	48
UNITED KINGDOM.....	49
URUGUAY.....	49
UNITED STATES OF AMERICA.....	49
UZBEKISTAN.....	51
VIET NAM.....	52
ANDEAN COMMUNITY.....	52
EURASIAN PATENT ORGANIZATION.....	52
GULF COOPERATION COUNCIL.....	53
AFRICAN INTELLECTUAL PROPERTY ORGANIZATION (OAPI).....	53

ALBANIA

Article 43 of the Patent Law № 9947 of 7 July 2008 (as amended up to Law № 55/2014 of 29 May 2014)

Article 43 Prior Users

1. The rights conferred by a patent shall have no effect on Persons who within the territory of the Republic of Albania, have used the invention or are in the process of serious and effective preparations for its use, before the filing date of the application, or, in cases when priority is claimed, before the priority date. These Persons shall have the right to continue use or preparations for use.
2. The right of prior use may be transferred, with the enterprise or company, or with that part of the enterprise or company where the use or the the preparations for use have been made.

ALGERIA

Article 14 of the Order No. 03–07 dated 19 Jumada I 1424 corresponding to July 19, 2003 related to patents of invention.

Article 14: If a person, at the time of filing the patent of invention application or the date of the legally claimed priority, has conducted the following in good faith:

- 1- Manufacturing the product or using the method of manufacturing subject matter of the patented invention,
- 2- Serious preparations to initiate such manufacturing or use, he may proceed his work in spite of the said patent of invention.

The right of prior user may only be transferred to the institution, the company, or the branches thereof in which the use or preparation for use has taken place.

ANDORRA

Article 24 of the Law on Patents

Article 24 - Prior user

(1) Any person who in good faith, for the purposes of his enterprise or business, before the filing date or, where priority is claimed, the priority date of the application on which the patent is granted, and within Andorra was using the invention or was making effective and serious preparations for such use, shall have the right, for the purposes of his enterprise or business, to continue such use or to use the invention as envisaged in such preparations.

(2) The right of the prior user may only be transferred or devolve together with his enterprise or business, or with that part of his enterprise or business in which the use or preparations for use have been made.

ANTIGUA AND BARBUDA

Sections 32(4)(e) and 33 of the Law of the Republic of Armenia of June 10, 2008, on Inventions, Utility Models and Industrial Designs

32. Rights conferred by the patent

[...]

(4) The rights under the patent shall not extend to-

[...]

(e) acts performed by any person who in good faith, before the filing or, where priority is claimed, the priority date of the application on which the patent is granted, and in Antigua and Barbuda, was using the invention or was making effective and serious preparations for such use;

[...]

(5) The right of prior user referred to in subsection (4) (e) may be transferred or devolve only together with the enterprise or business, or with that part of the enterprise or business in which the use or preparations for use have been made.

33. Prior user's right once the patent is granted

(1) Where a patent is granted for an invention, a person who before the date of filing of the patent application, or if priority was claimed, before the date of priority, does in good faith in Antigua and Barbuda, an act which would constitute an infringement of the patent if it were then in force, or makes effective and serious preparations in good faith to do such an act, shall have the rights specified in subsection (2).

(2) The rights referred to in subsection (1) shall be the following, namely-

(a) to continue to do or, as the case may be, to do that act himself; and

(b) if the act was done or preparations had been made to do it in the course of a business-

(i) to assign the right under paragraph (a);

(ii) to transmit the right under paragraph (a) to his heirs on his death or, in the case of a body corporate, on its dissolution, to any person who acquires that part of the business in the course of which the act was done or preparations had been made to do it; or

(iii) to authorise the act to be done by any partners of his for the time being in that business, and the doing of that act by virtue of this subsection shall not amount to an infringement of the patent concerned.

(3) The rights specified in subsection (2) shall not include the right to grant a licence to any person to do an act referred to in subsection (1).

(4) Where a product which is the subject of a patent is disposed of by any person to another in exercise of a right conferred by subsection (2), that other and any person claiming through him shall be entitled to deal with the product in the same way as if it had been disposed of by a sole owner of the patent.

ARGENTINA

Article 37 of the Law No. 24.481 of March 30, 1995, on Patents and Utility Models (as amended up to Decree No. 27/2018 of January 10, 2018)

ARTICULO 37. – El titular de una patente no tendrá derecho a impedir que, quienes de buena fe y con anterioridad a la fecha de la solicitud de la patente hubieran explotado o efectuado inversiones significativas para producir el objeto de la patente en el país, puedan continuar con dicha explotación.

ARMENIA

Article 18 of the Law of the Republic of Armenia of June 10, 2008, on Inventions, Utility Models and Industrial Designs

Article 18. Right on Prior Use

(1) Any person who, before the priority date of an invention, utility model, has used an identical solution created independently of the inventor and has used it bona fide in the territory of the Republic of Armenia or who has made the necessary preparatory works for it, shall retain the right to further non-compensated use, provided that the scope of such a use is not extended (right on prior use).

(2) The right on prior use shall be permitted to be transferred to another natural or legal persons only together with the production unit in which the use of the identical solution has taken place or the necessary preparations for such a use have been made.

AUSTRALIA

Section 119 of the Patents Act 1990 No. 83, 1990, Compilation No. 43

119 Infringement exemptions: prior use

(1) A person may, without infringing a patent, do an act that exploits a product, method or process and would infringe the patent apart from this subsection, if immediately before the priority date of the relevant claim the person:

- (a) was exploiting the product, method or process in the patent area; or
- (b) had taken definite steps (contractually or otherwise) to exploit the product, method or process in the patent area.

Note 1: This section applies in relation to a patent granted as a result of an application filed on or after the commencement of Schedule 6 to the *Intellectual Property Laws Amendment Act 2006* (which repealed and substituted this section).

Note 2: Section 119 of this Act as in force before the commencement of that Schedule continues to apply in relation to patents granted as a result of earlier applications.

(2) Subsection (1) does not apply if, before the priority date, the person:

- (a) had stopped (except temporarily) exploiting the product, method or process in the patent area; or
- (b) had abandoned (except temporarily) the steps to exploit the product, method or process in the patent area.

Limit for product, method or process derived from patentee

(3) Subsection (1) does not apply to a product, method or process the person derived from the patentee or the patentee's predecessor in title in the patented invention unless the person derived the product, method or process from information that was made publicly available:

- (a) by or with the consent of the patentee or the patentee's predecessor in title; and
- (b) in the prescribed circumstances mentioned in paragraph 24(1)(a).

Exemption for successors in title

(4) A person (the **disposer**) may dispose of the whole of the disposer's entitlement under subsection (1) to do an act without infringing a patent to another person (the **recipient**). If the disposer does so, this section applies in relation to the recipient as if the references in subsections (1), (2) and (3) to the person were references to:

- (a) the disposer; or
- (b) if the disposer's entitlement arose because of one or more previous applications of this subsection—the first person:
 - (i) who was entitled under subsection (1) (applying of its own force) to do an act without infringing the patent; and
 - (ii) to whom the disposer's entitlement is directly or indirectly attributable.

Definition

(5) In this section:

exploit includes:

- (a) in relation to a product:
 - (i) make, hire, sell or otherwise dispose of the product; and
 - (ii) offer to make, hire, sell or otherwise dispose of the product; and
 - (iii) use or import the product; and
 - (iv) keep the product for the purpose of doing an act described in subparagraph (i), (ii) or (iii); and
- (b) in relation to a method or process:
 - (i) use the method or process; and
 - (ii) do an act described in subparagraph (a)(i), (ii), (iii) or (iv) with a product resulting from the use of the method or process.

AUSTRIA

Article 23 of the Patentgesetz 1970 (zuletzt geändert durch das Bundesgesetz BGB1. I. Nr. 37/2018)

§ 23. (1) Die Wirkung des Patentbesitzes tritt gegen denjenigen nicht ein, der bereits zur Zeit der Anmeldung im guten Glauben die Erfindung im Inland in Benutzung genommen oder die zu solcher Benutzung erforderlichen Veranstaltungen getroffen hat (Vorbenützer).

(2) Der Vorbenützer ist befugt, die Erfindung für die Bedürfnisse seines eigenen Betriebes in eigenen oder fremden Werkstätten auszunützen.

(3) Dieses Befugnis kann nur zusammen mit dem Betrieb vererbt oder veräußert werden.

(4) Der Vorbenützer kann verlangen, daß seine Befugnis vom Patentinhaber durch Ausstellung einer Urkunde anerkannt wird. Wird diese Anerkennung verweigert, so hat auf Antrag das Patentamt über den erhobenen Anspruch in dem für den Anfechtungsprozeß vorgesehenen Verfahren zu

entscheiden. Die anerkannte Befugnis ist auf Ansuchen des Berechtigten in das Patentregister einzutragen.

AZERBAIJAN

Article 16 of the Patent Law of July 25, 1997, last amended on October 20, 2009

Article 16. Right of prior use

1. Any legal entity or natural person who, before the priority date of subject matter of industrial property protected by a patent and independently of the author, has devised and used in good faith on the territory of the Republic of Azerbaijan an identical subject matter of industrial property or has up until that date been making the necessary preparations for such use, has the right, without hindrance and without paying any compensation to the patent owner, to continue independently using the subject matter, provided that the scope of the use of the subject matter is not expanded.

2. For recognition the right of prior user the respective body of executive power considers his request according to his application and sends a notification to patent owner within the period of 1 month.

Upon application the prior user should also present the document certifying payment by him of the prescribed fee.

If there are no objections from patent owner on prior use within the period of 2 months, the respective body of executive power shall adopt a decision on recognition of right of prior user and shall be recorded it in appropriate the State register and shall publish a notice thereof in the official bulletin.

Litigations arising between prior user and patent owner consider by the Court proceedings.

3. The right of prior use may only be transferred to successor, another legal entity or natural person together with the enterprise where the subject matters of industrial property is used or where the necessary preparations for such use had been made. Successor, legal entity or natural person might use this right in a scope given a prior user in accordance with item 1 of the present Article.

BAHRAIN

Article 13(b) of the Law No. 14 of 2006 on Amendments to Some Provisions of Law No. 1 of 2004 on Patents and Utility Models

Article (13)

The following shall not be considered a violation of the rights conferred by a patent holder:

[...]

b. Others exploitation, in good faith, of the patent for industrial purposes or undertaking serious steps to that end prior to filing the patent application. In such case, notwithstanding the granting of the Patent, the third party is entitled to continue exploiting the invention for the needs of his facility only and to the same extent, but may not transfer this right independently of the said establishment.

[...]

BARBADOS

Sections 6 (1)(c) and (2) of the Patents Act, 2001 (Cap. 314) (as amended by Act No. 2 of 2006)

Limitations of rights.

6. (1) The rights vested in the owner of a patent by section 5 in respect of any invention do not apply to

[...]

(c) acts performed by any person who in good faith, before the filing or, where priority is claimed, the priority date of the application on which the patent is granted in Barbados, was using the invention or was making effective and serious preparations for its use; or

[...]

(2) The right of prior user referred to in paragraph (c) may be transferred or may devolve by operation of law only with the enterprise or business, or with that part of the enterprise or business, in respect of which the invention was used or preparations for its use were made.

BELARUS

Article 39 of the Law of the Republic of Belarus No. 160-Z of December 16, 2002, on Patents for Inventions, Utility Models, Industrial Designs (as amended up Law No. 328-Z of December 22, 2011)

Article 39. Right of Prior Use

1. Any natural or legal person that before the date of priority of the invention, industrial model or industrial design protected by the patent regardless of their author has created and bona fide used on the territory of the Republic of Belarus the identical solution or has made preparations necessary for it, keeps the right to its further gratuitous use without broadening the scope of amount of such usage (right of prior use).

2. The right of prior use can be transferred to other natural or legal person only together with the enterprise where the usage of the identical solution has taken place or where the preparations necessary for it has been made.

BELGIUM

Article XI. 36. § 1er. of the Law of April 19, 2014, on the Insertion of Book XI 'Intellectual Property' to the Code of Economic Law, and Specific Provisions to the Book XI in Books I, XV and XVII of the Code (updated on October 30, 2015) (2015)

XI.36. § 1er. Toute personne qui avant la date de dépôt ou de priorité d'un brevet, utilisait ou possédait de bonne foi sur le territoire belge l'invention, objet du brevet, a le droit, à titre personnel, d'exploiter l'invention malgré l'existence du brevet.

[...]

BELIZE

Sections 33(4)(e) and (5) of the Patents Act (Cap. 253, Revised Version 2000)

Rights Conferred by patent.

33.

[...]

(4) The rights under the patent shall not extend to:-

[...]

(e) acts performed by any person who in good faith, before the filing or, where priority is claimed, the priority date of the application on which the patent is granted, and in Belize, was using the invention or was making effective and serious preparations for such use.

(5) The right of prior user referred to in subsection (4) (e) may be transferred or devolve only together with the enterprise or business, or with that part of the enterprise or business in which the use or preparations for use have been made.

BENIN

Article 8(1)(d) of the Agreement Revising the Bangui Agreement of 2 March 1977 on the Creation of an African Intellectual Property Organization (Bangui (Central African Republic), 24 February 1999)

(Refer to AFRICAN INTELLECTUAL PROPERTY ORGANIZATION (OAPI) below).

BHUTAN

Sections 13(4)(a)(iv) and (b) of the Industrial Property Act of the Kingdom of Bhutan 2001

Rights Conferred by Patent

13 (4) (a): The rights under the patent shall not extend:

[...]

(iv) to acts performed by any person who in good faith, before the filing or, where priority is claimed, the priority date of the application on which the patent is granted, was using the invention or was making effective and serious preparations for such use in Bhutan.

(b) The right of prior user referred to in paragraph (a)(iv) may be transferred or devolve only together with the enterprise or business, or with that part of the enterprise or business, in which the use or preparations for use have been made.

BOLIVIA (PLURINATIONAL STATE OF)

Article 55 of the Decision No 486 of 14 September 2000 of the Commission of the Andean Community - Common Industrial Property Regime (Cartagena Agreement)

(Refer to ANDEAN Community below).

BOSNIA AND HERZEGOVINA

Article 74 of the Law on Patents as of 28 May 2010

(1) A patent shall have no effect against a person who had, prior to the filing date or prior to the date of the granted priority of a patent application, exploited or manufactured in good faith and within his economic activities a product according to the protected invention or had made real and serious preparations for such an exploitation of the invention in Bosnia and Herzegovina.

(2) The person referred to in paragraph (1) of this Article shall have the right to proceed, without the patent holder's consent, with the exploitation of the invention to the extent to which he had exploited it or prepared it for the exploitation up to the filing date of the patent application for the said invention.

(3) The right referred to in paragraph (2) of this Article may be transferred or inherited only together with the working process and production plant in which the exploitation of the invention has been prepared or started.

BRAZIL

Article 45 of the Patent Law No 9.279 of 14 May 1996 as last amended by Law No 10.196 of 14 February 2001

Art. 45. À pessoa de boa fé que, antes da data de depósito ou de prioridade de pedido de patente, explorava seu objeto no País, será assegurado o direito de continuar a exploração, sem ônus, na forma e condição anteriores.

§ 1º O direito conferido na forma deste artigo só poderá ser cedido juntamente com o negócio ou empresa, ou parte desta que tenha direta relação com a exploração do objeto da patente, por alienação ou arrendamento.

§ 2º O direito de que trata este artigo não será assegurado a pessoa que tenha tido conhecimento do objeto da patente através de divulgação na forma do art. 12, desde que o pedido tenha sido depositado no prazo de 1 (um) ano, contado da divulgação.

BOTSWANA

Section 25(1)(h) and (3) of the Industrial Property Act 2010 (Act No 8 of 2010)

Exceptions to rights conferred by patent

25. (1) The rights conferred by a patent shall not extend to –

[...]

(h) acts performed by any person who in good faith, before the filing date or, where priority is claimed, the priority date of the application on which the patent is granted and in Botswana, was using the invention or was making effective and serious preparations for such use;

[...]

(3) The right of prior user referred to in subsection 1 (h) may be transferred or may devolve only together with the enterprise or business, or with that part of the enterprise or business, in which the use of preparations for use have been made.

BRUNEI

Section 69 of the Patents Order, 2011

Right to continue use begun before priority date.

69. (1) Where a patent is granted for an invention, a person who in Brunei Darussalam before the priority date of the invention -

(a) does in good faith an act which would constitute an infringement of the patent if it were in force; or

(b) makes in good faith effective and serious preparations to do such an act, has the right to continue to do the act or, as the case may be, to do the act, notwithstanding the grant of the patent.

(2) The right conferred by subsection (1) shall not extend to granting a licence to another person to do the act.

(3) If the act was done, or the preparations were made, in the course of a business, the person entitled to the right conferred by subsection [1] may-

(a) authorise the doing of that act by any partner of his for the time being in that business; and

(b) assign that right, or transmit it on death (or in the case of a body corporate on its dissolution) to any person who acquires that part of the business in the course of which the act was done or the preparations were made.

(4) Where a product is disposed of to another in exercise of the rights conferred by subsection [1] or (3), that other and any person claiming through him may deal with the product in the same way as if it had been disposed of by the registered proprietor of the patent.

BULGARIA

Article 21 and 23 of the Law on Patents and Utility Models Registration of 9 November 2006 as last amended by Law of 18 May 2012

Right of Prior Use

Art. 21. A person who, prior to the filing date of the patent application, has used the invention in good faith or has made the necessary preparations for its use may continue to use the invention after such date on condition that the volume remains the same.

[...]

Assignment of the Right of Prior Use and the Right of Subsequent Use

Art. 23. The right of prior use and the right of subsequent use may be transferred only together with the enterprise or that part of the enterprise in which such rights have arisen and may be exercised, subject to there being no increase in the volume of such use outside the enterprise.

BURKINA FASO

Article 8(1)(d) of the Agreement Revising the Bangui Agreement of 2 March 1977 on the Creation of an African Intellectual Property Organization (Bangui (Central African Republic), 24 February 1999)

(Refer to AFRICAN INTELLECTUAL PROPERTY ORGANIZATION (OAPI) below).

CANADA

Section 56 of the Patent Act (R.S.C., 1985, c. P-4) (as amended up to December 13, 2018)

Exception — prior use

56 (1) Subject to subsection (2), if — before the claim date of a claim in a patent — a person, in good faith, committed an act that would otherwise constitute an infringement of the patent in respect of that claim, or made serious and effective preparations to commit such an act, it is not an infringement of the patent or any certificate of supplementary protection that sets out the patent, in respect of that claim, if the person commits the same act on or after that claim date.

Transfer

(2) If the act referred to in subsection (1) is committed or the preparations to commit it are made in the course of a business and that business, or the part of that business in the course of which the act was committed or the preparations were made, is subsequently transferred,
(a) subsection (1) or paragraph (b), as the case may be, does not apply to an act committed by the transferor after the transfer; and
(b) it is not an infringement of the patent or any certificate of supplementary protection that sets out the patent, in respect of the claim, if the transferee commits the act after the transfer.

CHINA

Article 69(2) of the Patent Law of the People's Republic of China (as amended up to the Decision of 27 December 2008 regarding the Revision of the Patent Law of the People's Republic of China)

69. The following shall not be deemed to be patent right infringement:

[...]

(2) Before the date of patent application, any other person has already manufactured identical products, used identical method or has made necessary preparations for the manufacture or use and continues to manufacture the products or use the method within the original scope;

[...]

HONG KONG, CHINA

Section 83 of the Patents Ordinance 2017 (Chapter 514)

Section: 83 **Right to continue use begun before priority date**

(1) Where a patent is granted for an invention, a person who in Hong Kong before the deemed date of filing of the application for the standard patent or the date of filing of the application for the short-term patent (as the case may be) or, if priority was claimed, before the date of priority-

(a) does in good faith an act which would constitute an infringement of the patent if it were in force; or

(b) makes in good faith effective and serious preparations to do such an act, has the rights specified in subsection (2).

(2) The rights referred to in subsection (1) are-

(a) the right to continue to do or, as the case may be, to do the act referred to in subsection (1);

(b) if such act was done or preparations had been made to do it in the course of a business-

(i) in the case of an individual-

(A) the right to assign the right to do it or to transmit such right on death; or

(B) the right to authorize the doing of that act by any of his partners for the time being in the business in the course of which the act was done or preparations had been made to do it;

(ii) in the case of a body corporate, the right to assign the right to do it or to transmit such right on the body's dissolution,

and the doing of that act by virtue of this subsection shall not amount to an infringement of the patent concerned.

(3) The rights specified in subsection (2) shall not include the right to grant a licence to any person to do an act referred to in subsection (1).

(4) Where a patented product is disposed of to another in exercise of a right conferred by subsection (2), that other and any person claiming through him may deal with the product in the same way as if it had been disposed of by a registered proprietor of the patent.

CAMEROON

Article 8(1)(d) of the Agreement Revising the Bangui Agreement of 2 March 1977 on the Creation of an African Intellectual Property Organization (Bangui (Central African Republic), 24 February 1999)

(Refer to AFRICAN INTELLECTUAL PROPERTY ORGANIZATION (OAPI) below).

CENTRAL AFRICAN REPUBLIC

Article 8(1)(d) of the Agreement Revising the Bangui Agreement of 2 March 1977 on the Creation of an African Intellectual Property Organization (Bangui (Central African Republic), 24 February 1999)

(Refer to AFRICAN INTELLECTUAL PROPERTY ORGANIZATION (OAPI) below).

CHAD

Article 8(1)(d) of the Agreement Revising the Bangui Agreement of 2 March 1977 on the Creation of an African Intellectual Property Organization (Bangui (Central African Republic), 24 February 1999)

(Refer to AFRICAN INTELLECTUAL PROPERTY ORGANIZATION (OAPI) below).

COLOMBIA

Article 55 of the Decision No 486 of 14 September 2000 of the Commission of the Andean Community - Common Industrial Property Regime (Cartagena Agreement)

(Refer to ANDEAN Community below).

COMOROS

Article 8(1)(d) of the Agreement Revising the Bangui Agreement of 2 March 1977 on the Creation of an African Intellectual Property Organization (Bangui (Central African Republic), 24 February 1999)

(Refer to AFRICAN INTELLECTUAL PROPERTY ORGANIZATION (OAPI) below).

CONGO

Article 8(1)(d) of the Agreement Revising the Bangui Agreement of 2 March 1977 on the Creation of an African Intellectual Property Organization (Bangui (Central African Republic), 24 February 1999)

(Refer to AFRICAN INTELLECTUAL PROPERTY ORGANIZATION (OAPI) below).

COSTA RICA

Article 16(3) of the Law No 6867 of 25 April 1983 on Patents, Industrial Designs and Utility Models (as amended up to Law No. 8686 of 21 November 2008)

16. Rights conferred by patents. Limitations.

[...]

3. Rights conferred by patents shall not be binding on any parties who, prior to the filing date or, as the case may be, the priority date of the application for the corresponding patent, were in the country producing the product or using the process of the invention. Moreover, such parties shall be entitled to continue producing the product or using the process. This right may only be assigned or transferred with the company or establishment which is producing the product or plans such production or use (Article amended by LAW No. 7979 of January 6, 2000, Article 2(d).

[...]

CÔTE D'IVOIRE

Article 8(1)(d) of the Agreement Revising the Bangui Agreement of 2 March 1977 on the Creation of an African Intellectual Property Organization (Bangui (Central African Republic), 24 February 1999)

(Refer to AFRICAN INTELLECTUAL PROPERTY ORGANIZATION (OAPI) below).

CROATIA

Article 64 of the Patent Act and Acts on Amendments to the Patent Act № 173/2003 of 1 January 2004, as amended by Act № 76/2013 of 29 June 2013

RIGHTS OF THE PRIOR USER

Article 64

(1) A patent shall have no effect against the person who had, prior to the filing date of the application or prior to the date of granted priority, exploited or manufactured, in good faith and within her/his economic activities, the product which is the subject-matter of the invention or, had made real and serious preparations for such exploitation of the invention in the Republic of Croatia.

(2) The person referred to in paragraph (1) of this Article shall have the right to proceed, without the patent owner's consent, with the exploitation of the invention to the extent to which she/he had exploited it or had prepared its exploitation up to the filing date of the application for the said invention.

(3) The right referred to in paragraph (2) of this Article may be transferred or inherited only with the working process and production plant in which the exploitation of the invention has been prepared or has started.

CYPRUS

Section 67 of the Patents Law of 1998

Authentic text of the European patent application and the European patent.

67.-(1) Where a translation into any of the official languages has been made in accordance with section 65 or section 66 of this Law, such translation shall be regarded as authentic if the European patent application or the European patent in its translated text does not confer more protection than that conferred by the application or patent in the language of the proceedings.

(2) However, a corrected translation may be filed at any time by the applicant for (or proprietor of) the patent. Such translation shall not have legal effect, however, until the requirements of section 65 or of section 66 have been satisfied.

(3) Any person who in good faith is using or has made effective and serious preparations for using an invention the use of which would not constitute infringement of the application or patent in the original translation may, after the corrected translation takes effect, continue such use in the course of his business or for the needs thereof without payment.

(4) Notwithstanding the provisions of subsections (1) to (3), of this section the language of the proceedings shall be authentic in revocation proceedings.

CZECH REPUBLIC

Section 17 of the Zákon č. 527/1990 Sb. ze dne 27. listopadu 1990 o vynálezech a zlepšovacích návrzích Zmena : 519/1991 Sb. (Změna: 378/2007 Sb.)

Limitation of effects of patent

Section 17

(1) A patent shall not have effect vis-à-vis a person (hereinafter referred to as "the prior user") who has already exploited the invention independently of the inventor or proprietor of the patent or who has made preparation therefore, that he can prove, before the priority right began (Section 27).

(2) In case of failure to reach agreement, the prior user shall be entitled to request a court that his right to be recognised by the proprietor of the patent.

DENMARK

Section 4 of the Bekendtgørelse af patentloven (LBK nr 90 af 29/01/2019)

4.-(1) Any person who, at the time when the patent application was filed, was exploiting the invention commercially in this country may, notwithstanding the grant of a patent, continue such exploitation retaining its general character, provided that the exploitation did not constitute an evident abuse in relation to the applicant or his legal predecessor. Such a right of exploitation shall also, under similar conditions, be enjoyed by any person who had made substantial preparations for commercial exploitation of the invention in this country.

(2) The right provided for in subsection 1 shall only be transferred to others together with the business in which it has arisen or in which the exploitation was intended.

DOMINICA

Section 34 of the Patents Act, 1999 (Act 8 of 1999)

Right to continue use begun before date of filing or priority

34. (1) Where a patent is granted for an invention, a person who before the date of filing of the patent application or, if priority was claimed, before the date of priority, does in good faith in

Dominica, an act which would constitute an infringement of the patent if it were then in force, or makes effective and serious preparations in good faith to do such an act, shall have the rights specified in subsection (2).

(2) The rights referred to in subsection (1) shall be the following, namely -

(a) to continue to do or, as the case may be, to do that act himself; and

(b) if the act was done or preparations had been made to do it in the course of a business -

(i) to assign the right under paragraph (a);

(ii) to transmit the right under paragraph (a) to his heirs on his death or, in the case of a body corporate, on its dissolution, to any person who acquires that part of the business in the course of which the act was done or preparations had been made to do it; or

(iii) to authorise the act to be done by any partners of his for the time being in that business, and the doing of that act by virtue of this subsection shall not amount to an infringement of the patent concerned.

(3) The rights specified in subsection (2) shall not include the right to grant a licence to any person to do an act referred to in subsection (1).

(4) Where a product which is the subject of a patent is disposed of by any person to another in exercise of a right conferred by subsection (2), that other and any person claiming through him shall be entitled to deal with the product in the same way as if it had been disposed of by a sole owner of the patent.

DOMINICAN REPUBLIC

Article 31 of the Law on Industrial Property

Article 31.- Right of the User Prior to the Invention

1) The rights conferred by a patent cannot be prevailed upon against a person who, in this country, in good faith and prior to the date of filing or, as the case may be, of priority of the corresponding patent application, was already in the country producing the product or using the procedure which constitutes the invention, or had made effective and serious preparations for carrying out such production or use.

2) That person shall have the right to continue producing the product or using the procedure as he had been doing, or to begin the production or use that he or she had foreseen intended. This right can only be assigned or transferred to the company or establishment in which such production or use was being carried out or was intended to be carried out.

3) The exception indicated in this article shall not be applicable if the person who desires to take advantage of it had acquired knowledge of the invention by an illegal act.

ECUADOR

Article 55 of the Decision No 486 of 14 September 2000 of the Commission of the Andean Community - Common Industrial Property Regime (Cartagena Agreement)

(Refer to ANDEAN Community below).

EGYPT

Article 10 (2) of the Law No. 82 of 2002 on the Protection of Intellectual Property Rights

Article 10

[...]

The following shall not be considered as infringements of that right when carried out by third parties:

[...]

(2) Where a third party proceeded, in Egypt, in good faith, with the making of a product or use of a process or made serious preparations for such activities prior to the date of an application for patent by another person for the same product or process. The former shall, notwithstanding the grant of patent, have the right to continue with such activities only within his enterprise and without extending the scope of those activities. Such right shall not be assigned or transferred without the other elements of the enterprise.

[...]

EL SALVADOR

Article 116 of the Ley de Propiedad Intelectual (modificada hasta el Decreto Legislativo N° 611, de 15 de febrero de 2017)

Art. 116.- Los efectos de la patente no se extienden:

[...]

Los derechos conferidos por la patente no podrán hacerse valer contra una persona que, con anterioridad a la fecha de presentación o, en su caso, de prioridad de la solicitud de patente correspondiente, ya se encontraba produciendo el producto o usando el procedimiento que constituye la invención de la República. Esa persona tendrá derecho de continuar produciendo el producto o empleando el procedimiento como venía haciéndolo, pero este derecho sólo podrá cederse o transferirse junto con el establecimiento o la empresa en que se estuviese realizando tal producción o empleo.

Esta excepción no será aplicable si la persona hubiera adquirido conocimiento de la invención por un acto de mala fe.

[...]

EQUATORIAL GUINEA

Article 8(1)(d) of the Agreement Revising the Bangui Agreement of 2 March 1977 on the Creation of an African Intellectual Property Organization (Bangui (Central African Republic), 24 February 1999)

(Refer to AFRICAN INTELLECTUAL PROPERTY ORGANIZATION (OAPI) below).

FINLAND

Section 4 of the Patents Act (Act No. 550/1967 of December 15, 1967, as amended up to Act No. 717/2016 of August 25, 2016)

4 §

Any person who, at the time the patent application was filed, was commercially exploiting the invention in this country may continue to do so, notwithstanding the grant of a patent, provided that the general nature of such previous exploitation is maintained and that the exploitation does not constitute an evident abuse in relation to the applicant or his predecessor in title. Such right of exploitation shall also be afforded, subject to the same conditions, to any person who has made substantial preparations for commercial exploitation of the invention in this country.

The right afforded under subsection (1) above can only be transferred to other parties together with the business in which it originated or in which exploitation was intended to take place.

FRANCE

Article L613-7 of the Code de la propriété intellectuelle (version consolidée au 24 octobre 2019)

Article L613-7

Toute personne qui, de bonne foi, à la date de dépôt ou de priorité d'un brevet, était, sur le territoire où le présent livre est applicable en possession de l'invention objet du brevet, a le droit, à titre personnel, d'exploiter l'invention malgré l'existence du brevet.

Le droit reconnu par le présent article ne peut être transmis qu'avec le fonds de commerce, l'entreprise ou la partie de l'entreprise auquel il est attaché.

GABON

Article 8(1)(d) of the Agreement Revising the Bangui Agreement of 2 March 1977 on the Creation of an African Intellectual Property Organization (Bangui (Central African Republic), 24 February 1999)

(Refer to AFRICAN INTELLECTUAL PROPERTY ORGANIZATION (OAPI) below).

GEORGIA

Article 53 Law of Georgia No. 1791 of February 5, 1999, on Patents (as amended up to Law No. 3235 of July 20, 2018)

ARTICLE 53. Right of Prior Use (4.05.2010. N3031 shall enter into force after 1 month from the publication, (LHG I, 24.05.2010 N27))

1. The right of prior use implies a right of a person to use an invention regardless of the effect of the patent, if such a person has been using the invention in good faith or conducted preparatory works for its use prior to the date of filing the patent application with Sakpatenti or the priority date. (2.07.2010 N 3278)
2. The right of prior use allows a third party to exploit an invention for a purpose and to such an extent with which he has already used it or for which he/she has made preparation works, prior to the date of filing the patent application with Sakpatenti or the priority date (2.07.2010 N 3278)
3. It shall be impermissible to issue a private license for the right of prior use.
4. The right of prior use can be transferred only together with such an enterprise, where the actions envisaged by Paragraph 2 of this Article were implemented.

GERMANY

Section 12 of the Patent Act (as amended up to Act of 8 October 2017)

Section 12

(1) The patent shall have no effect in respect of a person who, at the time the application was filed, had already begun to use the invention in Germany or had made the necessary arrangements for so doing. That person shall be entitled to use the invention for the needs of his own business in his own workshops or in the workshops of others. This entitlement may be inherited or sold only together with the business. Where the applicant or his legal predecessor has, before filing the application, disclosed the invention to others and, in so doing, has reserved his rights in the event of a patent being granted, a person learning of the invention as a result of this disclosure may not invoke measures referred to in the first sentence which he has taken within six months of the disclosure.

(2) If the proprietor of the patent is entitled to a right of priority, the earlier application shall be decisive and not the application referred to in subsection (1). However, this shall not apply to nationals of a foreign state which does not guarantee reciprocity in this respect if they claim priority of a foreign application.

GHANA

Section 11(4)(d) and (5) of the Patent Act, 2003 (Act 657)

[...]

(4) The rights under the patent shall not extend to

(d) acts performed by a person who in good faith, before the filing or, where priority is claimed, the priority date of the application on which the patent is granted in the country, was using the invention or was making effective and serious preparations for the use.

(5) The right of prior use referred to in paragraph (d) may be transferred or devolve only together with the enterprise or business, or with that part of the enterprise or business, in which the use or preparation for use has been made.

[...]

GREECE

Article 10(3) of the Law 1733/87 of 22 September 1987 on Technology Transfer, Inventions and Technological Innovation

Article 10
Contents of the right.

[...]

3. Whoever shall exploit his/her contrivance or has proceeded with the preparations required for said exploitation, at the time the application for a patent was filed by a third party or in accordance with the date of priority, shall have the right to go on using said contrivance for their enterprise and its needs. This right may be only assigned along with the enterprise.

GUINEA

Article 8(1)(d) of the Agreement Revising the Bangui Agreement of 2 March 1977 on the Creation of an African Intellectual Property Organization (Bangui (Central African Republic), 24 February 1999)

(Refer to AFRICAN INTELLECTUAL PROPERTY ORGANIZATION (OAPI) below).

GUINEA-BISSAU

Article 8(1)(d) of the Agreement Revising the Bangui Agreement of 2 March 1977 on the Creation of an African Intellectual Property Organization (Bangui (Central African Republic), 24 February 1999)

(Refer to AFRICAN INTELLECTUAL PROPERTY ORGANIZATION (OAPI) below).

HONDURAS

Article 19 of the Industrial Property Law (approved by Decree No. 12-99-E)

ARTICULO 19.- Los derechos conferidos por una patente no podrán hacerse valer contra una persona que pruebe que, con anterioridad a la fecha de presentación, o, en su caso, de prioridad de la solicitud de patente correspondiente, ya se encontraba produciendo el producto o usando el procedimiento que constituye la invención en el país.

Esa persona tendrá derecho de continuar produciendo el producto o empleando el procedimiento como venía haciéndolo, pero este derecho sólo podrá cederse o transferirse junto con el establecimiento o la empresa en que se estuviese realizando tal producción o empleo.

Esta excepción no será aplicable si la persona hubiese adquirido conocimiento de la intervención por acto de mala fe.

HUNGARY

Article 21 of the Act No XXXIII of 1995 on the Protection of Inventions by Patents (consolidated text of 17 June 2017)

Limitations of patent protection

Article 21

(1) A right of prior use shall belong to any person who, in good faith, before the date of priority, in the territory of the country and within the framework of his economic activities, had begun to make or use the subject matter of the invention or had made serious preparations for that purpose.

(2) A prior user shall be considered a bona fide user until it is proved that the prior use was based on the inventive activity that led to the patented product.

(3) Patent protection shall have no effect against a prior user in relation to the extent of making, using or preparation existing at the priority date. The right of prior use may only be transferred together with an entitled economic organization [Civil Code, Article 685(c)] or with that part of the economic organization in which such making, using or preparation has taken place.

(4) A right of continued use shall belong to any person who, in the period between a declaration of lapse of patent protection and restoration thereof, in the territory of the country and within the framework of his economic activities, has started to make or use the subject matter of the invention or has made serious preparations for that purpose. The provisions of paragraph (3) shall apply mutatis mutandis to the right of continued use.

[...]

ICELAND

Article 4 of the Patents Act No. 17/1991 (as amended up to Act No. 126/2011)

Article 4

Any person who, at the time when the application for a patent was filed, was using the invention commercially in this country may, notwithstanding the patent, continue such use while retaining its general character, provided the use does not constitute evident abuse in relation to the applicant or his predecessor in title. Such right of use shall also be due on corresponding conditions to any person who had made substantial preparations for commercial use of the invention in this country.

The right according to the preceding paragraph can only be transferred to others together with the business in which it originated or in which the use was intended to take place.

INDONESIA

Article 14 and 15 of the Law of the Republic of Indonesia No. 13 of July 28, 2016, on Patents

Pasal 14

(1) Pihak yang melaksanakan Invensi pada saat Invensi yang sama diajukan Permohonan, tetap berhak melaksanakan Invensinya walaupun terhadap Invensi yang sama tersebut kemudian diberi Paten.

(2) Pihak yang melaksanakan suatu Invensi sebagaimana dimaksud pada ayat (1) diakui sebagai pemakai terdahulu.

(3) Ketentuan sebagaimana dimaksud pada ayat (1) tidak berlaku jika pihak yang melaksanakan Invensi sebagai pemakai terdahulu menggunakan pengetahuan tentang Invensi tersebut berdasarkan uraian, gambar, contoh, atau klaim dari Invensi yang dimohonkan Paten.

Pasal 15

(1) Pihak yang melaksanakan suatu Invensi sebagaimana dimaksud dalam Pasal 14 hanya dapat diakui sebagai pemakai terdahulu jika setelah diberikan paten terhadap Invensi yang sama, ia mengajukan permohonan sebagai pemakai terdahulu kepada Menteri.

(2) Pengakuan sebagai pemakai terdahulu diberikan oleh Menteri dalam bentuk surat keterangan pemakai terdahulu setelah memenuhi persyaratan dan membayar biaya.

(3) Hak pemakai terdahulu berakhir pada saat berakhirnya Paten atas Invensi yang sama tersebut.

IRELAND

Section 55 of the Patents Act, 1992

Right to continue use begun before date of filing or priority

55.—(1) Where a patent is granted for an invention, a person who in the State before the date of filing of the patent application or, if priority was claimed, before the date of priority, does in good faith an act which would constitute an infringement of the patent if it were then in force, or makes in good faith effective and serious preparations to do such an act, shall have the rights specified in *subsection (2)*.

(2) The rights referred to in *subsection (1)* are the following:

(a) the right to continue to do or, as the case may be, to do the act referred to in *subsection (1)*,

(b) if such act was done or preparations had been made to do it in the course of a business—

(i) in the case of an individual—

(I) the right to assign the right to do it or to transmit such right on death, or

(II) the right to authorize the doing of the act by any of his partners for the time being in the business in the course of which the act was done or preparations had been made to do it;

(ii) in the case of a body corporate, the right to assign the right to do it or to transmit such right on the body's dissolution;

and the doing of that act by virtue of this subsection shall not amount to an infringement of the patent concerned.

(3) The rights specified in *subsection (2)* shall not include the right to grant a licence to any person to do an act referred to in *subsection (1)*

(4) Where a product which is the subject of a patent is disposed of by any person to another in exercise of a right conferred by *subsection (2)*, that other and any person claiming through him shall be entitled to deal with the product in the same way as if it had been disposed of by a sole proprietor of the patent.

ISRAEL

Sections 53 and 54 of the Patent Law, 5727-1967 (consolidated version of 2014)

Right based on prior exploitation (amendment no. 2) 1995

53. Any person, who would have exploited on the determining date, in good faith, in Israel, the invention for which the patent is sought, or if he in good faith made actual preparations towards exploitation, then he shall be entitled to exploit the invention himself and in the course of his business without consideration; for the purpose of this provision, the "determining date" is the date on which application for the patent was submitted in Israel or – if priority right under section 10 is claimed for such application – the filing date of the previous application whereon the claim for priority right relies.

Transfer of exploitation right

54. The right under section 53 shall not be transferred, devolved or transmitted by inheritance, except along with such business as such invention was used therein.

ITALY

Article 57(5) of the Industrial Property Code (Legislative Decree № 30 of 10 February 2005, as amended up to Legislative Decree № 63 of 11 May, 2018)

57. Applicable text of the European application or patent.

[...]

5. Whoever has in good faith begun to implement an invention in Italy or has performed actual preparations for this purpose without that implementation constituting infringement of the application or patent in the text of the translation initially filed, may continue without charge the exploitation of the invention in his business activity or for the needs of the same even after the corrected translation has entered into effect.

JAPAN

Article 79 of the Patent Act (Act No. 121 of April 13, 1959, as amended up to July 1, 2019)

Article 79 A person who, without knowledge of the content of an invention claimed in a patent application, made an invention identical to the said invention, or a person who, without knowledge of the content of an invention claimed in a patent application, learned the invention from a person

who made an invention identical to the said invention and has been working the invention or preparing for the working of the invention in Japan at the time of the filing of the patent application, shall have a non-exclusive license on the patent right, only to the extent of the invention and the purpose of such business worked or prepared.

KAZAKHSTAN

Article 13 of the Law on Patents of the Republic of Kazakhstan No. 427-I of July 16, 1999 (as amended up to Law of the Republic of Kazakhstan No. 378-V of October 31, 2015)

Article 13. The Right to Prior Use and Temporary Legal Protection

1. A person who prior to the industrial property object priority date used in the territory of the Republic of Kazakhstan in good faith a solution identical to the industrial property object independently of its author, or who made preparations required therefor, shall retain the right to its charge-free use without expanding the scope of such use (prior use right).

The right to prior use may be assigned to another person only together with the production on which the use of similar decision took place or preparations necessary for it have been made.

2. A person who began to use the object of industrial property after the date of priority but before the date of publication of information on the issue of patent for an invention, industrial design or utility model shall be obliged, pursuant to the demand of the patentee, to terminate its further use. However, such a person shall not be obliged to reimburse to the patentee the losses incurred by him as a result of such use.

[...]

KENYA

Section 56 of the Industrial Property Act No 3 of 27 July 2001 (as amended up to Act No 11 of 2017)

56. Right of a prior user

(1) Notwithstanding the provisions of section 54, a prior user patent shall have no effect against any person (hereinafter referred to as “the prior user”) who, in good faith, for the purposes of his enterprise or business, before the filing date or, where priority is claimed, the priority date of the application on which the patent is granted, and within the territory where the patent produces its effect, was using the invention or was making effective and serious preparations for such use; any such person shall have the right, for the purposes of his enterprise or business, to continue such use or to use the invention as envisaged in such preparations.

(2) The right of the prior user may only be transferred or devolve together with his enterprise or business, or with that part of his enterprise or business in which the use or preparations for use have been made.

KYRGYZ REPUBLIC

Article 14 of the Law of the Kyrgyz Republic No. 8 of January 14, 1998, on Patents (as amended up to Law No. 55 of May 26, 2018)

Article 14. The Right of Prior Use and Provisional Legal Protection

Any natural person or a legal entity who before the date of priority of an object of industrial property, regardless from the author, has created and used on the territory of the Kyrgyz Republic a solution similar to the object of an industrial property or made the required preparations shall keep the right to use it free of charge without enlarging the scope of such use.

The right of prior use may be assigned to another natural person or legal entity but together with the production where the use of identical solution has taken place or the required preparations has been made for that purpose.

[...]

LATVIA

Section 22 of the Patent Law (as amended up to January 1, 2016)

Section 22. Right of Prior Use

(1) A person, who has utilised in good faith the invention for commercial purposes or carried out the necessary preparatory works for such a utilisation in the territory of Latvia prior to the filing date or the priority date of the patented invention, is entitled to utilise this invention further on for commercial purposes to the extent planned during the period of preparatory works without any hindrance and without paying a remuneration to the owner of the patent.

(2) The right of prior use may be transferred to another person only together with the undertaking or a part of the undertaking in which the invention has been utilised within the meaning of Paragraph one of this Section.

LIECHTENSTEIN

Article 29 of the Bundesgesetz über Erfindungspatente (Schweiz)

A. Abtretungsklage

I. Voraussetzungen und Wirkung gegenüber Dritten

Art. 29

1 Ist das Patentgesuch von einem Bewerber eingereicht worden, der gemäss Artikel 3 kein Recht auf das Patent hat, so kann der Berechtigte auf Abtretung des Patentgesuches oder, wenn das Patent bereits erteilt worden ist, entweder auf Abtretung oder auf Erklärung der Nichtigkeit des Patentess klagen.

2 [...]

3 Wird die Abtretung verfügt, so fallen die inzwischen Dritten eingeräumten Lizenzen oder andern Rechte dahin; diese Dritten haben jedoch, wenn sie bereits in gutem Glauben die Erfindung im Inland

gewerbsmässig benützt oder besondere Veranstaltungen dazu getroffen haben, Anspruch auf Erteilung einer nicht ausschliesslichen Lizenz.

4 Vorbehalten bleiben alle Schadenersatzansprüche.

5 Artikel 40e ist entsprechend anwendbar.

LITHUANIA

Article 40 of the Patent Law No. I-372 of January 18, 1994 (as amended up to Law No. XIII-548 of June 29, 2017)

40 straipsnis. Pirmalaikio naudojimo teisė

1. Asmenys, kurie naudojo arba visiškai pasirengė naudoti išradimą iki patento paraiškos padavimo datos, o kai prašoma suteikti prioritetą, – iki patento paraiškos prioriteto datos, neatsižvelgdami į patento savininko valią, gali išradimą naudoti taip, kaip naudojo ar numatė naudoti pasirengimo metu.

2. Pirmalaikio naudojimo teisė gali būti perduota tik kartu su įmone ar jos veikla arba su ta įmonės ar jos veiklos dalimi, kurioje išradimas buvo panaudotas arba rengiamasi jį naudoti.

LUXEMBOURG

Article 50 (1) of the Law of July 20, 1992 on the Changes in the System for Patents for Invention (as amended by the Law of May 24, 1998)

50. Rights Deriving from Prior Use or Personal Possession

(1) Any person who, in good faith, at the filing date or priority date of a patent application, possessed in Luxembourg a justified right in the prior use of the invention that is the subject matter of the patent granted as a result of such application or a right of personal possession in such invention shall be entitled to exploit the invention, for personal use, despite the existence of the patent.

[...]

MADAGASCAR

Section 31 of the Ordinance No. 89-019 of July 31, 1989, establishing Arrangements for the Protection of Industrial Property

31. Anyone who, on the national territory, at the filing date of the application for a patent or an inventor's certificate by another person, or at the date of priority validly claimed for such application, was, in good faith, manufacturing the product or using the process, shall have the right, despite the patent or inventor's certificate, to continue carrying out such acts and, with regard to the products thus manufactured, carrying out the other acts referred to in Article 27.

MALAYSIA

Section 38 of the Patents Act 1983 (Act 291, as amended up to Act A1264)

Section 38. Rights derived from prior manufacture or use.

(1) Where a person at the priority date of the patent application -

(a) was in good faith in Malaysia making the product or using the process which is the subject of the invention claimed in the application;

(b) had in good faith in Malaysia made serious preparations towards the making of the product or using the process referred to in paragraph (a),

he shall have the right, despite the grant of the patent, to exploit the patented invention:

Provided that the product in question is made, or the process in question is used, by the said person in Malaysia:

Provided further that he can prove, if the invention was disclosed under the circumstances referred to in paragraphs 14(3)(a), (b) or (c) that his knowledge of the invention was not a result of such disclosure.

(2) The right referred to in subsection (1) shall not be assigned or transmitted except as part of the business of the person concerned.

MALI

Article 8(1)(d) of the Agreement Revising the Bangui Agreement of 2 March 1977 on the Creation of an African Intellectual Property Organization (Bangui (Central African Republic), 24 February 1999)

(Refer to AFRICAN INTELLECTUAL PROPERTY ORGANIZATION (OAPI) below).

MALTA

Article 29 of the Patents and Designs Act (Chapter 417)

Prior user.

29. (1) A patent shall have no effect against any person who in good faith, for the purposes of his enterprise or business, before the filing date, or, where priority is claimed, before the priority date of the application on which the patent is granted, and within Malta was using the invention or was making effective and serious preparations for such use. Any such person shall have the right, for the

purposes of his enterprise or business, to continue such use or to use the invention as envisaged in such preparations.

(2) The right of the prior user may only be transferred or may only devolve together with his enterprise or business, or with that part of his enterprise or business in which the use or preparations for use have been made.

MAURITANIA

Article 8(1)(d) of the Agreement Revising the Bangui Agreement of 2 March 1977 on the Creation of an African Intellectual Property Organization (Bangui (Central African Republic), 24 February 1999)

(Refer to AFRICAN INTELLECTUAL PROPERTY ORGANIZATION (OAPI) below).

MAURITIUS

Section 21(4)(e) and (5) of the Patents, Industrial Designs and Trademarks Act of 8 August 2002

21. Rights conferred by patent.

[...]

(4). Any right under the patent shall not extend –

[...]

(e) to acts performed by any person who in good faith, before the filing or, where priority is claimed, the priority date of the application on which the patent is granted and in Mauritius, was using the invention or was making effective and serious preparations for such use.

(5) The right of any prior use referred to in subsection (4) may only be transferred to or devolve upon the enterprise or business, or with that part of the enterprise or business, in which the use or preparations for use have been made.

MEXICO

Article 22(III) of the Law on Industrial Property (consolidated text published in the Official Journal of the Federation on 18 May 2018)

Artículo 22.- El derecho que confiere una patente no producirá efecto alguno contra:

[...]

III.- Cualquier persona que, con anterioridad a la fecha de presentación de la solicitud de patente o, en su caso, de prioridad reconocida, utilice el proceso patentado, fabrique el producto patentado o hubiere iniciado los preparativos necesarios para llevar a cabo tal utilización o fabricación;

[...]

La realización de cualquier actividad contemplada en el presente artículo no constituirá infracción administrativa o delito en los términos de ésta Ley.

MONTENEGRO

Article 55(g) of the Law on Patents (Official Gazette of Montenegro, No. 42/2015)

Right of the Prior User

Article 55

(1) A patent shall have no effect against the person acting in good faith who had, prior to the date of granted priority, already started exploiting a protected invention in production in the territory of Montenegro, or has made all necessary preparations to initiate such use.

(2) The person referred to in paragraph 1 of this Article shall be entitled to continue exploiting the invention exclusively for production purposes, in his own plant or in the plant of another person for his own needs.

(3) The person referred to in paragraph 1 of this Article cannot transfer his right to exploitation of the invention to another person, except together with the company or part thereof, where the preparation for use or the use of the invention has taken place.

MOROCCO

Article 55(g) of the Law No 17-97 on the Protection of Industrial Property (as amended by Laws No 31-05 and No 23-13)

Article 55

Les droits conférés par le brevet ne s'étendent pas:

[...]

g. aux actes effectués par toute personne qui, de bonne foi, à la date de dépôt de la demande ou, lorsqu'une priorité est revendiquée, à la date de priorité de la demande sur la base de laquelle le brevet est délivré sur le territoire du Maroc, utilisait l'invention ou faisait des préparatifs effectifs et sérieux pour l'utiliser, dans la mesure où ces actes ne diffèrent pas, dans leur nature ou leur finalité, de l'utilisation antérieure effective ou envisagée. Le droit de l'utilisateur antérieur ne peut être transféré qu'avec l'entreprise à laquelle il est attaché.

MOZAMBIQUE

Article 76 of the Industrial Property Code (approved by Decree No. 47/2015 of December 31, 2015)

Rights of prior use

1. Any person who in good faith, at the date of filing of the application or the date of priority was using the invention or was making effective and serious preparations for its manufacture or for the use of the process of the invention claimed in a patent application, has the right to exploit the patented invention.

2. The right referred to herein may only be transferred together with the enterprise or company in which the preparatory acts or use of the product or process subject to the patent were carried out.

NETHERLANDS

Article 55 of the Patent Act 1995 (Act of December 15, 1994, containing Rules Relating to Patents)

Artikel 55

1. Degene, die datgene waarvoor door een ander een octrooi is gevraagd, in Nederland of de Nederlandse Antillen reeds in of voor zijn bedrijf vervaardigde of toepaste of aan zijn voornemen tot zodanige vervaardiging of toepassing een begin van uitvoering had gegeven op de dag van indiening van die aanvraag of, indien de aanvrager een recht van voorrang geniet ingevolge artikel 9, eerste lid, dan wel ingevolge artikel 87 van het Europees Octrooiverdrag, op de dag van indiening van de aanvraag, waarop het recht van voorrang berust, blijft niettegenstaande het octrooi, als voorgebruiker bevoegd de in artikel 53, eerste lid, bedoelde handelingen te verrichten, tenzij hij zijn wetenschap ontleend heeft aan hetgeen reeds door de octrooiaanvrager vervaardigd of toegepast werd, of wel aan beschrijvingen, tekeningen of modellen van de octrooiaanvrager.

2. Het eerste lid is van overeenkomstige toepassing ten aanzien van dat deel van het aan Nederland of de Nederlandse Antillen grenzende continentaal plat, waarop het Koninkrijk soevereine rechten heeft, doch uitsluitend voor zover het handelingen betreft, gericht op en verricht tijdens het onderzoek naar de aanwezigheid van natuurlijke rijkdommen of het winnen daarvan.

3. Degene, die te goeder trouw datgene waarvoor aan een ander een Europees octrooi is verleend, reeds in of voor zijn bedrijf vervaardigde of toepaste of aan zijn voornemen tot zodanige vervaardiging of toepassing een begin van uitvoering had gegeven voor de datum waarop van een verbeterde vertaling als bedoeld in artikel 52, zevende lid, aantekening is gedaan in het octrooiregister, blijft niettegenstaande het octrooi bevoegd de in artikel 53, eerste lid, bedoelde handelingen te verrichten, voor zover deze handelingen geen inbreuk maken op het uitsluitend recht van de octrooihouder, welk recht in dit geval bepaald wordt door de inhoud van de conclusies van het octrooischrift en de voor de uitleg daarvan bedoelde beschrijving en tekeningen in de eerdere, gebrekkige vertaling in het Nederlands.

4. De in het eerste en het derde lid bedoelde bevoegdheden gaan alleen met het bedrijf op anderen over.

NEW ZEALAND

Section 146 of the Patents Act 2013 (reprint as at 16 September 2017)

146 No infringement for prior use of invention

(1) It is not an infringement of a patent for a person to do an act that exploits an invention, and that would infringe a patent apart from this section, if, immediately before the priority date of the relevant claim, the person—

- (a) was exploiting the invention in the patent area; or
- (b) had taken definite steps (contractually or otherwise) to exploit the invention in the patent area.

(2) Subsection (1) does not apply if, before the priority date, the person—

- (a) had stopped (except temporarily) exploiting the invention; or
- (b) had abandoned (except temporarily) the steps to exploit the invention.

(3) Subsection (1) does not apply to an invention the person derived from any of the following persons, unless the person derived the invention from information that was made publicly available by or with the consent of that person:

- (a) the patentee or nominated person;
- (b) any person from whom the patentee or nominated person derives title.

(4) A person (A)—

- (a) may dispose of the whole of A's entitlement under subsection (1) to exploit an invention without infringing a patent to another person (B) (and in this case subsections (1) to (3) apply to B as they applied to the first person who had that entitlement and from whom B's entitlement was directly or indirectly derived); but
- (b) may not license any or all of A's entitlement under subsection (1) to another person.

(5) This section applies in respect of a patent only if—

- (a) the relevant patent application was made under this Act on or after the commencement of Part 3 (and section 258 did not apply); or
- (b) this Act applies to the relevant patent application under section 256, 257, or 259(4).

NICARAGUA

Article 48 of the Law on Patents, Utility Models and Industrial Designs (No. 354 of 2000)

Rights of the Prior User of the Invention

48. The rights conferred by a patent may not be asserted against a person who in good faith, prior to the filing date or where applicable the priority date of the corresponding patent application, was already manufacturing the product or using the process constituting the invention in the country, or had made genuine and effective preparations for such manufacture or use. That person shall have the right to continue to manufacture the product or use the process as before, or to start the manufacture or use that he had planned. That right may only be assigned or transferred together with the business or establishment in which the manufacture or use was taking place or intended to take place.

The exception provided for in this Article shall not be applicable where the person wishing to avail himself of it obtained knowledge of the invention through an unlawful act.

NIGER

Article 8(1)(d) of the Agreement Revising the Bangui Agreement of 2 March 1977 on the Creation of an African Intellectual Property Organization (Bangui (Central African Republic), 24 February 1999)

(Refer to AFRICAN INTELLECTUAL PROPERTY ORGANIZATION (OAPI) below).

NIGERIA

Section 6(4)(b) of the Patents and Designs Act of 1971 (Chapter 344)

6.

[...]

(4) Where, at the date of the filing of a patent application in respect of a product or process or at the date of a foreign priority validly claimed in respect of the application, a person other than the applicant-

[...]

(b) in good faith and for the purposes of the undertaking, was manufacturing the product or applying the process or had made serious preparations with a view to doing so, then, notwithstanding the grant of a patent, there shall exist a right (exercisable by the person for the time being conducting the undertaking, and not otherwise) to continue the manufacture or application, or to continue and complete the preparations and thereafter undertake the manufacture or application, as the case may be, and in respect of any resulting products to do any other act mentioned in subsection (1) of this section.

[...]

NORTH MACEDONIA

Article 94 of the Law on Industrial Property

Right based on previous use

Article 94

(1) The patent right shall not apply on the person, which prior to the filing date of the application or prior to the date of the recognised priority right, has used the invention conscientiously and not in public in the Republic of Macedonia, or has prepared everything i.e. necessary for its use.

(2) The person referred to in paragraph (1) of this Article shall have the right, without a consent by the holder of the patent, to continue the utilisation of the invention to the extent it has utilised or prepared until the date of filing the patent application for the requested invention.

NORWAY

Section 4 of the Patents Act (Act No 9 of 15 December 1967) (consolidated version of 2018)

Section 4. Anyone who, at the time when the patent application was filed, was exploiting the invention commercially in this country, may, notwithstanding the patent, continue the exploitation, whilst retaining its general character, provided that the exploitation does not constitute an evident

abuse in relation to the applicant or his predecessor in title. Such right of exploitation shall also, on similar conditions, be enjoyed by anyone who had made substantial preparations for commercial exploitation of the invention in this country.

The right provided for in the first paragraph may only be transferred to others in conjunction with the enterprise in which it has arisen or in which the exploitation was intended.

OMAN

Article 11(4)(D) of the Industrial Property Rights Law (promulgated by the Royal Decree No. 67/2008)

Article (11):

[...]

4 - The rights under the patent shall not extend:

[...]

D) to acts performed by any person who in good faith, before the filing or, where priority is claimed, was using the invention or was making effective and serious preparations for such use in Oman (the "prior user"); Other than that this exception does not apply

[...]

PAKISTAN

Section 30(5)(d) of the Patents Ordinance No LXI of 2 December 2000

30. Rights conferred by patent.

[...]

(5) The rights under the patent shall not extend to:

[...]

(d) acts performed by any person who in good faith, before the filling or, where priority is claimed, the priority date of the application on which the patent is granted in Pakistan, was using the invention or was making effective and serious preparations for such use; or

[...]

(6) The right of prior user referred to in clause (d) of sub-section (5), may be transferred or devolve only together with the enterprise or business, or with that part of the enterprise or business, in which the use of preparations for use have been made.

PAPUA NEW GUINEA

Section 29 of the Patents and Industrial Designs Act 2000

29. RIGHTS CONFERRED BY A PATENT.

[...]

(4) The rights of an owner of a patent shall not extend to –

(d) acts performed by any person who in good faith, before the filing of an application under Section 19 or, where priority is claimed, the priority date of the application on which the patent is granted, was exploiting the invention or was making effective and serious preparations for such exploitation in Papua New Guinea; or

[...]

(5) The right of prior user referred to in Subsection (4) (d) may be transferred or devolved only together with the enterprise or business, or with that part of the enterprise or business, in which the exploitation or preparations for exploitation of the invention have been made.

PARAGUAY

Article 34 of the decision Nº 486 of 14 September 2000 of the Commission of the Andean Community

Artículo 34.- De las limitaciones al derecho de patente y agotamiento del derecho.

La patente no dará el derecho de impedir:

[...]

e) los actos realizados por una persona que de buena fe y con anterioridad a la fecha de presentación o, en su caso, de prioridad de la solicitud de patente correspondiente, ya se encontraba en el país produciendo el producto o usando públicamente el procedimiento que constituye la invención, o había efectuado preparativos para realizar tal producción o uso.

PERU

Article 55 of the Decision Nº 486 of 14 September 2000 of the Commission of the Andean Community - Common Industrial Property Regime (Cartagena Agreement)

(Refer to ANDEAN Community below).

PHILIPPINES

Section 73 of the Intellectual Property Code of the Philippines (Republic Act No. 8293)

SEC. 73. Prior User. - 73.1. Notwithstanding Section 72 hereof, any prior user, who, in good faith was using the invention or has undertaken serious preparations to use the invention in his enterprise or

business, before the filing date or priority date of the application on which a patent is granted, shall have the right to continue the use thereof as envisaged in such preparations within the territory where the patent produces its effect.

73.2. The right of the prior user may only be transferred or assigned together with his enterprise or business, or with that part of his enterprise or business in which the use or preparations for use have been made. (Sec. 40, R.A. No. 165a)

POLAND

Article 71 of the Act of 30 June 2000 on Industrial Property (as amended up to Act of 24 July 2015)

Article 71

1. Any person who, at the date according to which the priority for the grant of a patent is determined, exploited the invention in the territory of the Republic of Poland in good faith, may continue to exploit it in his enterprise free of payment to the extent to which he had previously exploited the invention. This right shall also belong to a person who at the same date had already made substantial preparations for the exploitation of the invention.

2. The rights referred to in paragraph (1) shall, at the request of the person concerned, be recorded in the Patent Register. The rights may be transferred to another party only together with the enterprise.

PORTUGAL

Article 105 of the Industrial Property Code (approved by Decree-Law No. 110/2018 of December 10, 2018)

Artigo 105.º

Inoponibilidade

1 — Os direitos conferidos pela patente não são oponíveis, no território nacional e antes da data do pedido, ou da data da prioridade quando esta é reivindicada, a quem, de boa-fé, tenha chegado pelos seus próprios meios ao conhecimento da invenção e a utilizava ou fazia preparativos efetivos e sérios com vista a tal utilização.

2 — O previsto no número anterior não se aplica quando o conhecimento resulta de atos ilícitos, ou contra os bons costumes, praticados contra o titular da patente.

3 — O ónus da prova cabe a quem invocar as situações previstas no n.º 1.

4 — A utilização anterior, ou os preparativos desta, baseados nas informações referidas na alínea a) do n.º 1 do artigo 56.º, não prejudicam a boa-fé.

5 — Nos casos previstos no n.º 1, o beneficiário tem o direito de prosseguir, ou iniciar, a utilização da invenção, na medida do conhecimento anterior, para os fins da própria empresa, mas só pode transmiti-lo conjuntamente com o estabelecimento comercial em que se procede à referida utilização.

QATAR

Article 10 of the Decree-Law No. 30 of the year 2006 issuing Patents Law

Article 10

Whoever manufactures the patented product uses the patent subject technique or undertakes serious arrangements for such manufacturing or usage within the State before the registration or priority date shall be allowed to carry on such action on the basis of good faith. Such right shall not be assigned or transferred to others except with the other parts of the enterprise.

REPUBLIC OF KOREA

Article 103 of the Patent Act No 950 of 31 December 1961 (as amended up to Act No 14112 of 29 March 2016)

Article 103 (Non-Exclusive Licenses Based on Prior Use)

A person who has created the same invention as a patent claimed in an application filed for registration of the patent without prior knowledge of the invention claimed in the patent application, or who has become aware of such patent from the person who had created it before the patent application was filed, and commercially or industrially executes, or prepares to execute, the patent within the Republic of Korea shall be granted a non-exclusive license of the patent on the invention claimed in the patent application within the scope of objectives of the invention that the person executes or prepares to execute and of the business. [This Article Wholly Amended by Act No. 12753, Jun. 11, 2014]

REPUBLIC OF MOLDOVA

Article 25 of the Law No 50-XVI of 7 March 2008 on the protection of Inventions (as amended up to Law No 101 of 26 May 2016)

Article 25. Right of Prior User of Invention

(1) Any person who in good faith, before the filing date, or, where priority is claimed, the priority date of the application on which the patent is granted and within the territory of the Republic of Moldova was using the invention or was making effective and serious preparations for such use, shall be personally entitled, for the purposes of his enterprise or business, to continue such use or to use the invention within the limits and/or scope envisaged in such preparations, without having to pay a royalty and on condition that he does not extend its scope.

(2) The right of prior user referred to in paragraph (1) may only be transferred during the user's lifetime or by hereditary or testamentary succession together with his enterprise or business, or with that part of his enterprise or business in which the use or preparations for use have been made.

ROMANIA

Article 33(1) Law No. 64/1991 on Patents (as amended up to Law No. 83/2014)

Art. 33 - (1) The following acts shall not constitute infringements of the rights provided in Art. 31 and Art. 32:

[...]

b) performing any of the acts referred to in Art. 31, paragraph (2) by a person who has applied the subject-matter of the patent or that of the patent application, as published, or has taken real and effective steps towards producing or exploiting said subject-matter in good faith on the territory of Romania, independently of the owner of the patent, and before the regular national filing concerning the invention has been effected or before the date on which the recognized priority period starts running; in that case the invention may continue to be exploited by that person to the same extent as on the date of the regular national filing or recognized priority, but the right of use may not be transferred otherwise than with the assets of that person or the part of the said assets assigned to the exploitation of the invention;

[...]

RUSSIAN FEDERATION

Article 1361 of the Civil Code of the Russian Federation (Part IV).

Article 1361. The Right of Prior Use of an Invention, Utility Model or Industrial Design

1. A person that prior to the priority date of an invention, utility model or industrial design (Articles 1381 and 1382) had been properly using on the territory of the Russian Federation an identical solution created independently of the author or had made the necessary preparations for this shall retain the right of further free use of the identical solution without broadening the scope of the use (the right of prior use).

2. The right of prior use may be assigned to another person only with the enterprise in which the use of the identical solution took place or the necessary preparations were made for it.

SAINT LUCIA

Section 67 of the Patents Act 2001

Right to continue use begun before priority date

67.— (1) Where a patent is granted for an invention, a person who is in Saint Lucia before the priority date of the invention —

(a) does in good faith an act which would constitute an infringement of the patent if it were in force; or

(b) makes in good faith effective and serious preparations to do such an act; has the right to continue to do the act or, as the case may be, to do the act, notwithstanding the grant of the patent, but this right does not extend to granting a licence to another person to do the act.

(2) If the act was done, or the preparations were made, in the course of a business, the person entitled to the right conferred by subsection (1) may —

(a) authorise the doing of that act by any of his or her partners for the time being in that business; and

(b) assign that right, or transmit it on death, or in the case of a body corporate on its dissolution, to any person who acquires that part of the business in the course of which the act was done or the preparations were made.

(3) Where a product is disposed of to another in exercise of the rights conferred by subsection (1) and (2), that other and any person claiming through him or her may deal with the product in the same way as if it had been disposed of by the registered proprietor of the patent.

SAO TOME AND PRINCIPE

Article 108 of the Intellectual Property Code (approved by Decree-Law No. 23/2016)

ARTICLE 108

UNENFORCEABILITY

1. The rights conferred by the patent shall not be enforceable on national territory and before the date of application or the date of priority, when same is claimed, against anyone who, in good faith, gained knowledge by his own means of the invention and used it or made actual and serious preparations for such use.

2. The provisions of the preceding paragraph shall not apply where the knowledge results from unlawful acts, or acts against morality, practiced against the proprietor of the patent.

3. The burden of proof rests on those who invoke the situations referred to in paragraph 1.

4. Prior use, or preparations for same based on the information referred to in paragraph 3a) of Article 61(2), shall not preclude good-faith.

5. In the cases referred to in paragraph 1, the beneficiary has the right to continue or start to use the invention to the extent of his prior knowledge, for the purposes of the company itself, but may only transfer it together with the commercial establishment in which such use is taking place.

SAUDI ARABIA

Article 20 of the Law of Patents, Layout-Designs of Integrated Circuits, Plant Varieties, and Industrial Designs (promulgated by Royal Decree No. M/27 of 29/5/1425H (July 17, 2004))

Article Twenty:

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.

SENEGAL

Article 8(1)(d) of the Agreement Revising the Bangui Agreement of 2 March 1977 on the Creation of an African Intellectual Property Organization (Bangui (Central African Republic), 24 February 1999)

(Refer to AFRICAN INTELLECTUAL PROPERTY ORGANIZATION (OAPI) below).

SERBIA

Article 23 of the Law on Patents of 4 January 2012 (Official Gazette of the Republic of Serbia No 99/2011)

The Right of Prior User

Article 23

A patent or petty patent shall have no effect against a person acting in good faith who has, before the date of priority, already started exploiting a protected invention in production in the territory of the Republic of Serbia, or has made all necessary preparations to initiate such use.

The person referred to in paragraph 1 of this Article shall be entitled to continue exploiting the invention exclusively for production purposes, in his own plant or in the plant of another person for his own needs.

The person referred to in paragraph 1 of this Article cannot assign his right to exploitation of the invention to another person, except together with the enterprise or part of the enterprise in which the preparation for use or the use of the invention has taken place.

SINGAPORE

Section 71 of Patents Act (Chapter 221) (Revised Edition 2005, as amended up to the Patents (Amendments) Act 2017)

Right to continue use begun before priority date

71.—(1) Where a patent is granted for an invention, a person who in Singapore before the priority date of the invention —

- (a) does in good faith an act which would constitute an infringement of the patent if it were in force; or
- (b) makes in good faith effective and serious preparations to do such an act, has the right to continue to do the act or, as the case may be, to do the act, notwithstanding the grant of the patent.

(2) The right conferred by subsection (1) shall not extend to granting a licence to another person to do the act.

(3) If the act was done, or the preparations were made, in the course of a business, the person entitled to the right conferred by subsection (1) may —

- (a) authorise the doing of that act by any partner of his for the time being in that business; and
- (b) assign that right, or transmit it on death (or in the case of a body corporate on its dissolution) to any person who acquires that part of the business in the course of which the act was done or the preparations were made.

(4) Where a product is disposed of to another in exercise of the rights conferred by subsection (1) or (3), that other and any person claiming through him may deal with the product in the same way as if it had been disposed of by the registered proprietor of the patent.

SLOVAK REPUBLIC

Article 17 of the Act No 435/2001 Coll. on Patents, Supplementary Protection Certificates and on Amendment of Some Acts [Patent Act (as amended up to Act No 125/2016 Coll.)]

Limitation to effects of a patent

Article 17

(1) Right of a patent owner shall not be exercised in respect of a person who, prior to the priority date of the invention (Article 36) in good faith and independently from inventor or owner of the patent, had already begun to use an invention on the territory of the Slovak Republic or had made demonstrable preparation (hereinafter referred to as "prior user"). In case of doubt, prior user doing shall be considered as doing in good faith unless proved otherwise.

(2) Assignment or transfer of prior user rights to use an invention pursuant to paragraph 1 shall be possible exclusively as a part of assignment or transfer of the business or part of the business in the course of which an invention is being used.

SPAIN

Article 63 of the Law No 24/2015 of 24 July 2015 on Patents

Artículo 63. Derechos derivados de la utilización anterior.

1. El titular de una patente no tiene derecho a impedir que quienes de buena fe y con anterioridad a la fecha de prioridad de la patente hubiesen venido explotando en España lo que resulte constituir el objeto de la misma, o hubiesen hecho preparativos serios y efectivos para explotar dicho objeto, prosigan o inicien su explotación en la misma forma en que la venían realizando hasta entonces o para la que habían hecho los preparativos y en la medida adecuada para atender a las necesidades razonables de su empresa. Los derechos de explotación solo son transmisibles juntamente con las empresas que los vengán ejerciendo.

2. Los derechos conferidos por la patente no se extienden a los actos relativos a un producto amparado por ella después de que ese producto haya sido puesto en el comercio por la persona que disfruta del derecho de explotación establecido en el apartado anterior.

SRI LANKA

Section 87 of the Intellectual Property Act No 36 of 2003

Rights derived from prior manufacture or use.

87. (1) Where a person at the filing date or, where applicable, the priority date, of the patent application—

(a) was in good faith making the product or using the process in Sri Lanka which is the subject of the invention claimed in such application ;

(b) had in good faith made serious preparations in Sri Lanka towards the making of the product or using the process referred to in paragraph (a), he shall have the right, despite the grant of the patent, to exploit the patented invention :

Provided that the product in question is made, or the process in question is used by the said person in Sri Lanka:

Provided further, if the invention was disclosed under circumstances referred to in paragraph (a) or (b) of subsection (3) of section 64, he may prove, that his knowledge of the invention was not as a result of such disclosure.

(2) The right referred to in subsection (1) shall not be assigned or transmitted except as part of the business of the person concerned.

(3) The provisions of this section shall not affect the rights of any person to object to the grant of a patent on the ground that such invention is not patentable under sections 63, 64, 65 and 66 of the Act, or to seek relief under sections 68 and 99 of the Act.

SWEDEN

Article 4 of the Patents Act (1967:837) (as amended up to Act (2018:273))

Article 4. Anyone who, at the time when the application for a patent was filed, was using the invention commercially in this country may, notwithstanding the patent, continue such use while retaining its general character, provided that the use did not constitute an evident abuse in relation to the patent applicant or someone from whom he derives his right. The right to such use shall, on corresponding conditions, also be due to anyone who has made substantial preparations for commercial use of the invention in this country.

The right pursuant to the first Paragraph may only be transferred to others together with the business where it originated or where the use was intended to take place.

SWITZERLAND

Article 35 of the Federal Act of June 25, 1954, on Patents for Inventions (status as of April 1, 2019)

Art. 35

A. Prior user rights; foreign vehicles

1 A patent may not be invoked against any person who, prior to the filing or priority date of the patent application, was commercially using the invention in good faith in Switzerland or had made special preparations for that purpose.

2 Any such person under paragraph 1 may use the invention for the purposes of their trade or business; this right may be transferred or bequeathed only together with the trade or business.

[...]

TAJIKISTAN

Article 31 of the Law of the Republic of Tajikistan № 17 of 28 February 2004 on Inventions (as amended up to Law № 956 of 19 March 2013)

Article 31. Right of prior use

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.

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.

THAILAND

Section 36(2)(2) of the Patent Act B.E. 2522 of 11 March 1979

36.

[...]

(2)

[...]

The preceding paragraph shall not apply to:

(2) the production of the patented product or use of the patented process, provided that the producer or user, in good faith and without knowing or having no reasonable cause to know about the patent application, has engaged in the production or has acquired the equipment therefore prior to the date of filing of the patent application in Thailand, Section 19*bis* not applicable hereto;

[...]

TRINIDAD AND TOBAGO

Article 58 of the Patents Act Chapter 82:76 Act 21 of 1996 (Unofficial version, Updated to December 31st 2011)

Right to continue use begun before date of filing or priority

58. (1) Where a patent is granted for an invention, a person who before the date of filing of the patent application or, if priority was claimed, before the date of priority, does in good faith in Trinidad and Tobago an act which would constitute an infringement of the patent if it were then in force, or makes in good faith effective and serious preparation to do such an act, shall have the rights specified in subsection (2).

(2) Any such person shall have the right—
(a) to continue to do or, as the case may be, to do that act himself; and
(b) if the act was done or preparations had been made to do it in the course of a business—
(i) to assign the right under paragraph (a);
(ii) to transmit the right under paragraph (a) to his heirs on his death or, in the case of a body corporate on its dissolution, to any person who acquires that part of the business in the course of which the act was done or preparations had been made to do it; or
(iii) to authorise the act to be done by any partners of his for the time being in that business, and the doing of that act by virtue of this subsection shall not amount to an infringement of the patent concerned.

(3) The rights specified in subsection (2) shall not include the right to grant a licence to any person to do an act referred to in subsection (1).

(4) Where a product which is the subject of a patent is disposed of by any person to another in exercise of a right conferred by subsection (2), that other and any person claiming through him shall be entitled to deal with the product in the same way as if it had been disposed of by a sole proprietor of the patent.

TOGO

Article 8(1)(d) of the Agreement Revising the Bangui Agreement of 2 March 1977 on the Creation of an African Intellectual Property Organization (Bangui (Central African Republic), 24 February 1999)

(Refer to AFRICAN INTELLECTUAL PROPERTY ORGANIZATION (OAPI) below).

TUNISIA

Article 48 of the Law No. 2000-84 of August 24, 2000, on Patents

48. Any person who, on the filing date of the patent application or the priority date claimed for it, was working the invention in good faith in Tunisia shall be entitled to continue to work the invention personally in spite of the existence of the patent. That right of working shall belong also, on the same terms, to a person who had made serious preparations for such working in Tunisia. That right may only be transferred to third parties with the business, the company or the part of the company to which it is attached.

TURKEY

Article 87 of the Law No 6769 of 22 December 2016 on Industrial Property

Önceki kullanımdan doğan hak

MADDE 87- (1) Başvuru tarihinde veya bu tarihten önce buluşu iyiniyetli olarak ülke içinde kullanmakta olan veya kullanım için ciddi ve gerçek tedbirler almış kişilere karşı, patent konusu buluşu aynı şekilde kullanmaya devam etmelerini veya alınmış tedbirlere uygun olarak kullanmaya başlamalarını, patent başvurusu veya patent sahibinin önleme hakkı yoktur. Ancak söz konusu kişilerin patent konusu buluşu kullanmaya devam etmeleri veya alınmış tedbirlere uygun kullanımları,

sahip oldukları işletmenin makul ihtiyaçlarını giderecek ölçüde olabilir. Önceki kullanımdan doğan hak, lisans verilmesi suretiyle genişletilemez ve bu hak, ancak işletme ile birlikte devredilebilir.

(2) Birinci fıkrada sözü edilen kişilerce satışa sunulmuş olan ürünlerle ilgili fiiller, patentin sağladığı hakkın kapsamı dışındadır.

UGANDA

Section 41 of the Industrial Property Act of 6 January 2014

41. Right of a prior user.

(1) Notwithstanding section 38, a patent has no effect against any person, in this Act referred to as “the prior user” who, in good faith, for the purposes of his or her enterprise or business, before the filing date or, where priority is claimed, the priority date of the application on which the patent is granted, and within the territory where the patent produces its effect, is using the invention or is making effective and serious preparations for that use.

(2) A person referred to in subsection (1) has the right, for the purposes of his or her enterprise or business, to continue the use or to use the invention as envisaged in the preparations referred to subsection (1).

(3) The right of the prior user may only be transferred or may only devolve together with his or her enterprise or business, or with that part of his or her enterprise or business in which the use or preparations for use is or are made.

UKRAINE

Article 31 of the Law of Ukraine № 3687-XII of 15 December 1993 on Protection of Rights to Inventions and Utility Models (as amended up to 5 December 2012)

Стаття 31. Дії, які не визнаються порушенням прав

1. Будь-яка особа, яка до дати подання до Установи заявки або, якщо заявлено пріоритет, до дати її пріоритету в інтересах своєї діяльності з комерційною метою добросовісно використала в Україні технологічне (технічне) вирішення, тотожне заявленому винаходу (корисній моделі), чи здійснила значну і серйозну підготовку для такого використання, зберігає право на безоплатне продовження цього використання або на використання винаходу (корисної моделі), як це передбачалося зазначеною підготовкою (право попереднього користування).

Право попереднього користування обмежується тим обсягом використання тотожного заявленому винаходу вирішення, яким воно було на дату подання заявки.

Право попереднього користування може передаватися або переходити до іншої особи тільки разом з підприємством чи діловою практикою або тією частиною підприємства чи ділової практики, в яких було використано вирішення, тотожне заявленому винаходу (корисній моделі), чи здійснено значну і серйозну підготовку для такого використання.

UNITED KINGDOM

Section 64 of the Patents Act of 2004

64.-(1) Where a patent is granted for an invention, a person who in the United Kingdom before the priority date of the invention -

- (a) does in good faith an act which would constitute an infringement of the patent if it were in force, or
- (b) makes in good faith effective and serious preparations to do such an act, has the right to continue to do the act or, as the case may be, to do the act, notwithstanding the grant of the patent; but this right does not extend to granting a licence to another person to do the act.

(2) If the act was done, or the preparations were made, in the course of a business, the person entitled to the right conferred by subsection (1) may -

- (a) authorise the doing of that act by any partners of his for the time being in that business, and
- (b) assign that right, or transmit it on death (or in the case of a body corporate on its dissolution), to any person who acquires that part of the business in the course of which the act was done or the preparations were made.

(3) Where a product is disposed of to another in exercise of the rights conferred by subsection (1) or (2), that other and any person claiming through him may deal with the product in the same way as if it had been disposed of by the registered proprietor of the patent.

URUGUAY

Article 41 of the Law No. 17.164 of September 2, 1999, regulating Rights and Obligations relating to Patents, Utility Models and Industrial Designs

41. Owners of patents may not prevent acts carried out, even without disclosure, by third parties who, in good faith, on the date of filing of the application or priority where applicable, were already manufacturing the product or using the process that is the subject matter of the invention in Uruguay or had made serious preparations to manufacture, use or work it.

Such acts may be continued in order to meet the needs of the enterprise to the extent that they correspond to such needs and relate to the products obtained.

This right shall not be transferable without that part of the enterprise or its intangible assets which benefit from it.

UNITED STATES OF AMERICA

Section 273 of the U.S. Patent Law, 35 U.S.C. §§ 1 et seq. (consolidated as of May 2015)

35 U.S.C. 273 Defense to infringement based on prior commercial use.

(a) In general.—A person shall be entitled to a defense under section 282(b) with respect to subject matter consisting of a process, or consisting of a machine, manufacture, or composition of matter used in a manufacturing or other commercial process, that would otherwise infringe a claimed invention being asserted against the person if—

- (1) such person, acting in good faith, commercially used the subject matter in the United States, either in connection with an internal commercial use or an actual arm's length sale or other arm's length commercial transfer of a useful end result of such commercial use; and
- (2) such commercial use occurred at least 1 year before the earlier of either—
 - (A) the effective filing date of the claimed invention; or
 - (B) the date on which the claimed invention was disclosed to the public in a manner that qualified for the exception from prior art under section 102(b).

(b) Burden of proof.—

A person asserting a defense under this section shall have the burden of establishing the defense by clear and convincing evidence.

(c) Additional Commercial Uses.—

(1) Premarketing regulatory review.—

Subject matter for which commercial marketing or use is subject to a premarketing regulatory review period during which the safety or efficacy of the subject matter is established, including any period specified in section 156(g), shall be deemed to be commercially used for purposes of subsection (a)(1) during such regulatory review period.

(2) Nonprofit laboratory use.—

A use of subject matter by a nonprofit research laboratory or other nonprofit entity, such as a university or hospital, for which the public is the intended beneficiary, shall be deemed to be a commercial use for purposes of subsection (a)(1), except that a defense under this section may be asserted pursuant to this paragraph only for continued and noncommercial use by and in the laboratory or other nonprofit entity.

(d) Exhaustion of Rights.—

Notwithstanding subsection (e)(1), the sale or other disposition of a useful end result by a person entitled to assert a defense under this section in connection with a patent with respect to that useful end result shall exhaust the patent owner's rights under the patent to the extent that such rights would have been exhausted had such sale or other disposition been made by the patent owner.

(e) Limitations and Exceptions.—

(1) Personal defense.—

(A) In general.—

A defense under this section may be asserted only by the person who performed or directed the performance of the commercial use described in subsection (a), or by an entity that controls, is controlled by, or is under common control with such person.

(B) Transfer of right.—

Except for any transfer to the patent owner, the right to assert a defense under this section shall not be licensed or assigned or transferred to another person except as an ancillary and subordinate part of a good-faith assignment or transfer for other reasons of the entire enterprise or line of business to which the defense relates.

(C) Restriction on sites.—

A defense under this section, when acquired by a person as part of an assignment or transfer described in subparagraph (B), may only be asserted for uses at sites where the subject matter that would otherwise infringe a claimed invention is in use before the later of the effective filing date of the claimed invention or the date of the assignment or transfer of such enterprise or line of business.

(2) Derivation.—

A person may not assert a defense under this section if the subject matter on which the defense is based was derived from the patentee or persons in privity with the patentee.

(3) Not a general license.—

The defense asserted by a person under this section is not a general license under all claims of the patent at issue, but extends only to the specific subject matter for which it has been established that a commercial use that qualifies under this section occurred, except that the defense shall also extend to variations in the quantity or volume of use of the claimed subject matter, and to improvements in the claimed subject matter that do not infringe additional specifically claimed subject matter of the patent.

(4) Abandonment of use.—

A person who has abandoned commercial use (that qualifies under this section) of subject matter may not rely on activities performed before the date of such abandonment in establishing a defense under this section with respect to actions taken on or after the date of such abandonment.

(5) University exception.—

(A) In general.—

A person commercially using subject matter to which subsection (a) applies may not assert a defense under this section if the claimed invention with respect to which the defense is asserted was, at the time the invention was made, owned or subject to an obligation of assignment to either an institution of higher education (as defined in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a)),^[1] or a technology transfer organization whose primary purpose is to facilitate the commercialization of technologies developed by one or more such institutions of higher education.

(B) Exception.—

Subparagraph (A) shall not apply if any of the activities required to reduce to practice the subject matter of the claimed invention could not have been undertaken using funds provided by the Federal Government.

(f) Unreasonable Assertion of Defense.—

If the defense under this section is pleaded by a person who is found to infringe the patent and who subsequently fails to demonstrate a reasonable basis for asserting the defense, the court shall find the case exceptional for the purpose of awarding attorney fees under section 285.

(g) Invalidity.—

A patent shall not be deemed to be invalid under section 102 or 103 solely because a defense is raised or established under this section.

UZBEKISTAN

Article 31 of the Law of the Republic of Uzbekistan No. 1062-XII of May 6, 1994, on Inventions, Utility Models and Industrial Designs (as amended up to Law of the Republic of Uzbekistan No. ZRU-446 of September 14, 2017)

Article 31. Right of prior use Any natural or legal person who, up to the established priority date of industrial property subject matter, used an identical solution created independently of its inventor, or made the necessary preparations therefor, shall retain the right to further use thereof free of charge, without the volume of production being expanded. The right of prior use may be transferred

to another natural or legal person only together with the products on which the identical solution was used or the preparations necessary therefor were made.

VIET NAM

Article 134 of the Law No. 36/2009/QH12 of June 19, 2009, amending and supplementing a Number of Articles of the Law on Intellectual Property

Article 134. Right of prior use of inventions and industrial designs

1. In case a person has, before the filing date or priority date (if any) of an invention or industrial design registration application, used or prepared necessary conditions for using an invention or industrial design identical with the protected invention or industrial design stated in that registration application but created independently (below referred to as prior use right holder), then after a protection title is granted, he/she may continue using such invention or industrial design within the scope and volume of use or use preparations without having to obtain permission of or paying compensations to the owner of the protected invention or industrial design. The exercise of the right of prior users of inventions or industrial designs is not regarded as an infringement upon the right of invention or industrial design owners.

2. Holders of prior use right to inventions or industrial designs may not assign such right to others, unless that right is assigned together with the transfer of business or production establishments which have used or are prepared to use the inventions or industrial designs. Prior use right holders may not expand the use scope and volume unless it is so permitted by invention or industrial design owners.

ANDEAN COMMUNITY

Article 55 of the decision № 486 of 14 September 2000 of the Commission of the Andean Community - Common Industrial Property Regime (Cartagena Agreement)

Article 55. - Without prejudice to the provisions stipulated in this Decision with respect to patent nullity, the rights conferred by a patent may not be asserted against a third party that, in good faith and before the priority date or the filing date of the application on which the patent was granted, was already using or exploiting the invention, or had already made effective and serious preparations for such use or exploitation.

In such case, the said third party shall have the right to start or continue using or exploiting the invention, but that right may only be assigned or transferred together with the business or company in which that use or exploitation is taking place.

EURASIAN PATENT ORGANIZATION

Rule 20 of the Patent Regulations under the Eurasian Patent Convention (adopted by the Administrative Council of the Eurasian Patent Organization (EAPO) at its second (1st ordinary) session on 1 December 1995, with the amendments and additions adopted by the Administrative Council of the EAPO at its thirty second (22st ordinary) EAPO AC session on 1-3 November 2016.

Rule 20. Right of the Prior User

(1) Any natural person, legal entity, or organization assimilated thereto, which in good faith, before the filing date of the application or, where priority has been established, before the priority date of the invention, has been using an identical solution on the territory of a Contracting State, or has made the necessary preparations for such use, shall retain the right to proceed with that use free of charge, provided that the scope thereof is not increased. The right of the prior user may only be transferred to another natural person, legal entity, or assimilated organization, together with the production unit in which the identical solution has been used, or the necessary preparations for the use thereof have been made.

(2) The right of the prior user shall apply only on the territory of the Contracting State in which such prior use has occurred.

Rule 20¹. Right of the Subsequent User

(1) Any natural person, legal entity or organization assimilated thereto, which in good faith has begun to use the invention or an identical solution on the territory of a Contracting State, or has made the necessary preparations for such use, during the period between the date on which the right to the Eurasian application published in accordance with Article 15(4) of the Convention or the Eurasian patent granted have lapsed, and the date of publication of the information on the restoration, pursuant to Rules 39(1) and 39(2) of the Regulations, of the rights to the Eurasian application or Eurasian patent, shall retain the right to proceed with the use of this invention or solution identical thereto free of charge, provided that the scope thereof is not increased.

The right of the subsequent user may only be transferred to another natural or legal person, or organization assimilated thereto, together with the production unit in which the invention or identical solution has been used, or the necessary preparations for the use thereof have been made.

(2) The right of the subsequent user shall apply only on the territory of the Contracting State where the subsequent use has taken place and the legislation of which provides for such a right.

GULF COOPERATION COUNCIL

Article 12(3) of the Patent Regulation of the Cooperation Council for the Arab States of the Gulf and its Implementing Bylaws

[...]

12/3 Despite the grant of the patent, an establishment that, in good faith, manufactures, uses an industrial manufacturing process of a product, or makes serious preparations therefor, before the filing date of an application by another person, or before the priority date of the application pertaining to the same product or process, shall have the right to continue such acts. Assignment or transfer of the said right is only permitted with the other elements of the establishment.

AFRICAN INTELLECTUAL PROPERTY ORGANIZATION (OAPI)

Article 8(1)(d) of the Agreement Revising the Bangui Agreement of 2 March 1977 on the Creation of an African Intellectual Property Organization (Bangui (Central African Republic), 24 February 1999)

8. Limitation of the Rights Conferred by the Patent:

(1) The rights deriving from the patent shall not extend

[...]

(d) to acts performed by any person who in good faith on the filing date, or where priority is claimed, on the priority date of the application on the basis of which the patent is granted on the territory of a member State, was using the invention or making effective and genuine preparations for such use, in so far as those acts are not different in nature or purpose from the actual or planned earlier use.

(2) The right of the user referred to in paragraph (1)(d) may not be transferred or handed on otherwise than with the business or company or the part thereof in which the use or the preparations for use were made.