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Section 1: General

1. As background for the exceptions and limitations to patents investigated in this questionnaire, what is the legal standard used to determine whether an invention is patentable? If the standard for patentability includes provisions that vary according to the technology involved, please include examples of how the standard has been interpreted, if available. Please indicate the source of law (statutory and-or case law) by providing the relevant provisions and/or a brief summary of the relevant decisions.

According to the Art 12 par 1 of the patent law of Georgia: an invention is patentable where it satisfies the criteria of patentability - novelty, inventive step and industrial applicability.

Correspondingly, please list exclusions from patentability that exist in your law. Furthermore, please provide the source of those exclusions from patentability if different from the source of the standard of patentability, and provide any available case law or interpretive decisions specific to the exclusions.

Article 16 of the Patent Law of Georgia lists objects that cannot be regarded as an inventions

1. The following shall not be regarded as an invention:

- a) discovery, scientific theory, or mathematical method;*
- b) artistic creation;*
- c) algorithm, computer program;*
- d) educational or teaching method and system, language grammar system, methods for performance of mental acts, rules for games or gambling;*
- e) methods of business and organizational management;*
- f) plans and schemes of structures, buildings or territories;*
- g) presentation of information.*

2. Objects under paragraph 1 of this Article shall not be considered patentable only where these are an immediate object of application.

Article 17 of the Patent Law of Georgia lists objects on which cannot be granted a patent

A patent is not granted for:

- a) inventions against public order;*
- b) inventions related to surgical, therapeutic and diagnostic methods of treatment of humans and animals. This rule does not apply to devices and substances used in such methods;*
- c) inventions related to plant varieties and breeds of animals, as well as primarily biological methods for plant and animal breed selection. This rule does not apply to micro-biological methods and products obtained through such methods;*

2. As background for the exceptions and limitations to patents investigated in this questionnaire, what exclusive rights are granted with a patent? Please provide the relevant provision in the statutory or case law. In addition, if publication of a patent application accords exclusive rights to the patent applicant, what are those rights?

Article 48 of the patent law of Georgia determines the scope of exclusive rights of the patent owner.

1. The patent owner uses invention at his/her discretion. The patent owner has the right to sell or dispose of the patent otherwise, issue private license on the use of patent in accordance with applicable rules or/and to lease the patent.

2. The patent vests its holder with the exclusive rights to prohibit others, without holder's permission, from:

- a) production, sale, offer for sale, use, import or other market use of a product protected by patent;*
- b) use or offer for sale of a patented method;*
- c) sale, offer for sale, use, import or other market use of a product directly made by the use of a patented method.*

According to the Art 51 of the patent law of Georgia, the applicant holds conditional entitlement to all rights accorded by the patent, from the day of publishing an application until he/she is granted a patent. In case a patent is not granted, these rights will not be considered established.

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

Private and/or non-commercial use;

Prior use;

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

Exhaustion of patent rights;

Compulsory licensing and/or government use.

Section 2: Private and/or non-commercial use

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

According to the article 52 par. b) The following shall not be considered a violation of exclusive rights: private use of invention for personal ends, unless such action is not intended for commercial purposes.

5.-10.

N/A

Section 3: Experimental use and/or scientific research

11.-22.

[Note from the Secretariat: The applicable law of Georgia does not provide exceptions related to experimental use and/or scientific research]

Section 4: Preparation of medicines

24.-30.

[Note from the Secretariat: The applicable law of Georgia does not provide exceptions related to preparation of medicines]

Section 5: Prior use

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

According to the art 53 of the Patent law of Georgia

- 1. Right of prior use is a right of a person to use the patent regardless of its effect, where such person has been using invention in good faith or conducted preparatory works for its use prior to the date of filing patent application in Sakpatenti or the priority establishment date.*
- 2. The right of prior use entitles third persons to use invention exclusively for purposes and in volume corresponding to its purposes and volume of its past use or preparatory works, up to the date of filing or establishment of priority.*
- 3. The right of prior use shall not be licensed privately.*
- 4. It is permitted to transfer the right of prior use only together with an enterprise where actions referred to in par. 2 of this Article were undertaken.*

32.-33.

N/A

34. How does the applicable law define the scope of “use”? Does the applicable law provide for any quantitative or qualitative limitations on the application of the “use” by prior user? Please explain your answer by citing legal provision(s) and/or decision(s):

According to the Art 53 par 2 of the patent law of Georgia - The right of prior use entitles third persons to use invention exclusively for purposes and in volume corresponding to its purposes and volume of its past use or preparatory works, up to the date of filing or establishment of priority.

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

No, the Patent law of Georgia does not provide a possibility for a remuneration to be paid to the patentee for the exercise of the exception.

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

Yes

37. In case of affirmative answer to question 36, does the applicable law establish conditions on such licensing or assignment for the continued application of the prior use exception?

Yes

If yes, please explain what those conditions are:

According to the Art 53 par 3 of the Patent law of Georgia - The right of prior use shall not be licensed privately.

However, according to the Art 53 par 4 of the Patent law of Georgia - It is permitted to transfer the right of prior use only together with an enterprise where actions referred to in par. 2 of this Article (Art 53 par 2 - The right of prior use entitles third persons to use invention exclusively for purposes and in volume corresponding to its purposes and volume of its past use or preparatory works, up to the date of filing or establishment of priority.) were undertaken.

38. Does this exception apply in situations where a third party has been using the patented invention or has made serious preparations for such use after the invalidation or refusal of the patent, but before the restoration or grant of the patent?

Yes

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

According to the Art 55 of the Patent law of Georgia considers Right of further use Any person, who has utilized an invention protected by patent in good faith or conducted preparations for exploitation of such invention from the date of patent revocation on the territory of Georgia until its reinstatement has the right to continue its use for entrepreneurial purposes. Transfer of this right is permitted only together with the enterprise (right of further use).

39.-41.

N/A

Section 6: Use of articles on foreign vessels, aircrafts and land vehicles

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

According to the Art 52 Sub. Par. C) of the Georgian patent law - The following shall not be considered a violation of exclusive rights: c) use of invention abroad the foreign vessel, aircraft or land transport present on the territory of Georgia. In such cases, invention should be used exclusively abroad such transportation means and not for entrepreneurial purposes;

43.-44.

N/A

45. The exception applies in relation to:

*Vessels;
Aircrafts;
Land vehicles.*

46. In determining the scope of the exception, does the applicable law apply such terms as "temporarily" and/or "accidentally" or any other equivalent term in relation to the entry of foreign transportation means into the national territory? Please provide the definitions of those terms by citing legal provision(s) and/or decision(s):

Yes. According to the Art 52 Sub. Par. C) of the Georgian patent law - The following shall not be considered a violation of exclusive rights: c) use of invention abroad the foreign vessel, aircraft or land transport present on the territory of Georgia. In such cases, invention should be used exclusively abroad such transportation means and not for entrepreneurial purposes;

47. Does the applicable law provide for any restrictions on the use of the patented product on the body of the foreign vessels, aircrafts, land vehicles and spacecraft for the exception to apply (for example, the devices to be used exclusively for the needs of the vessel, aircraft, land vehicle and/or spacecraft)? Please explain your answer by citing legal provision(s) and/or decision(s):

Yes. According to the Art 52 Sub. Par. C) of the Georgian patent law The following shall not be considered a violation of exclusive rights: c) use of invention abroad the foreign vessel, aircraft or land transport present on the territory of Georgia. In such cases, invention should be used exclusively abroad such transportation means and not for entrepreneurial purposes;

48.-50.

N/A

Section 7: Acts for obtaining regulatory approval from authorities

51.-59.

[Note from the Secretariat: The applicable law of Georgia does not provide exceptions related to acts for obtaining regulatory approval from authorities]

Section 8: Exhaustion of patent rights

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

*National
International*

There is no explicit provision defining exhaustion regime in Patent Act of Georgia, but Georgian legislation allows for parallel importation.

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

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

N/A

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

International exhaustion regime - the regime of parallel importation is justified in line with the country's economic, public health and social considerations. It can help to preserve access to medicine or other critical goods that may be covered by IPR. By allowing parallel import markets will be more competitive. This will lead to more efficient allocation of resources and better prices for consumers.

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

N/A

62. Does the applicable law permit the patentee to introduce restrictions on importation or other distribution of the patented product by means of express notice on the product that can override the exhaustion doctrine adopted in the country?

No

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

Although, in line with the DCFTA (Deep and Comprehensive Free Trade Agreement) with the EU Georgia will be obliged to introduce national exhaustion regime for all IP objects after signature of the said agreement, Georgia will exceptionally have an international regime for patented products only and this flexibility will be allowed in line with the above bilateral agreement. This regime will meet the public policy objectives of Georgia.

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

Generally, challenges are associated with trademarks and their parallel importation to Georgia. No precedent of patents and challenges with the exhaustion regime was encountered.

Section 9: Compulsory licenses and/or government use

Compulsory licenses

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

Patent Law of Georgia does not foresee compulsory licensing by now, but there are pending legislative changes in this regard.

66.-80.

N/A

Government use

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

According to the Art 52 sub. par. D) of the Patent Law of Georgia - The following shall not be considered a violation of exclusive rights: d) use of invention in cases of natural disaster, catastrophe, epidemic or other emergency situations.

82.-84.

N/A

85. If the applicable law provides for the grant of government use on the ground of “national emergency” or “circumstances of extreme urgency”, please explain how the applicable law defines those two concepts and their scope of application, and provide examples:

Georgian patent law does not define abovementioned concepts.

86.-88.

N/A

Section 10: Exceptions and limitations related to farmers' and/or breeders' use of patented inventions

Farmers' use of patented inventions

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

Georgian legislation does not consider limitations and exceptions related to farmers' and/or breeders' use of patented inventions.

90.-94.

N/A

Breeders' use of patented inventions

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

Georgian patent law does not consider the possibility of granting patents on new varieties of plants.

In Georgia relations in connection with breeders' rights are regulated by the Law on protection of Animal Breedings and Plant Varieties. Therefore Georgian Patent Law does not consider limitations and exceptions in connection with breeders' use of patented inventions.

96.-100.

N/A

Section 11: Other Exceptions and Limitations

101.-103.

N/A

[End of Questionnaire]