

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.

Protection of Patents is provided under the Patents Act Chapter 216 Laws of Uganda. Patentability criteria: Invention is (i) new, (ii) involves an inventive step; and (iii) is industrially applicable comprised in sections 8, 9, 10 and 11.

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 exclusions¹

Discoveries and scientific and mathematical theories; S.7 (2) (a).

Schemes, Rules or methods of doing business, performing purely mental acts or playing games; s. 7 (2) (c).

Methods for treatment of human or animal bodies by surgery or therapy and diagnostic methods; S. 7 (2) (d).

Mere presentation of information; s. 7 (2) (e).

In public interest, certain inventions may be temporarily excluded from patentability by responsible Minister. Ref. Section 12.

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?

Exclusive rights of the owner of a patent: make, use, import, offer for sale, sell and stock the product OR preclude others from exploiting patent in aforementioned manner. Ref. section 25. Patent officials are bound from disclosing the contents of applications (and grants) if information therein is by its nature secret, refer to section 6(2).

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

Private and/or non-commercial use;

Experimental use and/or scientific research;

Prior use;

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

Exhaustion of patent rights;

Compulsory licensing and/or government use;

If the applicable law provides for any of the above-listed exceptions and limitations, please fill out those parts of Sections II to X that apply to you. If the applicable law does not contain all of the exceptions and limitations provided in Sections II to X, then you should respond only to the other parts of the questionnaire. If the applicable law includes other exceptions and limitations that are not listed above, please answer the questions under Section XI "Other Exceptions".

[Note from the Secretariat: response was not provided]

Where reference is made to case law, please indicate, if possible, the official source in which the case has been published (for example, the publication number, issue, title, URL, etc.).

[Note from the Secretariat: response was not provided]

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

Section 2: Private and/or non-commercial use

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

Section 28 of the Patents Act provides that the patent owner's rights extend only to use of patented inventions on an industrial or commercial scale. Private or non-commercial use is implied.

5.-10.

[Note from the Secretariat: response was not provided]

Section 3: Experimental use and/or scientific research²

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

Section 28 (a) of the Patents Act.

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

[Note from the Secretariat: response was not provided]

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

Facilitate research and development

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

[Note from the Secretariat: response was not provided]

14. Does the applicable law make a distinction concerning the nature of the organization conducting the experimentation or research (for example, whether the organization is commercial or a not-for-profit entity)? Please explain:

No

15.-16.

[Note from the Secretariat: response was not provided]

17. If any of the following criteria is relevant to the determination of the scope of the exception, please indicate:

Research and/or experimentation must be conducted on or relating to the patented invention ("research on") and research and/or experimentation must be conducted with or using the patented invention ("research with")

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

Section 28(a) states that exclusive rights shall not be infringed "by acts done in pursuance of scientific research"

² Exceptions and limitations on acts for obtaining regulatory approval are dealt with in Section VII of the questionnaire.

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

A non-commercial purpose

19. If the applicable law makes a distinction between “commercial” and “non-commercial” purpose, please explain those terms by providing their definitions, and, if appropriate, examples. Please cite legal provision(s) and/or decision(s):

It does not; limitation of use of invention for non-commercial purpose is inferred from section.

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

[Note from the Secretariat: response was not provided]

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

Yes, amendments are proposed under the Industrial Property Bill. It is proposed to adopt an exception for experimental use of an invention, which allows the use of a patent in experimentation for both scientific as well as commercial purposes, without the consent of the patent holder.

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

[Note from the Secretariat: response was not provided]

Section 4: Preparation of medicines

23.-30.

[Note from the Secretariat: response was not provided]

Section 5: Prior use

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

Section 28(d) of the Patents Act.

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

[Note from the Secretariat: response was not provided]

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

As inferred from section 28 (d), it is to protect persons who in good faith use or make effective preparations for using of an invention prior to filing of applications for registration of patents in Uganda.

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

[Note from the Secretariat: response was not provided]

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

The prior user is not using the invention for industrial or commercial purposes.

The prior user is using or is making effective preparations to use the invention before the filing of the application or priority date;

The person is acting in good faith;

The right of use can only be transferred or devolved with the enterprise or business with which the invention is being use or intended to be used.

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 exception guards a prior user against claims of infringement.

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

No

37.-41.

[Note from the Secretariat: response was not provided]

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

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

Section 28 (c) of the Patents Act

43.-44.

[Note from the Secretariat: response was not provided]

45. The exception applies in relation to:

Vessels

Aircrafts

Land Vehicles

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

Yes, “temporarily or accidentally” are the words used but they are not defined in the Act.

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):

No

48.-50.

[Note from the Secretariat: response was not provided]

Section 7: Acts for obtaining regulatory approval from authorities

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

None

52.-59.

[Note from the Secretariat: response was not provided]

Section 8: Exhaustion of patent rights

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

National

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

Section 28(b) of the Patents Act

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

[Note from the Secretariat: response was not provided]

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

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

[Note from the Secretariat: response was not provided]

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

Yes

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

Section 25 (1)(a)(i) of the Patents Act gives the patent owner the right to preclude others from importing the patented invention but does not expressly provide for an express notice as means of restricting importation.

63.-64.

[Note from the Secretariat: response was not provided]

Section 9: Compulsory licenses and/or government use

Compulsory licenses

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

Section 30 of the Patents Act

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

[Note from the Secretariat: response was not provided]

67. What grounds for the grant of a compulsory license does the applicable law provide in respect to patents (please indicate the applicable grounds):

*Non-working or insufficient working of the patented invention
Refusal to grant licenses on reasonable terms
Section 30(1)(b); failure to meet market demand on reasonable terms.*

68. (a) What are the public policy objectives for providing compulsory licenses in your country?
(b) Where possible, please explain with references to the legislative history, parliamentary debates and judicial decisions:

[Note from the Secretariat: response was not provided]

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

“Non-working” provided under section 30(1)(a) of the Act but the same Act does not define the scope of the expression.

70. Does the importation of a patented product or a product manufactured by a patented process constitute “working” of the patent? Please explain your answer by citing legal provision(s) and/or decision(s):

It does not seem so. Although there is no definition of “working” of an invention in the Act; the reading of section 30(1)(c) shows that working of an invention does not include importation of the patented product at least in the context of issuing a compulsory license. S.30(1)(c) provides that court can grant a compulsory license on the ground that the working of the patented invention is hindered or prevented by importation of the invention.

71. In case of the grant of compulsory licenses on the grounds of non-working or insufficient working, does the applicable law provide for a certain time period to be respected before a compulsory license can be requested?

Yes

If yes, what is the time period?

Any time after four years from the patent application filing date or three years from the grant which ever period expires last.

72. In case of the grant of compulsory licenses on the grounds of non-working or insufficient working, does the applicable law provide that a compulsory license shall be refused if the patentee justifies his inaction by legitimate reasons?

No

If yes, what are “legitimate reasons”?

N/A

73. If the applicable law provides for the grant of compulsory licenses on the ground of refusal by the patentee to grant licenses on “reasonable terms and conditions” and within a “reasonable period of time”, please provide the definitions given to those terms by citing legal provision(s) and/or decision(s):

“Reasonable terms” is not defined in the Patents Act

74. If the applicable law provides for the grant of compulsory licenses on the ground of anti-competitive practices, please indicate which anti-competitive practices relating to patents may lead to the grant of compulsory licenses by citing legal provision(s) and/or decision(s):

There is no competition legislation in Uganda although certain practices such as failure to meet market demand for the patented product on reasonable terms, s.30(1)(b) of the Act, could amount to an anti-competitive practice.

On the other hand, anticompetitive terms contained in voluntary licenses are prohibited.

75. If the applicable law provides for the grant of compulsory licenses on the ground of dependent patents, please indicate the conditions that dependent patents must meet for a compulsory license to be granted:

[Note from the Secretariat: response was not provided]

76. Does the applicable law provide a general policy to be followed in relation to the remuneration to be paid by the beneficiary of the compulsory license to the patentee? Please explain:

Yes, terms of payment for the license are as court may consider “just”. What is considered “just” is not defined in the law and therefore is dependent on case law.

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

[Note from the Secretariat: response was not provided]

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

None

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

Amendments are envisaged through the Industrial Property Bill.

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

*Lack of technological capacity.
Government use*

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

Section 29 of the Patents Act

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

[Note from the Secretariat: response was not provided]

83. What grounds for the grant of government use does the applicable law provide in respect to patents (please indicate the applicable grounds):

Public health

National security

Matters of "vital public interest" as defined under section 29(3) of the Act including national economy, public order and morality

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

The public policy objective may be inferred from s.29 as being the safeguarding of matters of paramount importance to the country.

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

[Note from the Secretariat: response was not provided]

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

[Note from the Secretariat: response was not provided]

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

None

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

[Note from the Secretariat: response was not provided]

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

Lack of technological capacity.

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):

Plant breeders' rights will be provided for through a sui generis system notwithstanding the exclusion of plant varieties from unpatentable inventions. It is hoped that exceptions in respect of farmers rights will be provided for.

90.-93.

[Note from the Secretariat: response was not provided]

94. Which challenges, if any, have been encountered in relation to the practical implementation of the exception related to farmers' use of patented inventions in your country? Please explain:

Breeders' use of patented inventions

95.-100.

[Note from the Secretariat: response was not provided]

Section 11: Other Exceptions and Limitations

101.-103.

[Note from the Secretariat: response was not provided]