

Questionnaire on Exceptions and Limitations to Patent Rights

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

Country: [Austria](#)
Office: [Austrian Patent Office \(APO\)](#)

Person to be contacted:

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Please note, that the following answers and information is based on the applicable legal provisions, i.e. the Austrian Patent Act.

Section I: General

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

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

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

[Patents are granted for inventions in all technical fields provided that they are new, not obvious from the state of the art to a person skilled in the art and are susceptible of industrial application \(Sec. 1 para 1 Austrian Patent Act\).](#)

[Inventions which comply with these prerequisites \(para 1\) shall be patentable, even if they concern a product consisting of or containing biological material or a method by means of which biological material is produced, processed or used, wherein biological material is any material containing genetic information and being capable of reproducing itself or being reproduced in a biological system. These patentable inventions also include](#)

- 1. [biological material which is isolated from its natural environment or produced by means a technical method may be the subject of an invention even if it previously occurred in nature;](#)
- 2. [an element isolated from the human body or otherwise produced by means of a technical method, including the sequence or partial sequence of a gene, may constitute a patentable invention even if the structure of that element is identical to that of a nature element \(para 2\)](#)

Correspondingly, please list exclusions from patentability that exist in your law. Furthermore, please provide the source of those exclusions from patentability if different from the source of the standard of patentability, and provide any available case law or interpretive decisions specific to the exclusions.¹

The following subject matters or activities shall be **excluded** from patentability, only to the extent to which protection is sought for such subject matters as such (Sec. 1 para 3 and 4):

- discoveries as well as scientific theories and mathematical methods;
- the human body at the various stages of its formation and development;
- the simple discovery of one element of the human body, including the sequence or partial sequence of a gene;
- aesthetic creations;
- plans, rules and methods for mental acts, for games or for business activities as well as programs for data processing plants;
- the reproduction of information.

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The above text is considered to be fully in line with the TRIPs-Agreement.

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?

The patent entitles the patentee to exclude others from producing the subject matter of the invention, putting it on the market, offering it for sale or using it or importing or possessing it for the above purposes **on a commercial basis** (Sec. 22 para 1).
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3. Which exceptions and limitations does the applicable law provide in respect to patent rights (please indicate the applicable exceptions/limitations):

- Private and/or non-commercial use;
- Experimental use and/or scientific research;
- Preparation of medicines;²
- Prior use;
- Use of articles on foreign vessels, aircrafts and land vehicles;
- Acts for obtaining regulatory approval from authorities;
- Exhaustion of patent rights;
- Compulsory licensing and/or government use;
- Exceptions and limitations related to farmers' and/or breeders' use of patented inventions.³

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

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

³ For example, in some countries where patent rights extend to propagated or multiplied material derived from patented biological material, certain uses by farmers of harvested plant material or of breeding livestock or other animal reproductive material under patent protection on his own farm do not constitute patent infringement. Similarly, in some countries, patent rights do not cover uses by breeders of patented biological material for the purpose of developing a new plant variety (see paragraphs 133 to 137 of document SCP/13/3).

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".

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.).

Section II: Private and/or non-commercial use

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

See question 2.....
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5. If the exception is provided through case law, please cite the relevant decision(s) and provide its(their) brief summary:

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

Balance of interest between private use and commercial use.
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(b) Where possible, please explain with references to the legislative history, parliamentary debates and judicial decisions:

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7. If the applicable law defines the concepts "non-commercial", "commercial" and/or "private", please provide those definitions by citing legal provision(s) and/or decision(s):

Commercial use: an economical activity of certain duration, following a unitary concept and suited for repetition, which – without necessarily being acquisitive - does not only serve the satisfaction of personal needs.
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8. If there are any other criteria provided in the applicable law to be applied in determining the scope of the exception, please provide those criteria by citing legal provision(s) and/or decision(s):

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

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

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Section III: Experimental use and/or scientific research ⁴

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

[See question 2.](#).....
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12. If the exception is provided through case law, please cite the relevant decision(s) and provide its(their) brief summary:

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

[Freedom of scientific research.](#)

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

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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. The applicable law assesses the possibly violating action only. If it is considered "non-commercially" then this action does not fall under patent protection.](#).....

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⁴ Exceptions and limitations on acts for obtaining regulatory approval are dealt with in Section VII of the questionnaire.

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15. If the applicable law defines the concepts “experimental use” and/or “scientific research”, please provide those definitions by citing legal provision(s) and/or decision(s):

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16. If the purpose of experimentation and/or research is relevant to the determination of the scope of the exception, please indicate what that purpose is:

Experimentation and/or research should aim to:

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

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

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

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

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

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

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

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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):

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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:

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

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Section IV: Preparation of medicines

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

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

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

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

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

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

- Yes
- No

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

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

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

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

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Section V: Prior use

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

Sec. 23 para 1: The patent shall not enter into effect against a person who, already at the time of filing of the application, used the invention in Austria or took measures necessary for such use in good faith (prior use).

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

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

Patent protection should not prevent the prior user to make use of his achievement.

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

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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 use has to be carried out like a “trade-secret”, otherwise patent protection would afterwards not have been granted.

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

No.

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

Yes

No licensing is not allowed.

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

Yes

No

If yes, please explain what those conditions are:

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

Yes

No

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

Sec. 136 para 1: If a protective right has been refused, lapsed, expired, or otherwise became ineffective and is reinstated by the grant of reinstatement, it shall not enter into effect against any person who, after the lapse of the protective right and before the day of the official

announcement of the grant of reinstatement or not later than on the day of entry of the request in the Register, in all other cases not later than on the day of receipt of the request at the competent authority, started to use the subject matter in Austria or took the measures required for such use in Austria (interim user).

Such person shall be entitled to exploit the subject matter for the requirements of his own business in his own or in other persons' workshops. This title shall be inherited or sold only in connection with the business. Besides the provisions relating to prior use shall apply.....

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

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

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

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

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

Sec. 26: The effect of a patent shall not extend to vehicles and to arrangements at vehicles which have entered Austria only temporarily for their use for transportation purposes. ...

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

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

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

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45. The exception applies in relation to:

- Vessels
- Aircrafts
- Land Vehicles
- Spacecraft

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

The effect of a patent shall not extend to vehicles and to arrangements at vehicles which have entered Austria only **temporarily** for their use for transportation purposes.
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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):

The effect of a patent shall not extend to vehicles and to arrangements at vehicles which have entered Austria only temporarily for their use **for transportation purposes**.
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48. If the applicable law provides for other criteria to be applied in determining the scope of the exception, please describe those criteria. Please illustrate your answer by citing legal provision(s) and/or decision(s):

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

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

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Section VII: Acts for obtaining regulatory approval from authorities

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

Sec. 22 para 1 second sentence: The effect of the patent does not extend to studies and trials as well as to the consequential practical requirements, as far as they are necessary for obtaining a permission, authorization or registration for putting on the market pharmaceutical products.

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

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53. (a) What are the public policy objectives for providing the exception? Please explain: Privilege for the manufacturers of pharmaceutical products with a view to generic medicines. So called "Bolar"-provision.....

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

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

Manufacturers of pharmaceutical products, especially of generic medicines.

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55. The exception covers the regulatory approval of:

any products

certain products. Please describe which products: pharmaceutical products

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

- Making
- Using
- Selling
- Offering for sale
- Import
- Export

Other. Please specify: **Studies and trials as well as consequential practical requirements, as far as they are necessary for obtaining a permission, authorization or registration for putting on the market pharmaceutical products.....**

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

A direct relation is required between the studies, trials and consequential practical requirements on the one hand and the permission, authorization or registration on the other hand.

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

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

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Section VIII: Exhaustion of patent rights

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

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

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

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

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

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

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

- Yes
- No
- Uncertain

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

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

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

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Section IX: Compulsory licenses and/or government use

Compulsory licenses

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

Sec. 36 para 1: If a patented invention cannot be exploited without infringing an invention patented with a better priority (earlier patent), the owner of the later patent shall have claim to a non-exclusive license in the earlier patent, if the invention protected by the later patent constitute an important technical advance of substantial economic significance relative to the invention protected by the earlier patent. Where such license is granted, also the owner of the earlier patent shall have claim to an non-exclusive license in the later patent.

Para 4: If a patented invention is not exercised to an adequate extend in Austria, in which context importation also constitutes exercise, and the patentee has not undertaken everything necessary for such exercise, anybody has a claim for his business to a non-exclusive license for the patent unless the patentee proves that the exercise of the invention in Austria can not reasonably be

expected at all or on a larger scale than actually effected, due to the difficulties opposing such exercise.

Para 5: If the grant of a license for a patented invention is in the public interest, anybody shall have a claim for his business to a non-exclusive license for the invention. The claim of the federal administrative authority on this matter, however, is not bound to any business.

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

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

- Non-working or insufficient working of the patented invention
- Refusal to grant licenses on reasonable terms
- Anti-competitive practices and/or unfair competition
- Public health (as far as it is in the public interest)
- National security
- National emergency and/or extreme urgency
- Dependent patents
- Other, please specify:

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

The provision intends to protect the public from any abuse of the exclusive right to which the patent owner is entitled.

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

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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):

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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):

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

- Yes
- No

If yes, what is the time period?

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

- Yes
- No

If yes, what are "legitimate reasons"?

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):

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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):

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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:

Sec. 36 para 1: If a patented invention cannot be exploited without infringing an invention patented with a better priority (earlier patent), the owner of the later patent shall have claim to a non-exclusive license in the earlier patent, if the invention protected by the later patent constitute an **important technical advance** of **substantial economic significance** relative to the invention protected by the earlier patent. Where such license is granted, also the owner of the earlier patent shall have claim to an non-exclusive license in the later patent.

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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:

Sec. 37 para 1 first and second sentence: If the person entitled to grant a compulsory license refuses grant of the same, although the applicant for the license has taken efforts to obtain his consent within a reasonable term and at reasonable conditions common in business, the Austrian Patent Office shall, on request of the applicant of the license, decide in proceedings prescribed for the contestation of patents. In case a license is granted, an **adequate compensation is to be determined, wherein the economic value of the license is to be taken into consideration.**

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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:

Sec 36 para 5: If the grant of a license for a patented invention is in the **public interest**, anybody shall have a claim for his business to a non-exclusive license for the invention. The claim of the federal administrative authority on this matter, however, is not bound to any business.

There is no definition of “public interest”.....

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

Very seldom.....

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:

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

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Government use

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

Sec 36 para 5: If the grant of a license for a patented invention is in the **public interest**, anybody shall have a claim for his business to a non-exclusive license for the invention. **The claim of the federal administrative authority on this matter, however, is not bound to any business.**

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

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

- Non-working or insufficient working of the patented invention
- Refusal to grant licenses on reasonable terms (as far as it is in the public interest)
- Anti-competitive practices and/or unfair competition
- Public health (as far as it is in the public interest)
- National security (as far as it is in the public interest)
- National emergency and/or extreme urgency (as far as it is in the public interest)
- Dependent patents
- Other, please specify:

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

Securing sufficient rights to the government in case of extreme urgency or public emergency.
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(b) Where possible, please explain with references to the legislative history, parliamentary debates and judicial decisions:

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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:

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

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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:

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

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

Farmers' use of patented inventions

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

Sec 22b para1: The protection conferred by a patent on a biological material possessing specific characteristics as a result of the invention shall include any biological material directly derived from that biological material through generative or vegetative multiplication in an identical or divergent form and possessing those same characteristics.

[...]

Sec. 22c para 1: the protection referred to in Sec. 22b shall not extend to biological material obtained from the generative or vegetative multiplication of biological material, put on the marketing the territory within the European Economic Area by the patentee or with his consent, if the generative or vegetative multiplication necessarily results from the application for which the biological material was marketed, provided that the material obtained is not subsequently used for other generative or vegetative multiplication.

Para 2: Notwithstanding Sec. 22b, the sale or any other form of commercialization of plant propagating material to a farmer by the patentee or with his consent for agricultural use implies authorization for the farmer to use the product of his harvest for generative or vegetative multiplication by him on his own farm, wherein the extend and conditions of this exemption corresponds to those under Article 14 of Regulation (EC) No 2100/94.

Para 3: Notwithstanding Sec. 22b, the sale or any other form of commercialization of breeding stock or other animal reproductive material to a farmer by the patentee or with his consent implies authorization for the farmer to use the protected livestock for an agricultural purpose. This includes making the livestock or other animal reproductive material available for the purposes of pursuing his agricultural activity, but not the sale within the framework or for the purpose of a commercial stock-breeding. For said authorization an appropriate compensation shall be paid.

Para 4: Sec. 22b does not apply for biological material, which was obtained accidentally or technically not avoidable in the agricultural sector. Therefore, a farmer cannot be claimed against if he did not cultivate seed or seed stock protected by a patent.

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

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

The objective is to allow the farmer to use a part of his harvest product again for planting even if the propagating material is patented, since the seeds are intended for agricultural use and were sold for this purpose.
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- (b) Where possible, please explain with references to the legislative history, parliamentary debates and judicial decisions:

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

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

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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:

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Breeders' use of patented inventions

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

Sec. 22c para 1: the protection referred to in Sec. 22b shall not extend to biological material obtained from the generative or vegetative multiplication of biological material, put on the marketing the territory within the European Economic Area by the patentee or with his consent, if the generative or vegetative multiplication necessarily results from the application for which the biological material was marketed, provided that the material obtained is not subsequently used for other generative or vegetative multiplication.

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

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

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

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.....

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

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

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

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Section XI: Other Exceptions and Limitations

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

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102. In relation to each exception and limitation, please indicate:

- (i) the source of law (statutory law and/or the case law) by providing the relevant provision(s) and/or a brief summary of the relevant decision(s):

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

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

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

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

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

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

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[End of Questionnaire]