

Department of Patent, Design and Trademarks Bangladesh

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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.

The existing Patents & Designs Act dates back to 1911 and in section 2(8) Inventions has been defined as any manner of new manufacture and includes an improvement and an alleged invention. The draft Bangladesh Patent Act has been prepared in the light of the TRIPs Agreement which is being scrutinized by the Ministry of Industries.

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.

In the proposed Act exclusions from the patentability have been listed in the light of 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?

In the existing Patents & Designs Act, 1911 exclusive rights for making, selling, using and authorizing others to do so are granted in different manner but in the proposed Act same things are granted in compliance with the provisions of the TRIPs Agreement.

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

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

Not exactly mentioned in the existing Act.

5.-9.

Not Applicable.

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

No challenge has yet been encountered.

Section 3: Experimental use and/or scientific research

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

Not mentioned in the existing Act.

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

Not Applicable.

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

No public policy is in place.

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

Not Applicable.

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:

Not Applicable.

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):

Not defined in the existing Act.

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

Other, please specify: *Not exactly mentioned in the existing Act.*

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

Not Applicable.

18.

[Note from the Secretariat: response was not provided]

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):

In the existing Act the terms Commercial and Non-Commercial have not been defined.

20.-21.

Not Applicable.

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

No challenge has yet been encountered.

Section 4: Preparation of medicines

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

In the existing Act no exception is contained.

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

Not Applicable.

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

No public policy is in place.

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

Not Applicable.

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

Not mentioned in the existing Act.

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

No.

28.-29.

Not Applicable.

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

No challenge has yet been encountered.

Section 5: Prior use

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

In the existing Act for the exhibition purpose exception to prior use is given.

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

Not Applicable.

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

No public policy is in place.

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

Not Applicable.

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):

In the existing Act the scope of "use" is not defined.

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

The existing Act does not provide.

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

No.

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

Not Applicable.

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?

No.

39.-40.

Not Applicable.

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

No challenge has yet been encountered.

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):

In the Patents and Designs Act, 1911:

Section 42(1) provides that: "A patent shall not prevent the use of an invention for the purposes of the navigation of a foreign vessel within the jurisdiction of any Court in Bangladesh, or the use of an invention in a foreign vessel within that jurisdiction, provided it is not used therein for or in connection with the manufacture or preparation of anything intended to be sold in or exported from Bangladesh. (2) This section shall not extend to vessels of any foreign State of which the laws do not confer corresponding rights with respect to the use of inventions in Bangladesh vessels while in the ports of that State, or in the waters within the jurisdiction of its Courts."

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

There is no case law.

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

No public policy is in place.

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

Not Applicable.

45. The exception applies in relation to:

Vessels.

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):

Not Applicable.

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 applicable law does not provide any restriction on the above matter.

48.-49.

Not Applicable.

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

No challenge has yet been encountered.

Section 7: Acts for obtaining regulatory approval from authorities

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

No provision in the existing Act.

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

Not Applicable.

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

No public policy is in place.

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

Not Applicable.

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

Not mentioned in the existing Act.

55. The exception covers the regulatory approval of:

Nothing specific in the existing Act.

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

None of the above acts [making, using, selling, offering for sale, import, export] are allowed.

57.-58.

Not Applicable.

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

No challenge has yet been encountered.

Section 8: Exhaustion of patent rights

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

Not mentioned in the existing Act.

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

Not Applicable.

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

No public policy is in place.

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

Not Applicable.

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:

Not Applicable.

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

Not Applicable.

Section 9: Compulsory licensing and/or government use

Compulsory licenses

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

Section 22 of the existing Patents & Designs Act, provides some measures for issuing compulsory license.

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

No case law.

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*

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

No public policy objectives for providing compulsory licenses.

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

Not applicable.

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):

Not defined in the existing Act.

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):

Not exactly mentioned in the existing Act.

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?

Four years.

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.

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):

There is no specific definition in the existing Act.

74.-75.

Not Applicable.

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:

Not specifically mentioned in the existing Act.

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:

Not specifically mentioned in the existing Act.

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

Till today no compulsory license has been issued by the government.

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:

No problem regarding this matter is still faced.

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

No challenge is yet faced.

Government use

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

Not exactly mentioned in the existing Act.

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

Not Applicable.

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

Grounds for the grant of government use is not mentioned in the existing Act.

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

Not Applicable.

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

Not Applicable.

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:

Not exactly mentioned in the existing Act.

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

Till today no government use has been used.

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:

Not yet faced this problem.

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

No challenge has yet been encountered.

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):

No Act on the breeders/farmers rights has been put in place yet.

90.-94.

Not Applicable.

Breeders' use of patented inventions

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

No Act on the breeders/farmers rights has been put in place yet.

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

Not Applicable.

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

No Act/no public policy on the breeders/farmers rights has been put in place yet.

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

Not Applicable.

98.-100.

Not Applicable.

Section 11: Other exceptions and limitations

101.-103.

Not Applicable.

[End of Questionnaire]