

Questionnaire on Exceptions and Limitations to Patent Rights

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

Country: **Ukraine**
Office: **State Service for Intellectual property of Ukraine**.....

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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.

An invention meets the patentability requirements provided that it is new, involves an inventive step and is industrially applicable.

A utility model meets the patentability requirements provided that it is new and industrially applicable.

(Paragraphs 1 and 2 of Article 7 of Law of Ukraine “On the Protection of Rights to Inventions and Utility Models” (further – Law)

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

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

According to this Law, the legal protection shall not extend to such technology objects:

plant varieties and animal breeds;

processes of the reproduction of plants and animals that are biological in its basis and do not belong to non-biological and microbiological processes;

topographies of integrated circuits;

results of art constructing.

(Paragraph 3 of Article 6 of Law)

Not recognized as inventions (utility models) is the meaning of point 1.2 of these Rules: discoveries, scientific theories ta mathematical methods; methods of intellectual, economical, organizational and commercial activities (planning, financing, supplying, stock-taking, crediting, forecasting, rationing etc.); rules of performing physical exercises, games, competitions, auctions; plans and schemes of planning constructions, buildings, territories; signs (traffic signs, routes, codes, types etc.), itineraries, instructions; computer programs; forms of representation of information (e.g. in table form, diagrams, graphics, acoustic signals, words spelling, visual demonstrations, books, audio- and videodiscs). (point 2.5 Rules for patent and utility model application making and filing)

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?

A patent shall give the exclusive right to the owner of a patent to use an invention (utility model) at his own discretion if such a use does not infringe rights of other owners of patents.

(Paragraph 2 of Article 28 of Law)

The patent shall give to his owner the exclusive right to forbid other persons to use an invention (utility model) without his permission, excluding the cases when according to this Law such a use is not considered to be the infringement of rights granted by a patent.

(Paragraph 5 of Article 28 of Law)

The data on the application for a patent for an invention, which were published according to Article 16 of this Law, shall provide the temporary legal protection for the applicant in the volume of a patent claims in consideration of which the said data were published.

After publication of the data on the application, the applicant shall have the right to obtain a compensation for damages from a person, which really knew, or received a notification written in Ukrainian with the indication of the application number about the publication of the data on the application for an invention used by this person without the applicant permission. The applicant shall obtain the said compensation only after obtaining a patent.

(Paragraphs 1 and 2 of Article 21 of Law)

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

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):

The use of the patented invention (utility model) shall not be considered to be the infringement of rights deriving from a patent provided that it is used:

...

**without any commercial purpose;
(Paragraph 2 of Article 31 of Law)**

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?

To limit exclusive right of the owner to forbid use of the invention without permission if such use is non-commercial.

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

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).

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):

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):

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:

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

Section III: Experimental use and/or scientific research ⁴

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

The use of the patented invention (utility model) shall not be considered to be the infringement of rights deriving from a patent provided that it is used:

...
for scientific or experimental purposes;
(Paragraph 2 of Article 31 of Law)

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?

To stimulate development of science e.g. to allow using some methods of researching, diagnostics, testing without permission of owner while scientific experiment is carried on.

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

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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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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. 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: **Any**

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):

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

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):

**Any person, which has honestly used a technology (technical) solution identical to the claimed invention (utility model) or has made considerable and serious preparations for such a use in the interests of its activity with the commercial purpose before the date of filing the application for granting a patent on the invention (utility model) with the Office or, if the priority has been claimed, before the priority date, shall have the right to extend this use free of charge or to use an inventions (utility model) as it was foreseen by the mentioned preparation (the right of previous use).
(Paragraph 1 of Article 31 of Law)**

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:

To limit exclusive right of the owner to forbid use of the invention without permission to person who invented and used invention but didn't patented it in time.

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

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 following shall be considered to be the use of an invention (utility model): manufacturing a product with the use of a patented invention (utility model), the use of this product, an offer of a product for the market, including an offer via the Internet, selling, import (coming-in) and other its introduction into the commercial circuit as well as storing a product for defined purposes; the use of a process protected by a patent or an offer of a process for the use in Ukraine, provided that the person offering a process shall know that the use of a process without the permission of the patent owner is prohibited or, considering the circumstances, it is obvious.

(Paragraph 2 of Article 28 of Law)

The right of previous use shall be restricted by the volume of the use of a solution identical to the claimed invention, which it was on the date of filing of the application with the Office.

The right of previous use of the design may be transferred to another person only together with the enterprise or business practice, or with the part of the enterprise or business practice, in which the solution identical to the claimed invention (utility model) had been used or a considerable and serious preparation to such a use had been made.

(Paragraph 1 of Article 31 of Law)

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

No (within the boundaries of prior use)

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

Yes

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?

Yes

No

If yes, please explain what those conditions are:

The right of previous use of the design may be transferred to another person only together with the enterprise or business practice, or with the part of the enterprise or business practice, in which the solution identical to the claimed invention (utility model) had been used or a considerable and serious preparation to such a use had been made. (Paragraph 1 of Article 31 of Law)

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:

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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:

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

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):

The use of the patented invention (utility model) shall not be considered to be the infringement of rights deriving from a patent provided that it is used:

...
**in a construction or during the exploitation of a transportation means of a foreign state that temporarily or occasionally is situated at any sea, air, or at the territory of Ukraine, provided that an invention (utility model) is used exclusively for the operation of the said transportation means;
(Paragraph 2 of Article 31 of Law)**

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:

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

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):

Yes (See 42). No definitions.

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 (See 42).

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):

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:

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

Section VII: Acts for obtaining regulatory approval from authorities

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

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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:

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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:

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55. The exception covers the regulatory approval of:

any products
certain products. Please describe which 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:.....

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):

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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):

The introduction of a product that has been manufactured with the use of the patented invention (utility model) into the commercial circuit by any person, which has obtained a product without violation of the patent owner rights, shall not be considered to be the infringement of rights deriving from a patent.

The product manufactured with the use of the patented invention (utility model) shall be considered to be obtained without the violation of the patent owner rights provided that this product has been manufactured by the patent owner and (or) after manufacturing has been introduced into the commercial circuit by the patent owner or other person according to the special permission (license) of the patent owner.

(Paragraph 3 of Article 31 of Law)

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:

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

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:

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

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):

See below

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**
- 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:

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

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):

If an invention (utility model), excluding a secret invention (utility model) is not used or is inadequately used in Ukraine within 3 years from the date of publishing the data on granting a patent or from the date when the use of an invention (utility model) has been terminated, any person who wishes and is ready to use an invention (utility model) may appeal to the court for granting the right to use an invention (utility model) provided that the owner of rights has rejected the conclusion of the license agreement.

If the patent owner does not prove that the fact of nonuse of an invention (utility model) is caused by important reasons, the court shall make a decision on granting the permission to an interested person to use an invention (utility model) and define the volume of its use, the term of the permission, the amount and procedure of remunerating the patent owner. In this case, the right of the patent owner to grant permissions to use an invention (utility model) shall not be restricted.

(Paragraph 1 of Article 30 of Law)

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):

Yes, the importation constitutes “working” of the patent

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?

3 years from the date of publishing the data on granting a patent or from the date when the use of an invention (utility model) has been terminated

(Paragraph 1 of Article 30 of Law)

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 (by court decision)

No

If yes, what are “legitimate reasons”?

Any that court decided to be such

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):
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):

The CL on the ground of anti-competitive practice can be granted only in relation to semiconductor technology by the decision of a relevant body of the state power;

(Paragraph 3 of Article 30 of Law).
Also see answer to question 81.

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:

The patent owner shall be obliged to grant the permission (license) to use an invention (utility model) to the owner of the patent that has been granted later provided that an invention (utility model) of the latter is intended for other purpose or has significant technical and economical advantages and may not be used without infringement of the rights of the owner the patent that has been granted earlier. The permission shall be granted in the volume that is necessary for the use of an invention (utility model) by the owner of the patent that has been granted later. In this case, the owner of the patent that has been granted earlier shall have the right to obtain on acceptable conditions a license to use an invention (utility model) that is protected by the patent that has been granted later.

(Paragraph 2 of Article 30 of Law).

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:

In this case, the owner of the patent that has been granted earlier shall have the right to obtain on acceptable conditions a license to use an invention (utility model) that is protected by the patent that has been granted later.

(Paragraph 2 of Article 30 of 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:
78. Please indicate how many times and in which technological areas compulsory licenses have been issued in your country:

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

Government use

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

With the purpose to protect the health of population, ecological safety and other public interests, the Cabinet of Ministers of Ukraine may permit the use of the patented invention (utility model) by a defined person without the consent of the patent (declarative patent) owner provided that this owner has groundlessly rejected granting a license for the use of an invention (utility model).

In this case:

- 1. the permission for such a use shall be granted with consideration of specific circumstances;**
- 2. the volume and the duration of such a use shall be determined by purpose of the granted permission and, in the case of semiconductor technology this shall be purely noncommercial use by bodies of the state power or implementing an anticompetition practice by the decision of a relevant body of the state power;**
- 3. the permission for such a use shall not deprive the patent owner of the right to grant permissions for the use of an invention (utility model);**
- 4. the right to such a use shall not be transferred excluding the case when it is transferred together with the part of the enterprise or business practice in which this use is carried out;**
- 5. the use shall be permitted mainly for providing the internal market needs;**
- 6. the notification concerning the grant of the permission for the use of an invention (utility model) shall be sent to the patent owner at the first opportune moment;**
- 7. the permission for the use shall be revoked in case of discontinuance of circumstances under which this permission has been granted;**
- 8. an adequate compensation in accordance with an economic value of an invention (utility model) shall be paid to the patent owner.**
(Paragraph 3 of Article 30 of Law).

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
- Anti-competitive practices and/or unfair competition
- Public health**

National security

National emergency and/or extreme urgency

Dependent patents

Other, please specify:

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

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

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:

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

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:

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

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):

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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:

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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):

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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:

See 102.

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):

The use of an invention with the commercial purpose by any person, which has obtained a product manufactured with the use of the patented invention, but could not know that this product has been manufactured or introduced into the commercial circuit with the violation of the rights granted by the patent, shall not be considered to be the infringement of rights deriving from a patent. Meanwhile, after receiving the relevant notification from the owner of rights, the said person shall terminate the use of a product or pay the relevant compensation to the owner of rights. The amount of the said compensation shall be determined according to laws or by an agreement between the parties. The court shall resolve any disputes on the amounts and the procedure of paying compensation.

(Paragraph 4 of Article 31 of Law).

- (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:

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

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?):

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

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:

[End of Questionnaire]