

## ALGERIA

### **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.

*Ordinance No. 03-07 of July 19, 2003 on Patents (Section 1, Articles 3-9).*

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

*Article 8 of Ordinance No. 03-07 of July 19, 2003 on Patents.*

*(1) plant or animal varieties and essentially biological processes for the production of plants or animals;*

*(2) inventions whose implementation in the territory of Algeria is contrary to public order or morality; and*

*(3) inventions whose working in the territory of Algeria would be detrimental to the life and health of people and animals or to the conservation of plants or would be seriously detrimental to environmental protection.*

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

*Article 11 of Ordinance No. 03-07 July 19, 2003*

*A patent vests its owner with the following exclusive rights:*

*(1) if the object of the patent is a product, to prevent third parties acting without his consent from making, using, selling, offering for sale or importing the product to these ends; and*

*(2) if the object of the patent is a process, to prevent third parties acting without his consent from using the process and from performing the following acts: using, offering for sale, selling or importing the product obtained by this method for these ends.*

*The application is not published, the publication is post-grant.*

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

*Private and/or non-commercial use;*

*Experimental use and/or scientific research;*

*Prior use;*

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

*Exhaustion of patent rights*

### **Section 2: Private and/or non-commercial use**

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

*Ordinance No. 03-07 of July 19, 2003 on Patents.*

*Article 12: "The rights under a patent shall encompass only acts performed for industrial or commercial purposes.*

*These rights shall not encompass the following:*

*(1) acts performed for the sole purpose of scientific research;*

(2) acts concerning the product covered by the patent after the product has been lawfully placed on the market;

(3) the use of patented means on vessels, spacecraft or foreign air or land transport vehicles which temporarily or accidentally enter the waters, airspace or on national territory.

5.-6.

*The exception is/is not mentioned on the basis of case law.*

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):

*These terms are not defined in the applicable legislation.*

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):

*No other criteria are set out in the applicable legislation*

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:

*Nothing to report/the applicable framework is considered adequate*

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

*Nothing to report.*

### **Section 3: Experimental use and/or scientific research**

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

*Article 12(1).*

12. *The exception is/is not mentioned on the basis of case law*

13.

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:

*Algerian law does not provide for any distinction concerning the nature of the organization.*

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):

*These terms are not defined in the applicable legislation.*

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; and*

*seek an improvement to the patented invention.*

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

*Research and/or experimentation must be conducted on or relating to the patented invention (“research on”); and*

*Research and/or experimentation must be conducted with or using the patented invention (“research with”).*

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

*None*

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 [...]:

*The commercial objective of the experimentation or research should not be considered.*

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):

*The applicable Algerian legislation does not distinguish between these two terms.*

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):

*No, Algerian law does not provide for other criteria.*

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:

*The applicable legal framework is considered adequate.*

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

*No challenges have been encountered in this area.*

#### **Section 4: Preparation of medicines**

23.-30.

*The applicable Algerian law does not provide for exceptions for the preparation of medicines.*

#### **Section 5: Prior use**

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

*Article 14 of Ordinance No. 03-07 of July 19, 2003 on Patents.*

32.-33.

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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):

*Under Article 14(1)(a) of Ordinance No. 03-07 of July 19, 2003 on Patents, prior use is subject to good faith.*

*No, Algerian law does not stipulate quantitative or qualitative limitations in this area.*

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

*No, it does not provide for such remuneration.*

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?

*No*

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. 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):

*No, the applicable legislation does not provide for other criteria.*

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:

*The legal framework is considered adequate.*

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

*Nothing to report.*

### **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):

*Article 12(3) of Ordinance No. 03-07 of July 19, 2003 on Patents.*

43.

*No, it is not mentioned.*

44.

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45. The exception applies in relation to:

*Vessels;*

*Aircraft;*

*Land vehicles; and*

*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 terms "temporarily" and/or "or accidentally" are used but are not defined by the applicable legislation.*

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

*No*

48. 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):

*No, the applicable legislation does not provide for other criteria.*

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:

*Yes, the applicable legal framework of the exception is considered adequate.*

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

*Nothing to report.*

### **Section 7: Acts for obtaining regulatory approval from authorities**

51.-59.

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### **Section 8: Exhaustion of patent rights**

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

*National legislation has no clear provision on the applicable principle of exhaustion; the place of first offering for sale (national or international) is not specified.*

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

*Article 12(2) of Ordinance No. 03-07 of July 19, 2003 on Patents.*

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

*No*

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:

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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?

*No*

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:

*The principle of exhaustion of applicable rights is not considered adequate. We are planning to revise the law to clarify the exhaustion of the right (international).*

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

*Nothing to report.*

## **Section 9: Compulsory licenses and/or government use**

### **Compulsory licenses**

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

*Articles 38 to 50 of Ordinance No. 03-07 of July 19, 2003 on Patents.*

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

*No*

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;*

*Dependent patents; and*

*Public interest, nutrition.*

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:

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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):

*These terms are not defined in the applicable 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 of a patented product or a product manufactured by a patented process constitutes “working” of the patent, as stipulated in Article 11 of Ordinance No. 03-07 of July 19, 2003.*

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?

*On expiry of a period of four years from the filing date of the application for a patent or of three years from the date of grant of the patent.*

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

If yes, what are “legitimate reasons”?

*Provided that the patentee proves that the circumstances prevented him from remedying the non-working or insufficient working of the patented invention.*

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):

*These terms are not defined in the applicable law.*

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):

*Articles 49(2) of Ordinance No. 03-07 of July 19, 2003.*

*“Where the public interest, in particular national security, nutrition, health or the development of other sectors of the national economy so requires, especially when fixing, for patented pharmaceuticals, excessive or discriminatory prices compared to average market prices”.*

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 conditions are: significant technical progress and significant economic interest (Article 47(2) of Ordinance No. 03-07 of July, 19 2003)*

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

*Yes, the applicable legislation provides general guidance about the remuneration to be paid by the beneficiary of the compulsory license to the patentee.*

*Article 41 of Ordinance No. 03-07 of July, 19 2003.*

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:

*They are not defined.*

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

None

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

*Yes, the applicable legal framework for the issuance of compulsory licenses is considered adequate.*

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

*Nothing to report.*

#### **Government use**

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

*Article 49 of Ordinance No. 03-07 of July, 19 2003.*

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

*No*

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; and*

*National security*

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

*The objectives are civil protection and development of the national economy.*

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

85.-86

*None*

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

*The applicable legal framework for the issuance of government use is considered adequate.*

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

*Nothing to report.*

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

89.-100.

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#### **Section 11 : Other Exceptions and Limitations**

101.-103.

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[End of Questionnaire]