

Questionnaire on Exceptions and Limitations to Patent Rights

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

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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.

.....
The legal standard used to determine the patentability of an invention is Law No. 6867 on Patents, Industrial Designs and Utility Models, and the Regulations thereunder, Executive Decree No.15222-MIEM-J.....
.....

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.

.....
In accordance with Article 1(2) of the above Law, the following shall not be considered inventions:.....
.....

- (a) discoveries, scientific theories, mathematical methods and computer programs considered in isolation.
- (b) purely aesthetic creations, literary and artistic works.
- (c) economic plans, principles or methods for advertising or business and those referring to purely mental or intellectual activities, or games.
- (d) the juxtaposition of known inventions or mixtures of known products, their variation in form or use, dimensions or materials, apart from in the case of a combination or merger such that they cannot function separately or the characteristic features or functions thereof are modified in order to obtain an industrial result not obvious to a person skilled in the art.

Similarly, the following shall be excluded from patentability, in accordance with paragraph 4 of the above standard:

- (a) inventions whose commercial exploitation shall be prevented objectively and necessarily in order to protect *ordre public*, morality, the health or life of persons or animals, or in order to preserve plants or avoid serious harm to the environment.
- (b) diagnostic, therapeutic and surgical methods for the treatment of people or animals.
- (c) plants and animals, except for microorganisms, provided that they are not microorganisms as they are found in nature.
- (d) essentially biological processes for the production of plants or animals, which are not non-biological or microbiological processes.

In addition, Article 78(1), (5) and (6) of Law No. 7788 on Biodiversity establishes the following exceptions:

The following shall be excluded from patent protection:

1. Deoxyribonucleic acid sequences, nucleotides and amino acids, as they are found in nature or deoxyribonucleic acid sequences, nucleotides and amino acids that do not satisfy the requirements of patentability, as established in Law No. 6867, of April 25, 1983, and the revisions thereof.

(...)

5. Processes or cycles which are natural per se.

6. Inventions essentially derived from the knowledge associated with traditional or cultural biological practices in the public domain.

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 accordance with Article 16 of the Patent Law:

1. With the limitations provided for in this Law, the patent shall confer on the owner the right to work, exclusively, the invention and grant licenses to third parties for the working. Similarly, the patent shall confer on its owner the following exclusive rights:

- (a) where the subject matter of the patent is a product, the right to prevent third parties, without his consent, from performing acts of manufacture, use, offer for sale, sale or

import, for those purposes, of the product which is the subject of the patent;

(b) where the subject matter of the patent is a process, the right to prevent third parties, without his consent, from performing the act of using the process and the acts of use, offer for sale, sale or import, for those purposes, of at least the product obtained directly through said process.

2. Provided that the following exceptions do not unjustifiably harm the normal working of the patent, or cause undue harm to the legitimate interests of its owner or its licensee, the rights conferred by the patent shall not extend to:

(a) legal acts of any nature, provided that they are performed in a private sphere and for non-commercial purposes.

(b) the acts performed for experimental purposes, which refer to the subject matter of the patented invention.

(c) the acts performed exclusively for the purposes of teaching or scientific or academic research with respect to the subject matter of the patented invention.

(d) acts of sale, offer for sale, use, usufruct, import or any method of marketing of a product protected by the patent and obtained by a patented process, once it has been marketed in any country, with the consent of the owner or a licensee.

(e) the uses necessary to investigate or process or any other requirements to obtain health approval for the purpose of marketing a product after the patent protecting it expires.

3. The rights conferred by a patent may not be binding on any persons who, prior to the filing date or, as appropriate, priority date, of the corresponding patent application, were in the country producing the product or using the invention process, and shall have the right to continue doing so. This right may only be assigned or transferred with the firm or establishment in which such production or use is being carried out or is planned.

4. The Ministry of Health and other competent authorities shall implement measures in their process of approving marketing of medicines, for the purpose of avoiding any person other than the patent owner marketing a product covered by the patent which protects the previously approved product, or also its approved use during the validity of that patent, unless it is with the consent or approval of the patent owner.

In addition, pursuant to the provisions of Article 11 of the same Law compensation may be claimed for harm done to any person working the invention claimed in a patent application, during the period between the date of publication of the notice of application and the date of grant of the patent. Such compensation shall be subject to the grant of the patent and shall be given only with respect to such claims as have been included in the patent.

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;

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

- 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):

.....
Article 16.2a.....
Provided that the following exceptions do not unjustifiably harm the normal working of the patent, or cause undue harm to the legitimate interests of its owner or its licensee, the rights conferred by the patent shall not extend to:

(a) legal acts of any nature, provided that they are performed in a private sphere and for non-commercial purposes.

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

.....
.....
.....

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

.....
Costa Rica is in the process of devising such public policy.
.....

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

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).

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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):

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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:

.....
Yes, for the purposes of not interfering with scientific and technological development.
.....

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

.....
To date, there have been no such challenges.
.....

Section III: Experimental use and/or scientific research ⁴

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

.....
Article 16.2(b) and (c)

2.. Provided that the following exceptions do not unjustifiably harm the normal working of the patent, or cause undue harm to the legitimate interests of its owner or its licensee, the rights conferred by the patent shall not extend to:

(b) the acts performed for experimental purposes, which refer to the subject matter of the patented invention.

(c) the acts performed exclusively for the purposes of teaching or scientific or academic research with respect to the subject matter of the patented invention.

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

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

.....
.....
.....

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

.....
Costa Rica is in the process of devising such public policy.
.....
.....

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

.....
.....
.....

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. In addition, the only case included is that of “academic research”, as noted in Article 16.2(c).....
.....

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):

.....
.....
.....

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):

Article 16.2(b) and (c) states that the rights conferred by the patent shall not extend to acts performed for experimental purposes, which refer to the subject matter of the patented invention, nor to acts performed exclusively for the purposes of teaching or scientific or academic research with respect to the subject matter of the patented invention. From an analysis of the standard, the exception is noted to cover both criteria.

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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):

There is no distinction between the 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 other criteria are envisaged.
.....

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

.....
Yes, for the purposes of not interfering with scientific and technological development. However, no amendments to the legislation are planned.
.....

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

.....
To date, no challenges have arisen.....

.....

Section IV: Preparation of medicines

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

.....
The exception is not contained in Costa Rican law.....
.....

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

.....
.....
.....

25. (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:

.....
.....
.....

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

.....
.....
.....

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):

.....
.....
.....

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):

.....
Article 16.3 of the Patent Law.....
The rights conferred by a patent may not be binding on any persons who, prior to the filing date or, as appropriate, priority date, of the corresponding patent application, were in the country producing the product or using the invention process, and shall have the right to continue doing so. This right may only be assigned or transferred with the firm or establishment in which such production or use is being carried out or is planned.

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

.....
.....
.....

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

.....
Costa Rica is in the process of devising such public policy.
.....

(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 scope of “use” in the applicable national legislation is defined by the date of filing or, as appropriate, of priority of the corresponding patent application, but said legislation does not envisage qualitative or quantitative limitations to the application of such “use”..

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

.....
No

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:

.....
In accordance with the last paragraph of Article 16(3), this right may only be assigned or transferred with the firm or establishment in which such production or use is being carried out or is planned.

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

(The standard clearly states that the use must be given prior to the filing date or, as appropriate, priority date, of the corresponding patent application).

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

.....
.....
.....

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.
.....

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:

.....
Yes, for the purposes of not interfering with scientific and technological development. However, no amendments to the legislation are planned.
.....

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

.....
To date, no challenges have arisen.....
.....

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 exception is not included in national legislation. Should the situation arise, we must refer to the provisions of Article 5^{ter} of the Paris Convention.
.....

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

.....
.....
.....

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):

.....
The article in question envisages both terms but does not define them.
.....

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):

.....
In the case of vessels, it states "that such devices are used exclusively for the . needs of the vessel".
.....

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:

.....
Yes, for the purposes of not interfering with scientific and technological development. However, no amendments to the legislation are planned.
.....

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

.....
To date, no challenges have arisen.....
.....

Section VII: Acts for obtaining regulatory approval from authorities

51. If the exception is contained in statutory law, please provide the relevant provision(s):
.....
Article 16.2(e)
Provided that the following exceptions do not unjustifiably harm the normal working of the patent, or cause undue harm to the legitimate interests of its owner or its licensee, the rights conferred by the patent shall not extend to:
(e) the uses necessary to investigate or process or any other requirements to obtain health approval for the purpose of marketing a product after the patent protecting it expires.
52. If the exception is provided through case law, please cite the relevant decision(s) and provide its(their) brief summary:
.....
.....
.....
53. (a) What are the public policy objectives for providing the exception? Please explain:
.....
Costa Rica is in the process of devising such public policy.
.....
- (b) Where possible, please explain with references to the legislative history, parliamentary debates and judicial decisions:
.....
.....
.....
54. Who is entitled to use the exception? Please explain:
.....
The standard does not specify it, it refers only to "a product".
.....
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):

.....
In accordance with the standard referred to, a third party may investigate, process or any other requirement to obtain health approval in order to market the product.
.....

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:

.....
Yes, for the purposes of not interfering with scientific and technological development. However, no amendments to the legislation are planned.
.....

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

.....
To date, no challenges have arisen.....
.....

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):

.....
Article 16.2(d)
Provided that the following exceptions do not unjustifiably harm the normal working of the patent, or cause undue harm to the legitimate interests of its owner or its licensee, the rights conferred by the patent shall not extend to:
(d) acts of sale, offer for sale, use, usufruct, import or any method of marketing of a product protected by the patent and obtained by a patented process, once it has been marketed in any country, with the consent of the owner or a licensee.

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

.....
.....
.....

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

.....
Costa Rica is in the process of devising such public policy.
.....

(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):

.....
.....
.....

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

.....
Yes, for the purposes of not interfering with scientific and technological development.
.....

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

.....
To date, no challenges have arisen.....
.....

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):

.....
Articles 18, 19 and 20 of the Patent Law.....
Article 18. Absence of industrial working or insufficient nature thereof.....
Article 19. Compulsory licenses for dependent patents and compulsory licenses for anti-competitive practices.

Article 20. Public utility licenses.

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

.....
.....
.....

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: Public interest

.....

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

.....
Costa Rica is in the process of devising such public policy.
.....

(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):

.....
The legislation does not envisage any relevant definitions; however, in accordance with Article 18.1, non-working or insufficient working shall occur where a patent is not worked in a permanent and stable manner such that the market is appropriately and reasonably supplied.
.....

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):

.....

In accordance with Article 18.3, local production and unlawful import are forms of working.....
.....

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? In accordance with Article 18.1, the grant of a patent shall entail the obligation to work it in Costa Rica, in a permanent and stable manner, so that the market is conveniently and reasonably supplied within a period of three years beginning from the grant of the patent or four years beginning from the patent application, whichever period is longer. Working may not be interrupted either for more than one year.....

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):

.....
No relevant definitions are envisaged.
.....

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):

.....
Article 19.B.3

3. For the purposes of this Law, the following shall, *inter alia*, be considered anti-competitive practices:

- (a) the fixing of excessive or discriminatory prices for patented products.....
- (b) the lack of market supply on reasonable commercial conditions.
- (c) the obstruction of commercial or production activities.

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:

Article 19.A.1 of the Law refers to dependent patents.

If the invention claimed in a patent may not be worked industrially in the country without infringing an earlier patent, the Industrial Property Registry shall, at the request of the owner of the second patent, his licensee or the beneficiary of a compulsory license for the later patent, grant a compulsory license insofar as it is necessary to avoid the infringement of the earlier patent, subject to the relevant provisions of Article 18 of this Law and the following conditions:

- (a) the invention claimed in the second patent must involve a relevant technical advance, of considerable economic importance with respect to the invention claimed in the first patent.
- (b) the owner of the first patent shall have the right to a cross license on reasonable conditions, in order to work the invention claimed in the second patent.
- (c) the authorized use of the first patent may not be assigned without the assignment of the second patent.

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 the case of compulsory licenses owing to the absence or insufficient nature of industrial working, Article 18.7 states that the Industrial Property Registry shall decide, within a period of 90 calendar days, to grant a compulsory license, subject to hearing the parties. If the Registry grants such a license, it shall determine the conditions under which the license is granted, limiting the scope and duration to the authorized purposes, and the economic remuneration that the rights owner will receive. For this purpose, the particular circumstances of each case and the economic value of the authorization shall be taken into account, bearing in mind the average rate of royalties for the sector in question, in commercial license contracts between independent parties. With respect to semiconductor technology, only non-commercial public use may be made in order to rectify a practice declared anti-competitive following court or administrative proceedings.

.....
In the case of public utility licenses, Article 31.1(d) of the Regulations under the Patent Law provides that the amount and conditions of the payment to be made to the patent owner or any exclusive licensee of that patent shall be determined on the basis of the scope of the working of the invention that is the subject of the authorization.

Similarly, Article 81 *in fine* of the Law on Biodiversity states:

“As part of the fair and equitable distribution of benefits derived from the access to elements and resources of national biodiversity in favor of the community, each license, agreement or concession for access to or use of said elements and resources of biodiversity shall state that said licenses shall not be subject to any remuneration or royalty for the rights owner”.

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:

.....
There are no definitions.

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

.....
We have no record of this.....
.....

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, for the purposes of not interfering with scientific and technological development
However, no amendments to the legislation are planned.
.....

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

.....
To date, no challenges have arisen.....
.....

Government use

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

.....
Article 20 of the Law
Where required by reasons qualified as an extreme emergency, public interest, or national emergency or security, the Executive Authority may, by decree, subject the patent or the patent application to a compulsory license at any time, even without the consent of its owner, so that the invention is worked by a State entity or by third parties authorized by the Government. The owner of the patent which is the subject of the license shall be notified where reasonably possible. For the grant of such licenses, the provisions contained in Article 18 of this Law shall be observed, as appropriate.
.....

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

.....
.....
.....

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: Public interest

.....

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

.....
Costa Rica is in the process of devising such public policy.
.....

(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:

.....
There are no relevant definitions.
.....

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

.....
We have no record of this.
.....

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:

.....
Yes, for the purposes of not interfering with scientific and technological development. However, no amendments to the legislation are planned.
.....

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

.....
To date, no challenges have arisen.
.....

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):

.....
The exception is not included in Costa Rican legislation.
.....

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

.....
.....
.....

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

.....
.....
.....

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

.....
.....
.....

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):

.....
.....
.....

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:

.....
.....
.....

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

.....
.....
.....

Breeders' use of patented inventions

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

.....
The exception is not included in Costa Rican legislation.
.....

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

.....
.....
.....

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

.....
.....
.....

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

.....
.....
.....

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):

.....
.....
.....

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:

.....
.....
.....

Section XI: Other Exceptions and Limitations

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

.....
Costa Rican legislation does not envisage other exceptions or limitations.....
.....

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):

.....
.....
.....

- (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:

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.....

[End of Questionnaire]