

COMPILATION OF VARIOUS LEGAL PROVISIONS ON THE EXCEPTION REGARDING THE
EXHAUSTION OF PATENT RIGHTS

COMPILATION DE DIVERSES DISPOSITIONS JURIDIQUES CONCERNANT L'EXCEPTION RELATIVE À
L'ÉPUISEMENT DES DROITS DE BREVET

COMPILACIÓN DE DIVERSAS DISPOSICIONES LEGALES SOBRE LA EXCEPCIÓN RELATIVA AL
AGOTAMIENTO DE LOS DERECHOS DE PATENTE

مجموعة من مختلف الأحكام القانونية بشأن الاستثناء الخاص باستنفاد حقوق البراءات

关于专利权用尽例外的各种法律规定汇编

КОМПИЛЯЦИЯ РАЗЛИЧНЫХ ЗАКОНОДАТЕЛЬНЫХ ПОЛОЖЕНИЙ ОБ ИСКЛЮЧЕНИИ В
ОТНОШЕНИИ ИСЧЕРПАНИЯ ПАТЕНТНЫХ ПРАВ

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ALBANIA

Article 39 of the Law № 9947 of July 7, 2008, on Industrial Property (as amended up to Law № 17/2017 of February 16, 2017)

39. Exhaustion of rights

The rights conferred by a patent shall not extend to acts committed in the Republic of Albania with regard to a product protected by the patent after the said product has been put on the market in the Republic of Albania by the patent's owner or with his consent.

ALGERIA

Article 12(2) of Ordinance No. 03-07 of 19 Joumada El Oula 1424 corresponding to July 19, 2003, on Patents

12. Les droits découlant d'un brevet d'invention ne s'étendent qu'aux actes accomplis à des fins industrielles ou commerciales. Ces droits ne s'étendent pas :

[...]

2) aux actes concernant le produit couvert par ce brevet après que le produit ait été licitement mis dans le commerce;

[...]

ANDORRA

Article 33 (1) (a) of the Law 26/2014, of October 30, 2014, on Patents

33. Límits dels drets de les patents

(1) Els drets conferits per una patent no s'estenen a:

(a) Actes respecte d'un producte cobert per la patent després que aquest producte hagi estat introduït al mercat pel titular de la patent, o amb el seu consentiment exprés, al Principat d'Andorra o a qualsevol altre territori especificat per acord del Govern en virtut de criteris de reciprocitat;

[...]

ANTIGUA AND BARBUDA

Section 32 (4) (a) of the Patent Act № 22 of 2018

32. Rights conferred by the patent

[...]

(4) The rights under the patent shall not extend to-

(a) acts in respect of articles which have been put on the market in any country by the owner of the patent or with his consent;

[...]

ARGENTINA

Article 36 (c) of the Law № 24.481 of March 30, 1995, on Patents and Utility Models (as amended up to Decree № 403/2019 of June 5, 2019)

36. El derecho que confiere una patente no producirá efecto alguno contra:

[...]

c) Cualquier persona que adquiera, use, importe o de cualquier modo comercialice el producto patentado u obtenido por el proceso patentado, una vez que dicho producto hubiera sido puesto lícitamente en el comercio de cualquier país. Se entenderá que la puesta en el comercio es lícita cuando sea de conformidad con el Acuerdo de Derechos de Propiedad Intelectual vinculados con el comercio. Parte III Sección IV Acuerdo TRIP's-GATT.

[...]

Corresponding Regulation to Article 36 of the Law No. 24.481, on Patents and Utility Models

36. A los efectos del inciso c) del artículo 36 de la Ley, el titular de una patente concedida en la República Argentina tendrá el derecho de impedir que terceros, sin su consentimiento, realicen actos de fabricación, uso, oferta para la venta o importación en el territorio del producto objeto de la patente, en tanto dicho producto no hubiera sido puesto lícitamente en el comercio de cualquier país. Se considerará que ha sido puesto lícitamente en el comercio cuando el licenciataria autorizado a su comercialización en el país acredite que lo ha sido por el titular de la patente en el país de adquisición, o por un tercero autorizado para su comercialización.

La comercialización del producto importado estará sujeta a lo dispuesto en el artículo 98 de la Ley y esta reglamentación.

ARMENIA

Article 19 of the Law of the Republic of Armenia of June 10, 2008, on Inventions, Utility Models and Industrial Designs

19. Limitations of Rights Conferred by Patent

(1) The patent owner or the owner of exclusive license has no right to prevent to put into civil circulation in the Republic of Armenia a patented invention or utility model or product, developed by patented process, if this product or article has been legally put on the market in the Republic of Armenia by the patent owner or with his consent.

(2) Import of a patented product including an industrial property subject matter or developed by a patented process into the territory of the Republic of Armenia shall not be deemed as infringement of exclusive rights of the patent owner if it has been legally put on the market in a foreign country by the patent owner or with his consent.

[...]

BARBADOS

Section 6 (1) (b) of the Patents Act 2001 (Cap. 314) (as amended by Act No 2 of 2006)

6. Limitations of rights

(1) The rights vested in the owner of a patent by section 5 in respect of any invention do not apply to

[...]

(b) acts in relation to products that have been put on the market in Barbados by the owner of the product or with his consent;

[...]

BELARUS

Article 10 of the Law of the Republic of Belarus No 160-Z of December 16, 2002 on Patents for Inventions, Utility Models, Industrial Designs (as amended up to Law No 275-Z of December 18, 2019)

10. Actions not recognized as a violation of the exclusive right of the patent holder

The following shall not be recognized as a violation of the exclusive right of the patent holder:

[...]

application, offer for sale, sale, import or storage for these purposes of a product containing a patent protected invention, utility model, industrial design and introduced into civil circulation in the Republic of Belarus without violating the rights of the patent holder.

[...]

BELGIUM

Article XI.34. § 2 of the Law of April 19, 2014, on the insertion of Book XI 'Intellectual Property' to the Code of Economic Law, and specific provisions to the Book XI in Books I, XV and XVII of the Code (updated on October 30, 2015)

[...]

34. § 2. The rights conferred by the patent do not extend to acts concerning the product covered by this patent, carried out on Belgian territory, after this product has been put on the market in Belgium by the patent holder or with his express consent.

BELIZE

Section 33 (4) (a) of the Patents Act (Cap. 253, Revised version 2000)

33. Rights of owner of patent

[...]

(4.) The rights under the patent shall not extend to:

(a) acts in respect of articles which have been put on the market in Belize by the owner of the patent or with his consent;

[...]

BENIN

The Bangui Agreement Instituting an African Intellectual Property Organization (OAPI), Act of December 14, 2015 applies (see below).

BHUTAN

Section 13 (4) (a) (i) of the Industrial Property Act of the Kingdom of Bhutan 2001

13. Rights Conferred by Patent

[...]

(4) (a) The rights under the patent shall not extend:

(i) to acts in respect of articles which have been put on the market in Bhutan by the owner of the patent or with his consent; or

[...]

BOLIVIA

The decision № 486 of September 14, 2000 of the Commission of the Andean Community applies (See below).

BOSNIA AND HERZEGOVINA

Article 76 of the Law on Patents as of May 28, 2010

76. Exhaustion of Rights

The placing on the market within the territory of Bosnia and Herzegovina of a product made according to a protected invention or a product directly obtained by a process which is the subject matter of an invention by the patent holder or with his explicit consent shall exhaust for the territory of Bosnia and Herzegovina the exclusive rights conferred by the patent in respect of such a product.

BOTSWANA

Section 25 (1) (a) of the Industrial Property Act 2010 (Act No 8 of 2010)

25. Exceptions to rights conferred by patent

(1) The rights conferred by a patent shall not extend to –

[...]

(a) acts in respect of articles which have been put on the market in Botswana or abroad by the patentee or by another person acting with the patentee's consent, or having an economic tie to the patentee;

[...]

BRAZIL

Law No. 9.279 of May 14, 1996 (Law on Industrial Property, as amended up to Law No. 14.200 of September 2, 2021)

43. The provisions of the previous article do not apply:

[...]

IV - to a product manufactured in accordance with a process or product patent that has been placed on the internal market directly by the patentee or with his consent;

[...]

Art. 68. O titular ficará sujeito a ter a patente licenciada compulsoriamente se exercer os direitos dela decorrentes de forma abusiva, ou por meio dela praticar abuso de poder econômico, comprovado nos termos da lei, por decisão administrativa ou judicial.

§ 1º Ensejam, igualmente, licença compulsória:

I - a não exploração do objeto da patente no território brasileiro por falta de fabricação ou fabricação incompleta do produto, ou, ainda, a falta de uso integral do processo patenteado, ressalvados os casos de inviabilidade econômica, quando será admitida a importação; ou

II - a comercialização que não satisfizer às necessidades do mercado.

§ 2º A licença só poderá ser requerida por pessoa com legítimo interesse e que tenha capacidade técnica e econômica para realizar a exploração eficiente do objeto da patente, que deverá destinar-se, predominantemente, ao mercado interno, extinguindo-se nesse caso a excepcionalidade prevista no inciso I do parágrafo anterior.

§ 3º No caso de a licença compulsória ser concedida em razão de abuso de poder econômico, ao licenciado, que propõe fabricação local, será garantido um prazo, limitado ao estabelecido no art. 74, para proceder à importação do objeto da licença, desde que tenha sido colocado no mercado diretamente pelo titular ou com o seu consentimento.

§ 4º No caso de importação para exploração de patente e no caso da importação prevista no parágrafo anterior, será igualmente admitida a importação por terceiros de produto fabricado de acordo com patente de processo ou de produto, desde que tenha sido colocado no mercado diretamente pelo titular ou com o seu consentimento.

[...]

Article 184 - A crime is committed against a patent of invention or a utility model patent by he who:

I - exports, sells, exhibits or offers for sale, maintains in stock, hides or receives, with a view to use for economic purposes, a product manufactured in violation of a patent of invention or of a utility model patent, or that is obtained by a patented means or process; or

II - imports a product that is the subject matter of a patent of invention or of a utility model patent or is obtained by a means or process patented in this country, for the purposes mentioned in the previous item, and that has not been placed on the external market directly by the proprietor or with his consent.
Penalty - detention of 1 (one) to 3 (three) months, or a fine.

BRUNEI DARUSSALAM

Section 64 (2) (f) of the Patents Order, 2011

64. Meaning of infringement.

[...]

(2) An act which, apart from this subsection, would constitute an infringement of a patent for an invention shall not be so if –

[...]

(f) subject to subsections (3) and (6), it consists of the import, use or disposal of, or the offer to dispose of, any patented product or any product obtained by means of a patented process or to which a patented process has been applied, which is produced by or with the consent (conditional or otherwise) of the proprietor of the patent or any person licensed by him, and for this purpose “patent” includes a patent granted in any country outside Brunei Darussalam in respect of the same or: substantially the same

invention as that for which a patent is granted under this Order and “patented product”, “patented process” and “licensed” shall be construed accordingly;

[...]

BULGARIA

Article 20a (1) of the Law on Patents and Utility Models Registration (SG № 27/1993, as amended up to October 27, 2020)

20a. Exhaustion of rights

(1) The exclusive right over the invention, conceded with patent, shall not cover activities with the product, protected with the patent, which has been released on the market on the territory of the European Economic Area by the patent holder or with his consent.

[...]

BURKINA FASO

The Bangui Agreement Instituting an African Intellectual Property Organization (OAPI), Act of December 14, 2015 applies (see below).

BURUNDI

Article 57 (1) of the Law № 1/13 of July 28, 2009, relating to Industrial Property in Burundi

57. The rights arising from the patent shall not cover:

1. acts relating to goods placed on sale in Burundi or in any other country by the patent holder or with his consent, leading to the exhaustion of the patent holder’s rights;

[...]

CAMBODIA

Article 44 (i) of the Law on Patents, Utility Models and Industrial Designs

44. The rights under the patent shall not extend:

(i) to acts in respect of articles which have been put on the market in the Kingdom of Cambodia or outside the Kingdom of Cambodia by the owner of the patent or with his consent; or

[...]

CAMEROON

The Bangui Agreement Instituting an African Intellectual Property Organization (OAPI), Act of December 14, 2015 applies (see below).

CENTRAL AFRICAN REPUBLIC

The Bangui Agreement Instituting an African Intellectual Property Organization (OAPI), Act of December 14, 2015 applies (see below).

CHAD

The Bangui Agreement Instituting an African Intellectual Property Organization (OAPI), Act of December 14, 2015 applies (see below).

CHILE

Article 49 of the Law No 19.039 of March 6, 2006, on Industrial Property (Consolidated Law approved by Decree-Law No. 3 of March 9, 2006, incorporating amendments up to Law No. 20569 of February 6, 2012)

49.

[...]

La patente de invención no confiere el derecho de impedir que terceros comercialicen el producto amparado por la patente, que ellos hayan adquirido legítimamente después de que ese producto se haya introducido legalmente en el comercio de cualquier país por el titular del derecho o por un tercero, con el consentimiento de aquél.

[...]

CHINA

Article 75 (1) of the Patent Law of the People's Republic of China (as amended up to the Decision of October 17, 2020, of the Standing Committee of the National People's Congress on Amending the Patent Law of the People's Republic of China)

75. None of the following shall be deemed an infringement of the patent right:

(1) Where, after the sale of a patented product or products directly obtained through the patented process, which was made by the patentee, an entity or individual authorized by the patentee, any other person uses, offers to sell, sells or imports that product;

[...]

[Non-official translation]

COLOMBIA

The decision No 486 of September 14, 2000 of the Commission of the Andean Community applies (See below).

COMOROS

The Bangui Agreement Instituting an African Intellectual Property Organization (OAPI), Act of December 14, 2015 applies (see below).

CONGO

The Bangui Agreement Instituting an African Intellectual Property Organization (OAPI), Act of December 14, 2015 applies (see below).

COSTA RICA

Article 16 (2) (d) of the Law No 6867 of April 25, 1983, on Patents, Industrial Designs and Utility Models (as amended up to Law No 8686 of November 21, 2008)

16. Rights conferred by patents. Limitations

[...]

2. Provided that the following exceptions do not unjustifiably affect the normal working of the patent or result in unreasonable prejudice to the legitimate interests of the owner or his licensee, the rights conferred by the patent shall not extend to:

[...]

(d) the act of selling, offering for sale, use, usufruct, import or any means of marketing a product protected by the patent or obtained via a patented process, once the product has been traded by any country, with the consent of the owner or a licensee;

[...]

CÔTE D'IVOIRE

The Bangui Agreement Instituting an African Intellectual Property Organization (OAPI), Act of December 14, 2015 applies (see below).

CROATIA

Article 102 (1) of the Patent Act (OG No 16/2020)

102. Exhaustion of the patent holder's exclusive rights

(1) The exclusive rights conferred by a patent shall not extend to a product which is a subject matter of the patent after such product has been put on the market in the territory of a Member State of the European Union or a Contracting State of the European Economic Area Agreement by the holder of a patent or with his consent.

[...]

CUBA

Article 48.1 of the Decree-Law No 290 of November 20, 2011 on Inventions and Industrial Designs

48.1. Los derechos del titular no se extienden a los actos realizados por un tercero con relación al producto patentado o al producto directamente obtenido a partir de un procedimiento patentado, después de que ese producto haya sido puesto en el comercio en cualquier territorio por el titular o por otra persona con su consentimiento o económicamente vinculada a él.

[...]

CYPRUS

Section 27 (3) (i) of the Patents Law of 1998

27. Rights conferred by a patent.

[...]

3. Notwithstanding paragraphs (1) and (2) of this section, the owner of a patent shall have no right to prevent third parties from performing, without his authorization, the acts referred to in subsections (1) and (2) of this section in the following circumstances:

(i) Where the act concerns a product which has been put on the market by the owner of the patent, or with his express consent, insofar as such an act is performed after that product has been so put on the market in Cyprus.

[...]

CZECH REPUBLIC

Section 13 (b) of the Act No 527/1990 Coll. on Inventions and Rationalization Proposals (as amended up to Act No. 196/2017 Coll.)

Exhaustion of rights

The proprietor of the patent shall not be entitled to prohibit third persons to dispose with the product, which is subject-matter of the protected invention, if the product has been put on the market in the Czech Republic by the proprietor of the patent or with his consent, unless there exist the reasons for the extension of patent rights to the mentioned activities.

DENMARK

Section 3 (3) (ii) of the Consolidate Patents Act (Consolidate Act № 90 of January 29, 2019)

3.

[...]

(3) The exclusive right shall not extend to

[...]

(ii) acts concerning products put on the market in this country or in another country within the European Economic Area (EEA) by the proprietor of the patent or with his consent,

[...]

DOMINICA

Section 33 (4) (a) of the Patents Act № 8 of October 7, 1999

33. Rights conferred by patent.

[...]

(4) The rights under the patent shall not extend to:

(a) acts in respect of articles which have been put on the market in Dominica by the owner of the patent or with his consent;

[...]

DOMINICAN REPUBLIC

Article 30 (d) of the Law № 20-00 of May 8, 2000, on Industrial Property

30. Limitation and Extent of the Rights of the Patent

The patent does not give the right to prevent:

[...]

(d) The sale, leasing, use, usufruct, importation or any means of marketing a product protected by patent or obtained by a patented process, once said product has been placed on the market in any country with the consent of the holder or of a licensee or in any other legal manner. Products and procedures shall not be considered legally placed on the market if placed in violation to industrial property law.

[...]

ECUADOR

The decision No 486 of September 14, 2000 of the Commission of the Andean Community applies (See below).

EL SALVADOR

Article 116 (d) of the Law on Intellectual Property (as amended up to Legislative Decree No 611 of February 15, 2017)

116. Los efectos de la patente no se extienden:

[...]

d) A la comercialización o uso de un producto después de que ha sido legalmente colocado por primera vez en el comercio dentro del territorio nacional.

[...]

EQUATORIAL GUINEA

The Bangui Agreement Instituting an African Intellectual Property Organization (OAPI), Act of December 14, 2015 applies (see below).

ESTONIA

Section 17¹ of the Patents Act (consolidated text of April 1, 2019)

§ 17¹. Exhaustion of rights.

The proprietor of a patent has no right to prohibit acquisition (including importation), use, distribution, sale or offer for sale of a product containing the patented invention if the product has been put on the market in the territory of the Republic of Estonia or a contracting party to the Agreement on the European Economic Area by the proprietor of the patent or with the proprietor's consent.

ESWATINI

Section 12 (4) (a) of the Patents, Utility Models and Industrial Designs Act, 1997

12.

[...]

(4) The rights under the patent shall not extend to –

(a) acts in respect of articles which have been put on the market in Swaziland by the owner of the patent or with his consent;

[...]

ETHIOPIA

Section 25 (1) (c) of the Inventions, Minor Inventions and Industrial Designs Proclamation No 123/1995

25. Limitation of Rights

1. The rights of the patentee shall not extend to:

[...]

c) acts in respect of patented articles which have been put on the market in Ethiopia, by the owner of the patent or with his consent, or

[...]

FINLAND

Section 3 (3) (2) of the Patents Act (Act No 550/1967 of December 15, 1967, as amended up to Act No 717/2016 of August 25, 2016)

Section 3

[...]

(3)

[...]

The exclusive right shall not apply to:

[...]

(2) use of a patented product that has been put on the market within the European Economic Area by the proprietor of the patent or with his consent;

[...]

[Non-official translation]

FRANCE

Article L613-6 of the Intellectual Property Code (consolidated version as of January 1, 2021)

Article L613-6

Les droits conférés par le brevet ne s'étendent pas aux actes concernant le produit couvert par ce brevet, accomplis sur le territoire français, après que ce produit a été mis dans le commerce en France ou sur le territoire d'un Etat partie à l'accord sur l'Espace économique européen par le propriétaire du brevet ou avec son consentement exprès.

GABON

The Bangui Agreement Instituting an African Intellectual Property Organization (OAPI), Act of December 14, 2015 applies (see below).

GAMBIA

Section 12 (4) (a) of the Industrial Property Act (Act No. 12 of 1989)

12.

[...]

(4) The rights under the patent shall not extend-

(a) to acts in respect of articles which have been put on the market in The Gambia by the owner of the patent or with his consent; or

[...]

GHANA

Section 11 (4) (a) of the Patent Act, 2003 (Act 657)

11. Rights Conferred by Patent.

[...]

(4) The rights under the patent shall not extend to:

(a) acts in respect of articles which have been put on the market in any country by the owner of the patent or with the owner's consent; or

[...]

GUATEMALA

Article 131 of the Industrial Property Law, Decree No 57-2000

131. Agotamiento del Derecho

La patente no dará el derecho de impedir a un tercero realizar negocios mercantiles respecto de un producto protegido por la patente u obtenido por un procedimiento patentado, después de que ese

producto se hubiese introducido en el comercio en cualquier país por el titular de la patente o por otra persona con consentimiento del titular o económicamente vinculada a él.

[...]

GUINEA

The Bangui Agreement Instituting an African Intellectual Property Organization (OAPI), Act of December 14, 2015 applies (see below).

GUINEA-BISSAU

The Bangui Agreement Instituting an African Intellectual Property Organization (OAPI), Act of December 14, 2015 applies (see below).

HONDURAS

Article 18 of the Industrial Property Law (approved by Decree No. 12-99-E)

[...]

Los derechos conferidos por la patente no podrán hacerse valer contra cualquier persona que comercialice, adquiera o use el producto patentado u obtenido por el procesó patentado, luego de que dicho producto hubiera sido introducido lícitamente en el co nierc io nacional internacional por el titular de la patente o por sus licenciatarics.

[...]

HUNGARY

Article 20 of the Act No. XXXIII of 1995 on the Protection of Inventions by Patents (consolidated text of January 1, 2021)

20. Exhaustion of the exclusive right of exploitation conferred by patent protection

The exclusive right of exploitation conferred by patent protection shall not extend to further acts concerning a product put on the market in the territory of the European Economic Area by the patentee or with his express consent, except where the patentee has legitimate interests in opposing the further marketing of the product.

ICELAND

Article 3 (3) (2) of the Patents Act No 17/1991 (as amended up to Act No 126/2011)

3. The exclusive right conferred by a patent implies that no person except the proprietor of the patent may, without the proprietor's consent, use the invention by:

[...]

3.

[...]

The following are excepted from the exclusive right:

[...]

2. [use of the product protected by the patent which is put on the market within the European Economic Area, within a member state of the incorporation of the European Free Trade Association or in the Faroe Islands by the proprietor of the patent or with his consent] ;

[...]

INDIA

Section 107A (b) of the Patents Act, 1970 (Act No. 39 of 1970, as amended up to the Patents (Amendment) Act, 2005)

107A. Certain acts not to be considered as infringement.

For the purposes of this Act,—

[...]

(b) importation of patented products by any person from a person who is duly authorised under the law to produce and sell or distribute the product, shall not be considered as infringement of patent rights.

INDONESIA

Article 167 (a) of the Law of the Republic of Indonesia No. 13 of 2016, on Patents

167. Exceptions from the criminal provisions as referred to in Chapter XVII and civil lawsuit against:

a. importation of Patented pharmaceutical product in Indonesia and the product has been legally marketed in a country provided that the product is imported in accordance with the provisions of legislation; and

[...]

[Non-official translation]

IRAN (ISLAMIC REPUBLIC OF)

Article 15 (c) (1) of the Patents, Industrial Designs and Trademarks Registration Act 2008

15 - Rights Conferred by Patent shall be as follows:

[...]

c) The rights under the patent shall not include the following:

1. The use of articles which have been put on market in Iran by the owner of the patent or with his consent.

[...]

IRELAND

Section 43 of the Patents Act 1992 (Act No. 1 of 1992)

43.— The rights conferred by a patent shall not extend to any act which, pursuant to any obligations imposed by the law of the Treaties establishing the European Communities, cannot be prevented by the proprietor of the patent.

ITALY

Article 5 (1) of the Industrial Property Code (Legislative Decree № 30 of February 10, 2005, as amended up to Legislative Decree № 34 of May 19, 2020)

5. Exhaustion.

1. The exclusive rights attributed by this Code to the owner of an industrial property right are exhausted once the products protected by an industrial property right have been put on the market by the owner or with his consent in the territory of the Country or in the territory of a Member State of the European Union or the European Economic Area.

[...]

JAMAICA

Section 63 of the Patents and Designs Act (Act № 1 of 2020)

International exhaustion

63. The rights conferred by the registration of a patent shall not extend to an act in respect of an invention which has been put on the market in any country by the owner of the patent or with the consent of the owner.

JORDAN

Article 37 (A) of the Law № 32 of 1999 on Patents (as amended up to Law No. 16 of 2017)

37. A. The provisions of this law shall not prevent any person from importing any materials or goods from a third party if that party enjoys the legal protection of the same patent protected in the Kingdom and if

that importation is lawful, complies with the principles of commercial competition and fairly takes into account the economic value of the protected patent.

37.B. In spite of the inclusions of paragraph (A) of this article and without prejudice to the provisions of the related International conventions, goods covered by patent of invention may not be imported by any Licensee, if the Licensing contract prohibit him from importation to the kingdom, provided that the patent owner notify in writing the Customs Administration and the Registrar in this respect. The Registrar shall, at the expense of the patent owner, publish this notification in at least one of Local daily gazettes; and the applicable legislations shall apply to this case.

KAZAKHSTAN

Article 12 (6) of the Law on Patents of the Republic of Kazakhstan № 427-І of July 16, 1999 (as amended up to Law № 268-VI of October 28, 2019)

12. Acts not recognized as infringements on the executive right of the patent owner

The following shall not constitute acts infringing the executive right of the patent owner:

[...]

6) import into Republic of Kazakhstan, the use, offer for sale, selling, any other form of distribution for commercial purposes or stocking for above purposes of products containing the industrial property subject matter, if such product has been earlier distributed for commercial purposes in the Republic of Kazakhstan by the patent owner or by another person, authorized by the patent owner.

[Non-official translation]

KENYA

Section 58 (2) of the Industrial Property Act № 3 of July 27, 2001 (as amended up to Act № 11 of 2017)

58. Limitation of rights

[...]

(2) The rights under the patent shall not extend to acts in respect of articles which have been put on the market in Kenya or in any other country or imported into Kenya by the owner of the patent or with his express consent.

[...]

KYRGYZSTAN

Article 13 (6) of the Law of the Kyrgyz Republic № 8 of January 14, 1998, on Patents (as amended up to Law № 55 of May 26, 2018)

13. Actions not recognized as a violation of the exclusive right of the patent owner

Not recognized as a violation of the exclusive right of the patent owner:

[...]

6) import into the territory of the Kyrgyz Republic, use, offer for sale, sale, other introduction into civil circulation or storage for these purposes of a product in which an invention or utility model is used, or a product in which an industrial design is used, if this product or the product was previously introduced into civil circulation in the territory of any country by the patentee or by another person with the permission of the patentee.

[Non-official translation]

LATVIA

Section 21(1) of the Patent Law (as amended up to January 1, 2016)

21. Exhaustion of the Rights

(1) The rights resulting from the patent shall not apply to the activities which have been carried out with the patented product in the European Economic Area if this product is included in the economic circulation in the European Economic Area by the owner of the patent himself or herself or another person with his or her consent, unless the owner of the patent has a legal basis to object to the further economic circulation of the product.

[...]

LIBERIA

Section 13.11 (b) (i) of the Act to Repeal an Act Adopting a New Copyright Law of the Republic of Liberia approved on July 23, 1997; and the Industrial Property Act of Liberia approved on March 20, 2003, constituting Title 24 of the Liberian Code of Laws Revised, and to enact in their stead a New Title 24 to be known as the "Liberia Intellectual Property Act, 2016"

§13.11. Rights Conferred by the Patent; Limitations and Exceptions.

[...]

b) The rights under a patent may not be used to prevent:

i. acts in respect of a product covered by the patent after that product has been put on the market in Liberia or abroad by the holder of the patent, by a person acting with the holder's consent or having an economic tie to the holder, or by an otherwise authorized person. For the purposes of this provision, an economic tie shall exist between two persons where one of them may exercise on the other a decisive influence with respect to the exploitation of the patented invention, or where a third party may exercise such an influence on both persons;

[...]

LITHUANIA

Article 35 (3) (4) of the Patent Law № I-372 of January 18, 1994 (as amended up to Law № XIII-2857 of April 21, 2020)

35. Rights of the patent owner

[...]

3. The proprietor of a patent shall not be entitled to prevent other persons from carrying out the acts referred to in paragraphs 1 and 2 provided that they:

[...]

4) relating to products which have been placed on the market by the patent owner himself or with his consent in the countries of the European Economic Area.

[...]

[Non-official translation]

LUXEMBOURG

Article 48 (1) of the Law of July 20, 1992, on the Changes in the System for Patents for Invention (as amended by the Law of May 24, 1998)

48. Exhaustion of Rights Conferred by the Patent

1. The rights afforded by a patent shall not extend to acts concerning a product covered by that patent which are done on Luxembourg territory after such product has been put on the market in one of the States of the European Economic Community by the owner of the patent or with his express consent unless there exist reasons in accordance with the rules of Community law for the rights conferred by the patent to extend to such acts.

[...]

MADAGASCAR

Article 30 (2) of the Ordinance № 89-019 of July 31, 1989, establishing Arrangements for the Protection of Industrial Property

30.

[...]

(2) The rights deriving from a patent or an inventor's certificate shall not extend to acts carried out with respect to the product covered by the patent or inventor's certificate once the product has been lawfully sold within the country.

[...]

MALAYSIA

Section 37 (2) of the Patents Act of 1983 (Act 291, as amended up to Act No. A1264)

37. Limitation of rights.

[...]

(2) Without prejudice to section 58A, the rights under the patent shall not extend to acts in respect of products which have been put on the market -

(i) by the owner of the patent;

(ii) by a person having the right referred to in section 38;

(iii) by a person having the right referred to in section 43;

(iv) by the beneficiary of a compulsory licence within the meaning of section 48.

MALI

The Bangui Agreement Instituting an African Intellectual Property Organization (OAPI), Act of December 14, 2015 applies (see below).

MALTA

Article 27 (9)(a) and (c) of the Patents and Designs Act (Chapter 417)

27. Rights conferred by a patent.

[...]

(9) (a) The propagation of a patent shall have no right to prevent third parties from performing acts referred to in subarticles (1)(b) and (2)(b) where the act concerns a product which has been put on the market by the proprietor of the patent, or with his express consent, insofar as such act is performed after that product has been so put on the market.

[...]

(c) For the purposes of this subarticle “market” means the market in Malta and from 1st May, 2004, the European Union.

[...]

MAURITANIA

The Bangui Agreement Instituting an African Intellectual Property Organization (OAPI), Act of December 14, 2015 applies (see below).

MAURITIUS

Section 21 (2) (a) of the Industrial Property Act 2019 [Act No. 15 of 2019]

21. Rights conferred by patent

[...]

(2) The rights conferred by the grant of a patent shall not extend to –

(a) acts in respect of articles which are put on the market in Mauritius or abroad by the owner of the patent or with his consent;

[...]

MEXICO

Article 57, Section III of the Federal Law on the Protection of Industrial Property entered into force on November 5, 2020

Article 57.- The right conferred by a patent shall have no effect whatsoever against:

[...]

III. Any person who markets, acquires or uses the patented invention after the invention has been lawfully introduced onto the market in Mexico;

[...]

[Non-official translation]

MONGOLIA

Article 18.2.1 of the Patent Law of Mongolia of June 25, 1993 (as amended up to September 1, 2016)

18. Use inventions, product designs, and useful designs

[...]

18.2. The use of a patent holder's exclusive rights shall not be considered as infringed if the invention, product design and utility model with a certificate are used in the following ways:

18.2.1. To use the products introduced to the market of the patent by the patent owner or other persons;

[...]

[Non-official translation]

MONTENEGRO

Article 54 of the Law on Patents (Official Gazette of Montenegro, № 42/2015)

54. Exhaustion of the Patent Holder's Rights

(1) The placing on the market of a product made under the patent or product directly obtained by a process which is the subject of a patent by the patent holder or with his express consent, in Montenegro, shall exhaust the exclusive rights deriving from a patent in relation to such product, unless there are reasonable grounds based on which the patent holder retains exclusive rights deriving from the patent.

(2) The placing on the market of a product made under the patent or product directly obtained by procedure subject to a process which is the subject of a patent by the patent holder or with his express consent, in the territory of any of the states of the European Union or states that are parties to the Agreement Creating the European Economic Area, shall exhaust the exclusive rights deriving from a patent in relation to such product, unless there are reasonable grounds on which the patent holder retains exclusive rights deriving from the patent.

MOROCCO

Article 55 (e) of the Law No. 17-97 on the Protection of Industrial Property (promulgated by Dahir No. 1-00-91 of 9 Kaada 1420 (February 15, 2000), and amended up to Law No. 23-13)

55. The rights conferred by the patent do not extend:

[...]

e. to acts concerning the product covered by this patent, carried out on Moroccan territory, after this product has been marketed in Morocco by the owner of the patent or with his express consent;

[...]

MOZAMBIQUE

Article 75 (b) of the Industrial Property Code (approved by Decree № 47/2015 of December 31, 2015)

75. Limitation of the rights derived from a patent.

The rights of the patent holder shall not extend to the following:

[...]

b) Acts relating to products which have been placed on the market in Mozambique by the patent holder or with his consent;

[...]

NAMIBIA

Section 43 (1) (a) of the Industrial Property Act 2012 (Act No 1 of 2012)

43. Limitations of rights.

(1) The following acts do not constitute an infringement of the rights under a patent, namely

(a) acts of importation of patented inventions which have been put on the market in any territory or country by the owner of the patent or with his or her authorisation;

[...]

NETHERLANDS

Article 53 (5) of the Patent Act 1995

53.

[...]

5. If a product as referred to in paragraph (1)(a) or (b) has been put on the market lawfully in the Netherlands or the Netherlands Antilles or in one of the Member States of the European Union or in another State that is party to the Agreement concerning the European Economic Area by the patent holder or with his consent, the person who obtains or later holds the product shall not be deemed to have contravened the patent by using, selling, hiring out or delivering that product or by otherwise dealing in it in or for his business, or by offering, importing, or stocking the product for any of those purposes.

[...]

NICARAGUA

Article 47 of the Law on Patents, Utility Models and Industrial Designs (No 354 of September 19, 2000)

47. Exhaustion of Patent Rights

The patent does not confer the right to prohibit a third party from engaging in commercial acts in relation to a product protected by the patent after that product has been brought on to the market in any country by the owner of the patent or by another person who has the owner's consent or is economically connected with him.

[...]

NIGER

The Bangui Agreement Instituting an African Intellectual Property Organization (OAPI), Act of December 14, 2015 applies (see below).

NIGERIA

Section 6 (3) (b) of the Patents and Designs Act of 1971 (Chapter 344, Laws of the Federation of Nigeria 1990)

6.

[...]

(3) The rights under a patent-

[...]

(b) shall not extend to acts done in respect of a product covered by the patent after the product has been lawfully sold in Nigeria, except in so far as the patent makes provision for a special application of the product, in which case the special application shall continue to be reserved to the patentee notwithstanding this paragraph,

[...]

NORWAY

Section 3 (2) of the Patents Act (Act No 9 of December 15, 1967) (consolidated version of 2018)

3.

[...]

The exclusive right shall not include:

[...]

(2) Exploitation of products protected by the patent which have been put on the market in the European Economic Area by the patent holder or with his consent, if this is not determined differently by regulation laid down by the King.

[...]

OMAN

Article 11 (4) (A), 11(5) and 11(6) of the Law on Industrial Property Rights (promulgated by the Royal Decree No 67/2008)

11.

[...]

4 - The rights under the patent shall not extend:

A) to acts in respect of articles which have been put on the market in Oman by the owner of the patent or with his consent, consequently exhausting the patent owner's rights; or

[...]

5 - Without prejudice to the provisions of subsection 4(a) of this article, the Minister shall have the authority, ex officio or at the request of any interested party, of declaring the patent rights exhausted, and thus of authorizing others to import the patented product or a product manufactured directly or indirectly by means of the patented invention from another territory when that product is not available in Oman or is available in Oman with unreasonably low quality standards or in a quantity that is not sufficient to meet the local demand or at prices that the Minister deems abusive or for any other reason of public interest, including anticompetitive practices, provided that:

a) the product has been put in the channels of commerce in the territory from which it will be imported by the owner of the patent or with his consent; and

b) a patent claiming the product or the process for its manufacture is in force in the territory from which the product will be imported and is owned by the same person who owns the patent in Oman or by a person under his control.

6 - The Minister shall, ex officio, or at the request of the patent owner, shall cancel the authorization referred in the previous paragraph, in either of the two cases:

A - If the importer fails to fulfill the purpose that justified the Minister's decision to consider the patent rights exhausted;

B - If the conditions that gave rise to the Minister's decision to consider the patent exhausted cease to exist, provided that the legitimate interests of the importer are taken into account, including but not exclusively that the importer will retain the right to commercialize the products that remain on stock.

PAKISTAN

Section 30 (5) (a) of the Patents Ordinance, 2000 (Ordinance No LXI of 2000)

30. Rights conferred by patent.

[...]

(5) The rights under the patent shall not extend to:

(a) acts in respect of articles which have been put on the market anywhere in the world by the owner of the patent or with his consent or by an authorized person or in any other legitimate manner such as compulsory licenses;

[...]

PANAMA

Article 19 (3) of the Law No 35 of May 10, 1996, Enacting Provisions on Industrial Property

19. The right conferred by a patent shall have no effect whatever against:

[...]

3. any person who markets, acquires or used the patented product or the product obtained using the patented process after the said product has been lawfully placed on the market;

[...]

PAPAU NEW GUINEA

Section 29 (4) (a) of the Patents and Industrial Designs Act 2000

29. Rights conferred by a patent.

[...]

(4) The rights of an owner of a patent shall not extend to –

(a) acts in respect of articles which have been put on the market in Papua New Guinea by the owner of the patent or with his consent; or

[...]

PARAGUAY

Article 34 (c) of the Law No 1630/2000 on Patents (as amended by Law No 2593/2005)

34. De las limitaciones al derecho de patente y agotamiento del derecho.

La patente no dará el derecho de impedir:

[...]

c) los actos de comercio realizados por un tercero respecto de un producto protegido por la patente después de que se hubiese introducido lícitamente en el comercio en cualquier país por el titular de la patente o por otra persona con consentimiento del titular o habilitada legalmente;

[...]

PERU

The decision No 486 of September 14, 2000 of the Commission of the Andean Community applies (See below).

PHILIPPINES

Section 72.1. of the Intellectual Property Code of the Philippines (Republic Act № 8293) (2015 Edition)

72. Limitations of Patent Rights.

The owner of a patent has no right to prevent third parties from performing, without his authorization, the acts referred to in Section 71 hereof in the following circumstances:

72.1. Using a patented product which has been put on the market in the Philippines by the owner of the product, or with his express consent, insofar as such use is performed after that product has been so put on the said market: *Provided*, That with regard to drugs and medicines, the limitation on patent rights shall apply after a drug or medicine has been introduced in the Philippines or anywhere else in the world by the patent owner, or by any party authorized to use the invention: *Provided, further*, That the right to import the drugs and medicines contemplated in this section shall be available to any government agency or any private third party;

[...]

POLAND

Article 70 of the Act of June 30, 2000, on Industrial Property (as amended up to Act of February 13, 2020)

70. 1. The rights conferred by a patent shall not extend to acts concerning a product embodying the invention or manufactured by means of the invention, consisting in particular of its offering for sale or further putting on the market if that product has been put on the market in the territory of the Republic of Poland by the patent holder or with his consent.

2. A patent shall neither be considered infringed by an act of importation into the territory of the Republic of Poland or other acts referred to in paragraph (1) in respect of a product that has earlier been put on the market on the territory of the European Economic Area by the patent holder or with his consent.

PORTUGAL

Article 104 of the Industrial Property Code (approved by Decree-Law № 110/2018 of December 10, 2018)

104. Exhaustion of Rights.

The rights conferred by a patent do not allow its holder to forbid acts related to the products protected by it, after its sale, by the patentee or with his consent, in the European economic area, unless there are legitimate grounds for the patent holder to object that the products continue to be marketed.

REPUBLIC OF MOLDOVA

Article 23 (1) of the Law № 50-XVI of March 7, 2008 on the protection of Inventions (as amended up to Law № 101 of May 26, 2016)

23. Exhaustion of Rights

(1) The rights conferred by a patent shall not extend to acts concerning the patented product insofar as such acts are performed on the territory of the Republic of Moldova, after that product has been so put on the market in the Republic of Moldova by the patent owner or with his express consent.

[...]

ROMANIA

Article 33 (1) (d) of the Law No. 64 of October 11, 1991, on Patents (as amended up to Law № 83/2014)

33. (1) The following acts shall not constitute infringements of the rights provided in Art. 31 and Art. 32:

[...]

d) marketing or offering for sale, within the territory of the European Union, of specimens of the product constituting the subject-matter of the invention that have been previously sold by the patent owner or with his express consent;

[...]

RUSSIAN FEDERATION

Article 1359 (6) of the Civil Code of the Russian Federation (Parts One to Four) (2020)

The Actions Not Deemed an Infringement of the Exclusive Right to an Invention, Utility Model or Industrial Design

The following is not deemed an infringement of the exclusive right to an invention, utility model or industrial design:

[...]

6) the importation onto the territory of the Russian Federation, the application, offer for sale, sale, another introduction in civil-law transactions or storage for such purposes of a product in which the invention or utility model is used or of an article in which the industrial design is used, if the product or article has been earlier introduced in civil-law transactions on the territory of the Russian Federation by the patent holder or by another person by permission of the patent holder.

Decision No. 506 of March 29, 2022 of the Government of the Russian Federation on goods (groups of goods) in respect of which certain provisions of the Civil Code of the Russian Federation relating to the protection of exclusive rights to the results of intellectual activity expressed in such goods, and the distinctive signs with which such goods are marked, are not applicable

Pursuant to Article 18, parts 1 (paragraph 13) and 2, of Federal Act No. 46-FZ of March 8, 2022, on amendments to certain Acts of the Russian Federation, the Government of the Russian Federation hereby decides:

1. That the Ministry of Industry and Trade of the Russian Federation, on the instructions of the federal authorities, shall approve a list of goods (groups of goods) in respect of which the provisions of Article 1359, subparagraph 6, and Article 1487 of the Civil Code of the Russian Federation shall not be applicable, where those goods (groups of goods) are marketed beyond the territory of the Russian Federation by the rights holders (patent holders) and with their consent.

[...]

Order No. 1532 of April 19, 2022 of the Ministry of Industry and Trade of the Russian Federation on approval of a list of goods (groups of goods) in respect of which the provisions of Article 1359, subparagraph 6, and Article 1487 of the Civil Code of the Russian Federation shall not be applicable, where those goods (groups of goods) are marketed beyond the territory of the Russian Federation by the rights holders (patent holders) and with their consent

Pursuant to paragraph 1 of Order No. 506 of the Government of the Russian Federation on goods (groups of goods) in respect of which certain provisions of the Civil Code of the Russian Federation relating to the protection of exclusive rights to the results of intellectual activity expressed in such goods, and the distinctive signs with which such goods are marked, are not applicable (Official Gazette of the Russian Federation, No. 14 (2022), Article 2286), I hereby order that:

The enclosed list of goods (groups of goods) in respect of which the provisions of Article 1359, subparagraph 6, and Article 1487 of the Civil Code of the Russian Federation shall not be applicable, where those goods (groups of goods) are marketed beyond the territory of the Russian Federation by the rights holders (patent holders) and with their consent, is confirmed.

[Non-official translation]

ФЕДЕРАЛЬНЫЙ ЗАКОН

О внесении изменения в статью 18 Федерального закона «О внесении изменений в отдельные законодательные акты Российской Федерации»

Статья 1

Внести в статью 18 Федерального закона от 8 марта 2022 года № 46-ФЗ "О внесении изменений в отдельные законодательные акты Российской Федерации" (Собрание законодательства Российской Федерации, 2022, № 11, ст. 1596) изменение, дополнив ее частью 3 следующего содержания:

"3. Не является нарушением использование результатов интеллектуальной деятельности, выраженных в товарах (группах товаров), перечень которых устанавливается в соответствии с пунктом 13 части 1 настоящей статьи. Не является также нарушением использование средств индивидуализации, которыми такие товары маркированы."

Статья 2

Настоящий Федеральный закон вступает в силу со дня его официального опубликования.

RWANDA

Article 40 of the Law № 31/2009 of 26/10/2009 on the Protection of Intellectual Property

40: Limitation to patent rights: exhaustion of rights

The rights stemming from the patent shall not be extended to the acts relating to products which have been put lawfully on the market, in Rwanda, by the patent owner or with his consent, consequently exhausting the patent owner's rights.

Without prejudice to the provisions of this article and article 44, the Minister shall have the authority, on of the empowered authority's advice or at the request of any interested party, of declaring the patent rights exhausted, and thus of authorizing others to import the patented product or a product manufactured directly or in directly by means of the patented invention ("the product") from another territory when that product:

- 1° is not available in the territory of Rwanda;
- 2° available in the territory of Rwanda does not respect the required standards;
- 3° can not be available in sufficient quantities;
- 4° has the price that the minister finds unfair;
- 5° for any other reason of public interest, including anticompetitive practices.

In taking the decision, the following shall be considered:

1° the product has been put in the channels of commerce in the territory from which it will be imported by the owner of the patent or with his consent; and

2° a patent claiming the product or the process for its manufacture is in force in the territory from which the product will be imported and is owned by the same person who owns the patent in Rwanda or by a person under his control.

If the importer fails to fulfill the purpose that justified the Minister's decision to consider the patent rights exhausted, the Minister shall, ex officio, or at the request of the patent owner, cancel the authorization.

If the conditions that gave rise to the Minister's decision to consider the patent exhausted cease to exist, the Minister may, ex officio or at the request of the patent or trademark owner, cancel the authorization, provided that the legitimate interests of the importer are taken into account, including but not exclusively that the importer will retain the right to commercialize the products that remain on stock.

SAINT KITTS AND NEVIS

Section 32 (4) (a) of the Patents Act (Cap. 18.25)

32. Rights conferred by a patent.

[...]

(4) The rights in a patent referred to in subsection (3) of this section shall not extend to

(a) acts in respect of articles put on the market in Saint Christopher and Nevis by the patentee or with his or her consent;

[...]

SAINT VINCENT AND THE GRENADINES

Section 28 of the Patents Act, 2004 (Act No 39 of 2004)

28. Regional exhaustion of rights

The rights conferred by a patent shall not extend to acts in respect of articles which have been put on the market in the Caribbean Community by the owner of the patent or with his consent.

SAMOA

Section 12 (5) (a) of the Intellectual Property Act 2011 (Act No 9 of 2011)

12. Rights conferred by patent

[...]

(5) The rights under the patent do not extend:

(a) to acts in respect of articles which have been put on the market anywhere in the world by the owner of the patent or with the owner's consent; and

[...]

SAN MARINO

Article 28 (10) (c) of the Law No 79 of 25 May 2005 - Industrial Property Consolidation Act

28. Rights conferred by the patent

[...]

10. The exclusive rights conferred by a San Marino patent do not cover:

[...]

c) acts related to articles marketed, in the Republic of San Marino, by the patent owner or with his consent;

[...]

SAO TOME AND PRINCIPE

Article 107 (1) of the Intellectual Property Code (approved by Decree-Law No 23/2016)

107. Exhaustion of Rights

1. After a product protected by a patent right, has been sold in the national territory by its owner or with his consent, the owner may not prohibit any acts relating to the said product.

[...]

SENEGAL

The Bangui Agreement Instituting an African Intellectual Property Organization (OAPI), Act of December 14, 2015 applies (see below).

SERBIA

Article 22 of the Law on Patents of January 4, 2012 (Official Gazette of the Republic of Serbia No 99/2011, 113/2017, 95/2018 and 66/2019)

22. Exhaustion of Rights of the Right Holder

If a protected product is placed on the market on the territory of the Republic of Serbia by the right holder or with his consent, the person coming into possession of such product may use and dispose of it freely.

SEYCHELLES

Section 19 (b) of the Industrial Property Act 2014 (Act No 7 of 2014)

19. Limitations of right

The rights of the patentee shall not extend to-

[...]

(b) acts in respect of articles which have been put on the market in and outside of Seychelles, by the patentee or with his or her consent;

[...]

SIERRA LEONE

Section 23 (1) (a) of the Patents and Industrial Design Act, 2012 (Act No 10 of 2012)

23. Limitation of rights.

(1) The rights under the patent shall not extend-

(a) to acts in respect of articles which have been put on the market in any country by the owner of the patent or with his consent; or

[...]

SINGAPORE

Section 66(2)(g), 66(2)(i), 66(3) and 66(5A) of the Patents Act 1994 (Chapter 221) (Revised Edition 2005, as amended up to the Supreme Court of Judicature (Amendment) Act 2019)

66. Meaning of infringement

[...]

(2) An act which, apart from this subsection, would constitute an infringement of a patent for an invention shall not be so if —

[...]

(g) subject to subsections (3) and (5A), it consists of the import, use or disposal of, or the offer to dispose of, any patented product or any product obtained by means of a patented process or to which a patented process has been applied, which is produced by or with the consent (conditional or otherwise) of the proprietor of the patent or any person licensed by him, and for this purpose “patent” includes a patent granted in any country outside Singapore in respect of the same or substantially the same invention as that for which a patent is granted under this Act and “patented product”, “patented process” and “licensed” shall be construed accordingly;

[...]

(i) subject to subsection (5A), it consists of the import, disposal or offer to dispose of a patented pharmaceutical product for use by or on a specific patient in Singapore, or the use of that product by or on that patient, where —

(i) that product is required for use by or on that patient;

(ii) the relevant authority has granted approval specifically for the import of that product for use by or on that patient; and

(iii) that product was produced by or with the consent (conditional or otherwise) of the proprietor of the patent or any person licensed by him (and for this purpose “patent” includes a patent

granted in any country outside Singapore in respect of the same or substantially the same product and “licensed” shall be construed accordingly)

(3) Subsection (2)(g) shall not apply to the import of any patented pharmaceutical product by any person (referred to in this subsection and subsection (4) as the importer) if —

(a) the product has not previously been sold or distributed in Singapore by or with the consent (conditional or otherwise) of the proprietor of the patent or any person licensed by the proprietor of the patent to sell or distribute the product in Singapore;

(b) the import of the product by the importer would result in the product being distributed in breach of a contract between —

(i) the proprietor of the patent; and

(ii) any person licensed by the proprietor of the patent to distribute the product outside Singapore; and

(c) the importer has actual or constructive knowledge of the matters referred to in paragraph (b).

[...]

(5A) Subsection (2)(g) and (i) shall not apply to the import or sale of, or the offer to sell, any relevant health product produced for export to any country, other than Singapore, which is an eligible importing member of the World Trade Organisation.

SLOVAKIA

Article 16 (1) of the Act № 435/2001 Coll. on Patents, Supplementary Protection Certificates and Amendment of Some Acts [Patent Act (as amended up to Act № 291/2018 Coll.)]

16. Exhaustion of rights

(1) A patent owner shall not be entitled to prohibit third parties to dispose of a product which is a subject-matter of a patent protection after this product has been placed on the market in the member state of the European Union or in the state which is a contracting party to the Agreement on the European Economic Area by a patent owner or with his explicit consent. This shall not apply if there are reasons for extension of rights to a patent for such treatment.

[...]

SLOVENIA

Article 21 of the Industrial Property Act (Official Gazette of the Republic of Slovenia, No. 45/01 of June 7, 2001, as amended up to March 29, 2020)

21. Exhaustion of patent rights

(1) Patent rights shall not apply to acts concerning a product covered by the patent which are performed in the Republic of Slovenia after that product has been placed on the market in the Republic of Slovenia by the holder of the patent or with the holder's express consent, unless there are grounds which, under the law of the Republic of Slovenia, would justify the extension of patent rights to such acts.

(2) The exhaustion of patent rights referred to in the preceding paragraph may be extended beyond the territory of the Republic of Slovenia if this is in accordance with an international treaty that is binding on the Republic of Slovenia.

SOUTH AFRICA

Section 45 (2) of the Patents Act 1978 (Act No 57 of 1978, as amended up to Patents Amendment Act 2002)

45. Effect of patent.

[...]

(2) The disposal of a patented article by or on behalf of a patentee or his licensee shall, subject to other patent rights, give the purchaser the right to use, offer to dispose of and dispose of that article.

[...]

Section 15C of the Medicines and Related Substances Act 1965 (Act No 101 of 1965, as amended)

15C. Measures to ensure supply of more affordable medicines.

The Minister may prescribe conditions for the supply of more affordable medicines in certain circumstances so as to protect the health of the public, and in particular may—

(a) notwithstanding anything to the contrary contained in the Patents Act, 1978 (Act No. 57 of 1978), determine that the rights with regard to any medicine under a patent granted in the Republic shall not extend to acts in respect of such medicine which has been put onto the market by the owner of the medicine, or with his or her consent;

(b) prescribe the conditions on which any medicine which is identical in composition, meets the same quality standard and is intended to have the same proprietary name as that of another medicine already registered in the Republic, but which is imported by a person other than the person who is the holder of the registration certificate of the medicine already registered and which originates from any site of manufacture of the original manufacturer as approved by the council in the prescribed manner, may be imported;

(c) prescribe the registration procedure for, as well as the use of, the medicine referred to in paragraph (b).

SOUTH SUDAN

Section 23 (2) of the Patents Act, 1971 (Act No 58 of 1971)

23. Limitation of Rights under the Patent:

[...]

(2) The rights under a patent shall not extend to acts in respect of the product covered by the patent after the product has been lawfully sold in the Democratic Republic of the Sudan nevertheless, insofar as the patent also concerns a special application of the product, this application shall continue to be reserved to the registered owner of the patent.

SPAIN

Article 61 (2) of the Law No 24/2015 of July 24, 2015 on Patents (as amended by Law No 6/2018, of July 3, 2018)

61. General limits and exhaustion of patent rights.

[...]

2. The rights conferred by a patent do not extend to acts relating to a product protected by the patent after the product has been placed on the market, either by the patentee or with his consent, in the European Economic Area, unless the patentee has legitimate grounds to prevent marketing of the product thereafter.

[...]

[Non-official translation]

SRI LANKA

Section 86 (1) (iv) of the Intellectual Property Act No 36 of 2003

86. Limitation of owner's rights

(1) The provisions of section 84 shall:

[...]

(iv) not extend to acts in respect of articles which have been put in the market by the owner of the patent or by a manufacturer under licence.

SUDAN

Section 23 (2) of the Patents Act, 1971 (Act No 58 of 1971)

23. Limitation of Rights under the Patent:

[..]

(2) The rights under a patent shall not extend to acts in respect of the product covered by the patent after the product has been lawfully sold in the Democratic Republic of the Sudan nevertheless, insofar as the patent also concerns a special application of the product, this application shall continue to be reserved to the registered owner of the patent.

SWEDEN

Article 3 (2) of the Patent Act № 837 of 1967 (as amended up to Act № 541 of 2020)

3.

[...]

The following acts are exempted from the exclusive right:

[...]

2. acts of exploitation of a product protected by the patent which is put on the market within the European Economic Area by the holder of the patent or with his consent; as regards biological material this applies also to acts of exploitation in the form of reproduction or multiplication of a product when the reproduction or multiplication is a necessary element of the exploitation for which the biological material has been put on the market, provided that the product obtained is not later used for further reproduction or multiplication,

[...]

[Non-official translation]

SWITZERLAND

Article 9a (1) of the Federal Act of June 25, 1954 on Patents for Inventions (status as of April 1, 2019)

9a (1) If the proprietor of the patent has placed patent-protected goods on the market in Switzerland or within the European Economic Area, or consented to their placing on the market in Switzerland or within the European Economic Area, these goods may be imported and used or resold commercially in Switzerland.

(2) If he has placed apparatus that can be used with a patent-protected process on the market in Switzerland or within the European Economic Area, or consented to its placing on the market in Switzerland or within the European Economic Area, the first and each subsequent person who acquires the apparatus is entitled to use this process.

(3) If the proprietor of the patent has placed patent-protected biological material on the market in Switzerland or within the European Economic Area, or consented to its placing on the market in Switzerland or within the European Economic Area, this material may be imported and propagated in Switzerland, provided this is necessary for its intended use. The material so obtained may not be used for further propagation. Article 35a remains reserved.

(4) If the proprietor of the patent has placed patent-protected goods on the market outside the European Economic Area or consented to their placing on the market outside the European Economic Area and if the patent protection for the functional characteristics of the goods is only of subordinate importance, the goods may be imported commercially. Subordinate importance is presumed unless the proprietor of the patent provides prima facie evidence to the contrary.

(5) Irrespective of the provisions of paragraphs 1–4, the consent of the proprietor of the patent for the placing on the market of patent protected goods is reserved if their price in Switzerland or in the country in which they are placed on the market is fixed by the state.

TAJIKISTAN

Article 30 of the Law of the Republic of Tajikistan № 17 of February 28, 2004, on Inventions (as amended up to Law № 956 of March 19, 2013)

30. Actions not recognized as infringement of exclusive right

The following actions shall not be deemed infringements of a patent owners' exclusive right:

[...]

- use of the devices incorporating inventions protected by titles of protection if such devices were put to commercial use on a lawful basis in accordance with the rights granted by a patent owner.

THAILAND

Section 36 (7) of the Patent Act B.E. 2522 of March 11, 1979

36.

[...]

The preceding paragraph shall not apply to:

[...]

(7) the use, sale, having in possession for sale, offering for sale or importation of a patented product when it has been produced or sold with the authorization or consent of the patentee.

TOGO

The Bangui Agreement Instituting an African Intellectual Property Organization (OAPI), Act of December 14, 2015 applies (see below).

TONGA

Section 13 (4) (a) of the Industrial Property Act № 19 of 1994 (2020 Revised Edition)

13. Rights conferred by patent; exploitation by Government or person thereby authorized.

[...]

(4) The rights under the patent shall not extend:

(a) to acts in respect of articles which have been put on the market in Tonga or in any other country by the patentee or with his consent;

[...]

TRINIDAD AND TOBAGO

Section 43 of the Patent Act No 21 of 1996 (as last amended by the Act No 18 of 2000)

43. Exhaustion of rights

The rights conferred by a patent shall not extend to acts in respect of articles which have been put on the market in Trinidad and Tobago by the owner of the patent or with his consent.

TUNISIA

Article 47 (d) of the Law No 2000-84 of August 24, 2000, on Patents

47. The rights conferred by the patent shall not extend to the following:

[...]

(d) the advertising, import, stocking or use of the patented product or the product obtained using a patented process, done on Tunisian territory after the product has been lawfully brought on to the market in any country by the owner of the patent or with his express consent;

[...]

TURKEY

Article 152(1) of the Law No. 6769 of December 22, 2016, on Industrial Property

152 - (1) After the products forming the subject of protection of industrial property right are put on the market by right owner or by third parties with his consent, actions related to these products shall remain outside the scope of the right.

[...]

UGANDA

Section 43 (2) of the Industrial Property Act, 2014

43. Limitation of rights.

[...]

(2) The rights under the patent do not extend to acts in respect of articles which have been put on the market in Uganda or in any other country or imported into Uganda by the owner of the patent or with his or her consent.

[...]

UKRAINE

Article 31 (3) of the Law of Ukraine № 3687-XII of December 15, 1993, on Protection of Rights to Inventions and Utility Models (as amended up to December 5, 2012)

31. Actions that are not recognized as violation of rights.

[...]

3. 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.

[...]

UNITED REPUBLIC OF TANZANIA

Section 38 (2) of the Patents (Registration) Act, Cap. 217

38. Limitation of rights

[...]

(2) The rights under the patent shall not extend to acts in respect of articles which have been put on the market in the United Republic by the owner of the patent or with his express consent.

[...]

URUGUAY

Section 40 of the Law No. 17.164 of September 2, 1999, on Patents (as amended up to Law No. 19.924 of December 18, 2020)

40. Owners of patents may not prevent a person from using, importing or commercializing a patented product in any way after it has lawfully been put on sale within Uruguay or abroad by the patent owner or by a third person with the owner's consent or lawfully authorized to do so.

Products or processes which infringe intellectual property rights shall not be considered as having been lawfully put on sale (Part III, Section 4, of the TRIPS Agreement [Agreement on the Trade-Related Aspects of Intellectual Property Rights] of the World Trade Organization [WTO]).

[Non-official translation]

UZBEKISTAN

Article 12 of the Law of the Republic of Uzbekistan № 1062-XII of May 6, 1994 on Inventions, Utility Models and Industrial Designs (as amended up to Law of the Republic of Uzbekistan № ZRU-446 of September 14, 2017)

12. Acts not recognized as an infringement of a patent owner's exclusive right.

The following shall not be recognized as an infringement of a patent owner's exclusive right:

[...]

the use of means containing industrial property subject matter protected by patents, where these means have been lawfully introduced into civilian circulation;

[...]

VIET NAM

Article 125 (2) (b) of the Intellectual Property Law № 50/2005/QH11 of November 29, 2005

125. Right to prevent others from using industrial property objects

[...]

2. Owners of industrial property objects as well as organizations and individuals granted the right to use or the right to manage geographical indications shall not have the right to prevent others from performing the following acts:

[...]

b/ Circulating, importing, exploiting utilities of products having been lawfully put on the market, including overseas markets, except for products put on the overseas markets not by the mark owners or their licensees;

[...]

ZAMBIA

Section 76 of the Patents Act, 2016 (Act No 40 of 2016)

76. Exhaustion of rights

The rights conferred on a patentee by a patent shall not extend to acts relating to a product for which a patent subsists or to which it is applied, when the product has been put on the market in Zambia or elsewhere by the patentee or any other person with the patentee's consent.

ZIMBABWE

Section 24 (6) of the Patents Act (Chapter 26:03, as amended up to Act No 14/2002)

24. Extent, effect and form of patent

[...]

(6) The rights granted in subsection (4) shall not have effect in relation to a product which has been put on the market in any country by the patent holder or by an authorised person.

ANDEAN COMMUNITY

Article 54 of the decision No 486 of September 14, 2000 of the Commission of the Andean Community

54. The patent shall not give the right to prohibit a third party from engaging in commercial acts in relation to a product protected by the patent after that product has been brought on to the market in any country by the owner of the patent, or by another person who has obtained his consent or is economically associated with him.

For the purposes of the foregoing paragraph, two persons shall be considered economically associated where one can directly or indirectly exercise a decisive influence on the other concerning the working of the patent, or where a third party can exercise such an influence on both.

[...]

EURASIAN PATENT ORGANIZATION

Rule 19 of the Patent Regulations under the Eurasian Patent Convention (as amended on April 11-12, 2022)

19. Acts not Infringing the Eurasian Patent

The following cases of the use of the patented invention shall not constitute an infringement of the Eurasian patent:

[...]

use of a product after this product has been marketed by the patent owner himself or with his consent in a Contracting State where the Eurasian patent is valid and in which the product in question was marketed.

ORGANISATION AFRICAINE DE LA PROPRIÉTÉ INTELLECTUELLE (OAPI)

Article 7(1)(a) of Annex I of the Bangui Agreement Instituting an African Intellectual Property Organization (OAPI), Act of December 14, 2015

Article 7

Limitation of the rights conferred by the patent

(1) The rights conferred by the patent shall not extend to the following:

(a) the offer, import, holding or use of the patented product on the territory of a Member State, after the product is legally placed on the market in any country by the owner of the patent or with his express consent;

[...]

[End of the Appendix and of document]