

**Council for Trade-Related Aspects of
Intellectual Property Rights**

Original: French

REVIEW OF LEGISLATION

Replies by Côte d'Ivoire to the Questions Posed by the European Communities and their Member States and the United States

Addendum

By means of a communication from the Permanent Mission of Côte d'Ivoire, dated 16 June 2001, the Secretariat has received the following replies to the questions posed by the European Communities and their Member States and the United States, circulated in documents IP/C/W/274 and IP/C/W/268 respectively.

THE EUROPEAN COMMUNITIES AND THEIR MEMBER STATES

A. GENERAL PROVISIONS

1. Please describe if your legislation includes measures necessary to protect public health and nutrition, and to promote the public interest in sectors of vital importance to your socio-economic and technological development as mentioned under Article 8 of the TRIPS Agreement. If yes, please explain how such measures are consistent with the provisions of the TRIPS Agreement.

The Bangui Agreement of 24 February 1999 gives each Member State the possibility of granting ex officio licences in certain areas and subject to certain conditions (Article 56 of Annex I on Patents; Article 32 of Annex IX on Lay-out Designs (Topographies) of Integrated Circuits; Article 36 of Annex X on New Plant Varieties), but in general no special provisions have yet been adopted to allow the possibility given by Article 8 of the TRIPS Agreement.

B. COPYRIGHT AND RELATED RIGHTS

2. Please state how your legislation provides for the protection of the exclusive rights of authors in relation to their literary and artistic works, as specified in Article 9 of the TRIPS Agreement which requires Members to comply with Articles 1-21 of the Berne Convention and the Appendix to the Berne Convention (1971).

Although it does not refer explicitly to Article 9 of the TRIPS Agreement, the Ivorian law on copyright and related rights nevertheless observes the provisions requiring that Members should comply with Articles 1 to 21 of the Berne Convention (1971) and the Appendix thereto because Côte d'Ivoire is party to the Berne Convention and the Marrakesh Agreement on the one hand and, on the other, its law on copyright and related rights specifically obliges it to respect the rules on protection in the international conventions it has signed (Article 2.3).

3. Please describe the protection accorded to authors of computer programs, databases or compilations of data.

The special mention of the protection of computer programs (Article 5) and compilations of data (Article 7) is one of the areas where Ivorian law has been brought into conformity with the TRIPS Agreement.

4. Please state whether your legislation provides for a rental right and, if so, the works to which it applies.

Recognition of a rental right (Article 23) is another of the areas where Ivorian law has been updated in the light of the TRIPS Agreement.

This right is covered as follows:

- The law does not specify the works concerned, which means that the rental right applies to all categories of work;
- the law does not provide the exemption for cinematographic works in cases where rental would not have any prejudicial effect on the right of reproduction, as called for in Article 11 of the TRIPS Agreement.

5. Please describe the rights granted to performers, producers of phonograms (sound recordings) and broadcasting organizations under your legislation.

Côte d'Ivoire's law recognizes a performer's moral right (Article 60). Among the economic rights, a performer is given the exclusive right to authorize:

- Fixation and reproduction of his fixed performances, including audiovisual fixations, in any manner or form;
- communication to the public and rental of his performances (Article 61).

Protection of phonogram producers

Ivorian law gives the producers of phonograms and videograms the exclusive right to authorize:

- Direct or indirect reproduction of their phonograms or videograms;
- communication to the public, rental or loan of their phonograms or videograms (Article 62).

Regarding the rights of broadcasting organizations, these are not taken into account in the aforementioned draft law (Article 62).

6. Please state whether your legislation provides for any limitation or exception in relation to each of the rights described above in accordance with the relevant provisions of the Berne and Rome Conventions and in light of Articles 13 and 14.6 of the TRIPS Agreement.

The limitations and exceptions allowed by Ivorian legislation generally comply with the provisions recommended in the Berne Convention in particular. In other words, they respect the three criteria set out in Article 13 of the TRIPS Agreement:

- They only apply in special cases;
- they do not conflict with normal exploitation of the work;
- they do not unreasonably prejudice the legitimate interests of the right holder.

7. Please state the terms of protection of each right described above and the work or subject matter to which it applies.

The term of protection of a work other than a photographic work or a work of applied art.

The term of protection granted under Ivorian law is 99 years, irrespective of the nature of the work.

The determination of this period is nevertheless subject to nuances depending on whether it is a work of collaboration, an anonymous or pseudonymous work, a collective or audiovisual work, or a work of applied art.

Depending on the case, the term of protection runs either from the calendar year in which the last surviving co-author died, or the year of first publication or execution of the work, or the year in which the work was lawfully published or made available to the public, or the year in which the work was disclosed.

8. Please state how your legislation grants the retroactive protection provided pursuant to Article 18 of the Berne Convention (the obligation of which derives from Article 9 of the TRIPS Agreement) and Article 14.6 of the TRIPS Agreement.

With regard to the protection of works that existed when the law came into effect, Ivorian legislation complies with the provisions of Article 18 of the Berne Convention.

C. TRADEMARKS

9. Please give the definition of a sign under your national legislation and explain under what conditions it is protectable.

Articles 2 and 3 of Annex III to the revised Bangui Agreement define signs that are allowed as trademarks and those that are excluded, as follows:

- The following are allowed as trademarks for goods or services: any visible sign used or intended to be used and capable of distinguishing the goods or services of any enterprise, including in particular surnames by themselves or in a distinctive form, special, arbitrary or fanciful designations, the characteristic form of a product or its packaging, labels, wrappers, emblems, prints, stamps, seals, vignettes, borders, combinations or arrangements of colours, drawings, reliefs, letters, numbers, slogans and pseudonyms;
- a mark may not be validly registered if:
 - it is devoid of distinctiveness, notably owing to the fact that it consists of signs or indications constituting the necessary or generic designation of the product or the composition thereof;

- it is identical to a mark that belongs to another owner and is already registered, or whose filing or priority date is earlier, and which relates to the same or similar goods or services, or where it so resembles such a mark that it is liable to mislead or confuse;
- it is contrary to public order, morality or the law;
- it is liable to mislead the public or business circles, notably as to the geographical origin, nature or characteristics of the goods or services in question;
- it reproduces, imitates or incorporates armorial bearings, flags or other emblems, an abbreviated name or acronym or an official sign or hallmark indicating control and warranty of a State or intergovernmental organization established by an international convention, except where the competent authority of that State or that organization has given its permission;
- the mark may be registered for one more classes of goods or one or more classes of services within the meaning of the Nice Agreement;
- foreigners not residing in Côte d'Ivoire or in a member State of the AIPO or not having an effective or serious establishment there must appoint an agent.

10. Please confirm whether or not services are a protectable subject matter in your trademark law. Please confirm if signs, such as trade names, are protectable. Please describe if elements such as sound, perfumes and containers are protectable.

Yes, Ivorian legislation grants protection for service marks, trade names, and three (3) dimensional elements (for example, bottles, packaging ...).

No provision of our law provides protection for marks for smells or sounds.

11. Please explain what the requirements of use are, if any, as a condition for a trademark registration. Please explain the definition of use and the conditions of maintenance of a registration in that respect.

According to our legislation, rights to a trademark are acquired solely through registration and not use.

12. Please confirm whether or not your legislation permits that the registration of trademarks be indefinitely renewable.

Yes, the right to a trademark can be renewed indefinitely for successive ten (10)-year periods.

13. Please describe the special requirements, if any, prescribed by your legislation concerning the use of a trademark.

Failure to use a trademark for an uninterrupted period of five years after its registration leads to cancellation at the request of any interested party (Article 23 of Annex III).

D. GEOGRAPHICAL INDICATIONS

14. Please explain whether or not your trademark registration authority refuses a trademark application if it contains a geographical indication.

Registration of a trademark containing a geographical indication or constituted by such indication is refused or invalidated if the use of such an indication in the trademark for such products is liable to mislead the public as to the true place of origin (Article 2.1 of Annex VI to the Bangui Agreement).

15. Please give the definition of a geographical indication in your legislation.

"Geographical indication" means an indication that serves to identify a product as originating from a territory, a region, or a locality within that territory, in those cases where the quality, reputation or other specific characteristic of the product may be essentially attributed to such geographical origin.

16. Please describe and explain the provisions of your legislation establishing a link, if any, between the characteristics of an indication and its geographical origin.

"Geographical indication" means an indication that serves to identify a product as originating from a territory, a region, or a locality within that territory, in those cases where the quality, reputation or other specific characteristic of the product may be essentially attributed to such geographical origin (Article 1).

17. Please describe how additional protection is granted by your legislation to wines and spirits. Please mention other types of products, if any, covered by this additional protection.

There is no special provision on wines and spirits in the legislation. These are protected under the general provisions applicable to the subject matter protected as a geographical indication.

18. Please explain how exceptions under Article 24 of the TRIPS Agreement are used in your jurisdiction. Please provide examples of the use of the exceptions by courts or lists of names considered as generic in your jurisdiction.

The Bangui Agreement does not contain any special provisions concerning the exceptions mentioned in Article 24 of the TRIPS Agreement. The provisions in Article 23 are, however, observed.

E. INDUSTRIAL DESIGNS

19. Please explain whether or not your legislation extends to the protection of designs dictated essentially by technical or functional considerations. Please explain how textile designs are protected.

In Côte d'Ivoire, the technical or functional aspects of industrial designs are not requirements imposed for their protection.

The aesthetic and ornamental aspects are the only elements taken into account for the protection of industrial designs.

Designs on printed materials are not the subject of any special provisions on protection. They are protected under Annex IV to the Bangui Agreement, which concerns industrial designs.

20. Please explain how your legislation protects right holders of a design against importing of articles bearing embodied or copied designs.

Registration gives the creator of an industrial design or his successors in title the exclusive right to exploit the design.

They may therefore prohibit the manufacture, sale or import of any article that infringes their right.

21. Please state whether or not your legislation provides for the right to issue a compulsory licence for industrial designs.

No provision in Côte d'Ivoire's legislation allows the granting of a compulsory licence for industrial designs.

22. Please indicate for what period of time your legislation grants protection for industrial designs.

Industrial designs are registered for a term of five years as of the date of filing the application for registration. Registration may be extended, however, for two further consecutive periods of five years subject to payment of the corresponding fee, whose amount is fixed in the regulations.

F. PATENTS

23. Please describe how your legislation defines the notions of: novelty, inventiveness and industrial application.

Articles 3, 4 and 5 of Annex I to the Bangui Agreement.

Novelty

1. An invention is new if it has not been anticipated by prior art;
2. prior art consists of everything made available to the public, in any place and by any means or method, before the filing date either of the patent application or of a patent application filed abroad whose priority has been validly claimed;
3. the novelty of an invention is not denied if, during the 12 months preceding the date specified in paragraph 2 above, the invention has been the subject of a disclosure resulting from:
 - (a) An obvious violation committed against the applicant or his predecessor in title;
 - (b) the fact that the applicant or his predecessor in title has displayed it at an official or officially recognized international exhibition.

Inventive step

An invention is regarded as resulting from an inventive step if, having regard to the prior art, it would not have been obvious to a person having ordinary knowledge and skill in the art on the filing date of the patent application or, if priority has been claimed, on the priority date validly claimed for it.

Industrial applicability

An invention is considered industrially applicable if its subject matter can be made or used in any kind of industry. The term "industry" should be understood in its broadest sense; in particular, it covers handicrafts, agriculture, fisheries and services.

24. Please explain whether or not in your legislation, patent or otherwise, patent rights are enjoyed without any exclusions. If exclusions are provided for, please describe in detail how these exclusions are applied in legal as well as practical terms.

According to Article 8 of Annex I to the Bangui Agreement, the rights deriving from a patent do not extend to the following:

- (a) Acts in relation to subject matter brought on to the market on the territory of a member State by the owner of the patent or with his consent;
- (b) the use of objects on board foreign aircraft, land vehicles or ships that temporarily or accidentally enter the airspace, territory or waters of a member State;
- (c) acts in relation to a patented invention that are carried out for experimental purposes in the course of scientific and technical research;
- (d) acts performed by any person who, in good faith, on the filing date or, where priority is claimed, on the priority date of the application on the basis of which the patent is granted on the territory of a member State, was using the invention or making effective and serious preparations for such use, in so far as those acts are not different in nature or purpose from the actual or planned earlier use.

25. Please explain whether your legislation provides for the exclusion of inventions from patentability based on *ordre public* or morality. If so, please explain the relevant section of your legislation and explain its formulation. Please also explain if it has been applied in practice.

According to Article 6(a) of Annex I, any invention whose exploitation is contrary to public order or morality cannot be patented.

Exploitation of such an invention shall not be considered contrary to public order or morality, however, merely because it is prohibited by law or regulation.

26. Please explain whether or not diagnostic, therapeutic and surgical methods are excluded from patentability in your legislation. If so, please explain the relevant section of your legislation and explain its formulation.

Article 6(e) of Annex I provides that methods for the treatment of the human or animal body by surgery or therapy, including diagnostic methods, cannot be patented.

27. Please explain whether or not plants, animals and essentially biological processes are excluded from patentability in your legislation. If so, please explain the relevant section of your legislation and explain its formulation.

Article 6(c) of Annex I provides that inventions having as their subject matter plant varieties, animal species and essentially biological processes for the breeding of plants or animals, other than microbiological processes and the products of such processes, may not be patented.

28. Please describe how micro-organisms, non-essentially biological processes, microbiological processes and plant varieties are protected in your legislation. Please explain, in this respect, the relevant sections of your legislation.

Micro-organisms, non-essentially biological processes and products obtained by means of such processes are protected by patents pursuant to Annex I to the Bangui Agreement.

As far as plant varieties are concerned, they are protected by Annex X on the protection of new plant varieties.

29. Please explain how your legislation protects patent right holders against the importing and against the offering for sale of a patented invention.

Subject to the conditions and within the limits set in Annex I to the Bangui Agreement, a patent gives its owner the exclusive right to work the patented invention and to prohibit any person from working it.

Working may consist of:

- (a) In the case of a patent for a product:
 - (1) Manufacturing, importing, offering for sale, selling and using the product;
 - (2) possessing the product for the purposes of offering it for sale, selling it or using it;
- (b) In the case of a patent for a process:
 - (1) using the process;
 - (2) engaging in the acts mentioned in subparagraph (a) in relation to a product resulting directly from use of the process.

Article 8 of Annex I determines the limitations on the rights conferred by the patent, in conformity with Article 30 of the TRIPS Agreement.

A patent expires at the end of the 20th calendar year following the filing date of the application.

30. Please state if your legislation provides for patent product protection of pharmaceutical and agricultural chemical products. In the affirmative, please indicate the legal reference.

Pharmaceutical and agricultural chemical products are not protected under patent legislation pursuant to Annex I to the Bangui Agreement.

31. Please clarify if the patent protection of a process, as provided for in your legislation, covers the product obtained directly by that process.

Where a patent is granted for a process, the products obtained by that process are protected.

32. Please explain the additional conditions, if any, in your legislation other than the sufficient disclosure of the invention in Article 29 of the TRIPS Agreement (e.g. submission of justification for access to genetic material or prior informed consent to its use). If such additional conditions exist, please point out the relevant legislation and describe the additional conditions in detail.

The current regulatory provisions do not contain any additional conditions other than those requiring that an applicant set out the invention clearly and completely so that a person having average knowledge and skill in the art could carry it out (Article 14 of Annex I to the Bangui Agreement).

33. Please describe if your legislation provides for limited exceptions to the exclusive rights conferred by a patent. If affirmative, please make a reference to relevant legislation.

There are no limited exceptions to the exclusive right of exploitation granted to the patent owner other than non-voluntary licences.

34. Please explain whether or not your legislation provides for compulsory licensing. If so, please explain in detail the conditions under which a compulsory licence may be granted. In particular, please explain how your national legislation considers individual merits in the authorization of such use.

Ivorian legislation contains provisions on the granting of compulsory licences for the following reasons:

Non-voluntary licence for non-working (Article 46)

1. At the request of any person made after the expiry of a period of four years from the filing date of the patent application or three years from the date of grant of the patent, whichever period expires last, a non-voluntary licence may be granted where one or more of the following conditions are fulfilled:
 - (a) a patented invention is not being worked on the territory of a member State at the time the request is made;
 - (b) the working of the patented invention on such territory does not meet the demand for the protected product on reasonable terms;
 - (c) on account of the refusal of the owner of the patent to grant licences on reasonable commercial terms and conditions, the establishment or development of industrial or commercial activities on such territory is unfairly and substantially prejudiced;
2. notwithstanding the provisions of paragraph (1) above, a non-voluntary licence may not be granted if the owner of the patent provides legitimate reasons for the non-working of the invention.

Non-voluntary licence for a dependent patent (Article 47)

Where a patented invention cannot be worked without infringing the rights under an earlier patent whose owner refuses to authorize its use on reasonable commercial terms and conditions, the owner of the later patent may obtain a non-voluntary licence for such use from the court on the same terms as those applicable to the non-voluntary licences granted under Article 46 and subject to the following additional conditions:

- (a) The invention claimed in the later patent must represent substantial technical progress, of considerable economic interest, in relation to the invention claimed in the earlier patent;
- (b) the owner of the earlier patent has the right to a reciprocal licence on reasonable terms for the use of the invention claimed in the later patent;
- (c) the use authorized in relation to the earlier patent is non-transferrable, except where the later patent is also transferred.

Ex officio licence (Article 56)

- (1) Where certain patents are of vital interest to the country's economy, public health or national defence, or where non-working or insufficient working of such patents seriously compromises the satisfaction of the country's needs, by means of an administrative act of the competent Minister of the member State concerned, they may be made subject to the non-voluntary licence regime.

The said act specifies the beneficiary administration or organization, the conditions, the term and the scope of the non-voluntary licence and the amount of royalties payable.

- (2) In the absence of amicable agreement between the owner of the patent and the administration concerned on the said conditions, they are set by the civil court.
- (3) Ex officio licences shall be subject to the same conditions as the non-voluntary licences granted under Article 46.

Licence of right (Article 57)

- (1) Any owner of a patent not precluded by the terms of any previously registered licence from granting further licences may apply to the Organization to have the notice "licences of right" entered in the Register in respect of his patent. The notice is entered in the Register and published by the Organization as soon as possible.
- (2) The entry of such notice in the Register entitles any person to obtain a licence to work the said patent on terms that, in the absence of agreement between the parties concerned, are fixed by the civil court. It also causes the annual fee to be reduced.

35. Please explain how your legislation explicitly ensures that a proposed user has made efforts to obtain authorization from the right holder on reasonable commercial terms and conditions and that such efforts have not been successful within a reasonable period of time. In this context, how do you define "reasonable period of time"? Please also explain how your legislation ensures that the use of a compulsory licence shall be authorized predominantly for the supply to the domestic market of the Member authorizing such use.

A person applying for a compulsory licence must provide proof that he has previously approached the owner of the patent, by registered letter, requesting a contractual licence, but has been unable to obtain such a licence from him on reasonable commercial terms and conditions and within a reasonable time.

The time-limit is fixed in the implementing regulations of the Bangui Agreement.

Where certain patents are of vital interest to the country's economy, public health or national defence or where non-working or insufficient working of such patents seriously compromises the satisfaction of the country's needs, by means of an administrative act of the competent Minister of the member State concerned, they may be made subject to the non-voluntary licence regime.

The said act specifies the beneficiary administration or organization, the conditions, the term and the scope of the non-voluntary licence and the amount of royalties payable (Article 56 of Annex I).

36. Please state if your legislation grants additional protection for innovations after the 20 years of patent protection has lapsed.

Under Ivorian law, innovations made to an invention are protected by certificates of addition. This protection terminates together with the principal patent.

37. Please explain how your legislation provides for the enhanced patent protection of patents or patent applications pending on 1 January 1995.

According to Article 68 of Annex I to the Bangui Agreement of 24 February 1999, any patent granted or recognized under the Bangui Agreement of 2 March 1977 remains in force for a period of 20 years as from its filing date.

38. Please explain how your legislation provides for the reversal of the burden of proof in relation to process patents.

Article 66 of Annex I to the Bangui Agreement deals with the burden of proof in cases of disputes related to process patents.

Where the subject matter of a patent is a process for making a product, the judicial authority is authorized to order the defendant to prove that the process used to make an identical product is different from the patented process in the following situations:

- The product obtained by means of the process is new;
- there is a strong probability that the identical product was obtained by means of the process and the owner of the patent has been unable, in spite of reasonable effort, to establish what process was actually used.

G. LAY-OUT DESIGNS (TOPOGRAPHIES) OF INTEGRATED CIRCUITS

39. Please describe how your legislation protects topographies.

Annex IX to the Bangui Agreement contains provisions on the protection of lay-out designs.

Subject matter of protection (Article 2)

Lay-out designs of integrated circuits may be protected under Annex IX to the Agreement if they are original.

A lay-out design is original if it is the result of its creator's personal intellectual effort and is not in common use among creators of lay-out designs and manufacturers of integrated circuits at the time of its creation (Article 3).

Registration may be applied for only if the lay-out design has not yet been commercially exploited or has not been commercially exploited for more than two years anywhere in the world.

Right to protection

The right to protection of a lay-out design belongs to its creator. It may be assigned or transferred by succession.

Where several persons have jointly created a lay-out design, the right belongs to them collectively.

Where a lay-out design has been created under a works or services contract, the right to protection belongs to the person who commissioned the work or service or to the employer, unless otherwise provided in the contract

40. Please explain what protection your national legislation grants to right holders against the unlawful importation, sale or distribution for commercial purposes of topographies including integrated circuits or other articles in which a topography is incorporated in accordance with Article 36 of the TRIPS Agreement.

The protection granted under Annex IX is independent of the fact of whether or not the integrated circuit incorporating the protected lay-out design is itself incorporated in an article. Subject to the provisions of Articles 6 and 15 of Annex IX, the following acts are unlawful when carried out without the authorization of the holder:

- (a) The act of reproducing, whether by incorporation in an integrated circuit or otherwise, a protected lay-out design in its entirety or any part thereof, except the act of reproducing any part that does not fulfil the requirement of originality referred to in Article 3;
- (b) the act of importing, selling or otherwise distributing for commercial purposes a protected lay-out design, an integrated circuit in which a protected lay-out design is incorporated or an article in which such integrated circuit is incorporated if it continues to contain a lay-out design that is unlawfully reproduced.

41. Please explain how your legislation provides for the derogation from Article 36 as specified in Article 37 of the TRIPS Agreement where a person has no knowledge or reasonable grounds to know when acquiring an integrated circuit or an article incorporating such an integrated circuit that it contains an unlawful topography.

Article 6 of Annex IX to the Bangui Agreement provides that:

The protection afforded a lay-out design under this Annex does not extend:

- (a) To the reproduction of a protected lay-out design for private purposes or for the sole purpose of evaluation, analysis, research or teaching;
- (b) to the incorporation, in an integrated circuit, of a lay-out design based on such analysis or evaluation and itself possessing originality within the meaning of Article 3, nor to the carrying out with respect to such lay-out design of any of the acts referred to in Article 5;
- (c) to the carrying out of any of the acts referred to in Article 5(b) where the act is carried out with respect to a protected lay-out design, or an integrated circuit in which such a lay-out design is incorporated, which has been placed on the market by the holder or with his consent;
- (d) to the carrying out of any of the acts referred to in Article 5(b) with respect to an integrated circuit incorporating an unlawfully reproduced lay-out design or any article incorporating an unlawfully-reproduced lay-out design or any article incorporating such an integrated circuit where the person performing or ordering such act did not know and had no reasonable grounds to know, when acquiring the integrated circuit or an article incorporating it, that it incorporated an unlawfully-reproduced lay-out design; however, once that person has been duly advised of the fact that the lay-out design has been unlawfully reproduced, he may carry out any of the aforementioned

acts with regard solely to the stocks at his disposal or which he had ordered before being advised and shall be required to pay to the holder an amount equivalent to a reasonable royalty that would be required under a freely-negotiated licence with respect to such a lay-out design;

- (e) to the carrying out of any of the acts referred to in Article 5(b) where the act is carried out with respect to an identical original lay-out design created independently by a third party.

42. Please state the term of protection granted by your legislation to topographies.

The protection afforded a lay-out design under Annex IX shall take effect:

- On the date of the first commercial exploitation of the lay-out design, any where in the world, by the holder or with his consent, on condition that an application for protection be filed by the holder with the Ivorian Industrial Property Office or with the African Intellectual Property Organization; or
- on the filing date allocated to the application for registration of the lay-out design filed by the holder if the lay-out design has not been the subject of prior commercial exploitation anywhere in the world.

The protection afforded a lay-out design under this Law shall cease at the end of the tenth calendar year following the date on which it took effect.

H. PROTECTION OF UNDISCLOSED INFORMATION

43. Please explain whether or not your legislation grants a defined period of time for the protection of undisclosed information. If so, please give the time span.

The legislation does not specify a defined period of time for the protection of undisclosed information.

44. Please explain how your legislation defines undisclosed information.

Undisclosed information is protected under Article 6 of Annex VIII to the Bangui Agreement of 24 February 1999.

Article 6 of this Annex deals with unfair competition concerning confidential information.

Information is considered confidential when:

- In its totality or in the configuration or precise assembly of its elements, it is not generally known to persons belonging to the circles that normally deal with that type of information or is not readily available to them;
- it has commercial value because it is confidential;
- its lawful holder has taken reasonable precautions, in view of the circumstances, to keep it confidential;
- any act or practice which, in the course of industrial or commercial activities, constitutes or leads to dishonest use in trade of confidential data obtained from tests

or other confidential data whose production requires considerable effort and which have been communicated to a competent authority for the purpose of obtaining authorization to market pharmaceutical products or chemical products for agriculture comprising new chemical entities, is considered unfair competition.

There is one exception to this provision, namely, where disclosure of data is necessary to protect the public unless measures have been taken to ensure that the data are protected against dishonest use in trade.

45. Please explain how your legislation defines data submitted to governments or governmental agencies.

Paragraph (4) of Article 6 of Annex VIII to the Bangui Agreement protects undisclosed information and data communicated to public authorities or their entities through provisions on unfair competition concerning confidential information.

I. ENFORCEMENT

46. Please describe how your legislation provides for effective action against infringement of intellectual property rights.

The revised Bangui Agreement of 24 February 1999 contains provisions relating to the enforcement obligations established in Articles 41 to 61 of the TRIPS Agreement. These aspects have been addressed on page 4 of the report on progress in implementing the TRIPS Agreement.

The draft legislation mentioned in paragraphs 1.2(a) and 1.2(b) of this report reinforces the provisions of the Bangui Agreement.

For example, Title III of the draft law on the protection of intellectual works, which covers procedures and penalties, contains the following provisions:

Infringement seizure (Article 90)

At the request of right holders, their successors in title or agents, goods in infringement of rights can be seized.

This measure is subject to legal recourse to have them released (Articles 91 and 92).

Descriptive seizure (Article 93)

At the request of the aforementioned parties, one or more court-appointed experts may proceed to draw up an inventory of the objects alleged to be counterfeit or to describe the particulars of the infringement and the materials used to commit it.

Suspension of release by customs (Article 94)

Without prejudice to the pertinent provisions of the customs code, when a right holder has *prima facie* evidence for suspecting the imminent import or export of goods whose circulation is unlawful, he may submit a written request to the customs authorities to suspend their release.

Enforcement

The law defines infractions and establishes penalties. It describes the offence of counterfeiting (Article 96), the infraction of fraudulent affixation or suppression of a mark

(Article 96), the infraction of abuse of technical facilities (Article 97), etc., and establishes the penalties to which offenders are liable.

Technical measures

Provisions on technical devices to prevent piracy (Article 76) have been added to the provisions governing the use of apparatus not equipped with anti-copying devices or equipped with devices to render inoperative any means of protection against or regulation of copying (Article 175).

47. Please explain whether or not your legislation provides for a mechanism to appeal to judicial bodies of final administrative decisions.

In civil, criminal, commercial and administrative matters, Ivorian legislation provides that judicial or administrative decisions taken at the first level may be the subject of appeal before the Court of Appeal and, where appropriate, before the Supreme Court, which is the last court of appeal.

48. Please describe how your legislation authorizes judges to order production of evidence by the opposing party. Please give precise information on what measures are taken to ensure the protection of confidential information.

When passing sentence, an Ivorian judge has the power to compel the party concerned, under oath, to provide any evidence that may lie within his control, with full guarantees in regard to the protection of confidential information.

This provision is contained in Articles 54 *et seq.* of the Code of Civil Procedure.

This possibility is also provided at the examination stage, pursuant to Article 97 of the Code of Criminal Procedure. The examining judge may order the presentation of any evidence that may be appropriate in order to reveal the truth.

A number of measures can be taken to guarantee professional secrecy:

- Seizure in the presence of the person concerned or his lawyer;
- placing under seal, and opening in the presence of the party concerned or his lawyer;
- drawing up of minutes;
- penalties, consisting of fines and imprisonment, for any disclosure or communication of information without the consent of the party concerned.

The foregoing measures are established in Articles 56, 57, 97 and 98 of the Code of Criminal Procedure.

49. Please quote provisions of your legislation that authorize judges to order a defendant to desist from an infringement.

Through summary proceedings or direct summons, the judge may order that precautionary measures be taken against any person who infringes another person's intellectual property rights.

These measures are established in Articles 67, 47, 48, 31, 16, 16, 62, 1, 35 and 44 respectively of Annexes I to X to the Bangui Agreement.

50. Please quote what provisions of your legislation authorize judges to order the payment to the right holder of adequate damages to compensate the injury he suffered.

Articles 58, 41, 46, 29, 16, 16, 63, 1, 35 and 43 in Annexes I to X respectively to the Bangui Agreement allow persons injured by infringement of their intellectual property rights to request a civil court judge to order the payment of damages.

51. Please quote what provisions of your legislation authorize judges to order the payment of the right holder's expenses by the infringer.

In the event of conviction, the infringer of an intellectual property right may be required by the judge to pay the legal costs incurred by the holder of the right. Articles 464 to 468 of the Code of Criminal Procedure and Article 149 of the Code of Civil Procedure deal with the issue of the payment of legal costs.

52. Please explain if and how judges have the authority to order that infringing goods are placed outside channels of commerce or destroyed.

The Bangui Agreement recognizes the judge's power to order the seizure of recognizedly infringing goods or objects (infringement seizure procedure), or their forfeiture or destruction, together with any implements or tools specifically intended for their manufacture.

See, for example, Articles 64 and 67 of Annex I on patents and Articles 43 and 48 of Annex III on trademarks and service marks.

This measure is supported by the draft laws on the protection of intellectual property rights at borders and on the protection of intellectual works, as mentioned in paragraphs 1.2(a) and 1.2(b) of the report.

53. Please quote what provisions of your legislation authorize judges to indemnify a defendant in the event of abuse by the plaintiff.

The Bangui Agreement, in the Articles cited above in regard to infringement seizure, provides that, if there has been a legal irregularity, the defendant may initiate an action seeking damages from the complainant.

The defendant is also entitled to take such action in the event of failure by the complainant to take substantive action within ten days from the seizure or inventory.

54. Please explain how your legislation implements Article 50 of the TRIPS Agreement.

The infringement seizure regime established under the Bangui Agreement allows the judge to order the seizure of allegedly infringing goods at any location, including the border.

Before seizure is effected, the judge may require the petitioner to furnish security.

The person in possession of the goods seized is given a copy of the order and of the document attesting the deposit of security, on pain of invalidity and damages against the bailiff, the public official or the customs officer, as the case may be.

The complainant has ten (10) days to take substantive action; if no such action is taken by the end of that ten-day period, the seizure becomes void and the defendant may claim damages.

The draft law on the protection of intellectual property rights at borders, described in paragraph 1.2(a) of the report, not only authorizes the detention in customs of any allegedly infringing goods (Article 7), but also authorizes the complainant to inspect the goods whose clearance has been suspended (Article 14), requires the complainant to provide tangible evidence of the rights he is asserting and the claims he is making (Article 8), authorizes the customs service to seize the goods ex officio in order to prevent any infringing goods that have been detected from reaching the market (Article 19), provides for the payment of damages to the defendant and the right to be heard at review proceedings if a substantive decision is handed down (Article 13(b)), and provides for all provisional measures to be suspended at the request of the defendant if the petitioner fails to take substantive action within ten (10) days (Article 13(a)).

55. Please identify the competent authorities in your jurisdiction who receive requests from right holders for an application to suspend the release of counterfeit goods by the customs authorities.

The authorities empowered to deal with requests for the suspension of customs clearance of counterfeit goods are judges, customs officers and judicial police officers.

56. Please indicate whether or not procedures are available to suspend the exporting of counterfeit goods.

There are procedures to suspend the export of counterfeit goods. These are to be found in the draft law on the protection of intellectual property rights at borders (Article 1). The same provisions apply to imports.

57. Please quote what provisions of your legislation authorize the competent authorities to order the destruction or disposal of infringing goods.

Please see the reply to question 52.

58. Please indicate whether or not your legislation provides for a de minimis imports exception.

Article 25 of the draft law on the protection of intellectual property rights at borders provides that counterfeit goods not intended for commercial use, found in small quantities in travellers' personal effects, are not subject to the prohibition.

59. Please explain how your legislation implements Article 61 of the TRIPS Agreement.

The owner of an intellectual property right that has been infringed may bring proceedings before the civil or criminal courts.

The Code of Criminal Procedure and the relevant provisions of the Bangui Agreement on prosecution and penalties applicable to trademarks and copyright allow the right holder to bring proceedings and provide for deterrents.

Articles 74, 77 and 377 of the Code of Criminal Procedure set out the procedures applied with regard to the preliminary investigation, information, direct summons and the ruling.

The procedures described such as summary proceedings, direct summons, seizure and infringement seizure, which involve bailiffs, public or ministerial officials including customs officers, are procedures that are in the spirit of the TRIPS Agreement.

The Bangui Agreement provides extensive penalties. These are defined in the "Penalties" chapter in each of the ten (10) Annexes to the Agreement. The range of penalties includes the following:

- Imprisonment (three months to two years);
- fines, which have been increased twenty-fold since the Agreement of 2 March 1977 (CFAF 1 to 6 million);
- damages;
- forfeiture or destruction of the counterfeit goods;
- destruction of the implements or tools specially intended for committing the infringement;
- publication of the verdict at the infringer's expense;
- legal disqualification from membership of professional associations (chambers of commerce, trade unions);

In addition, the penalties may be increased in cases of recidivism.

UNITED STATES

A. GENERAL

1. Please describe, in relation to each form of intellectual property covered by the TRIPS Agreement, including plant variety protection, the manner in which national treatment and most-favoured-nation treatment are provided to nationals of other WTO Members and cite the relevant provisions of law.

These aspects are addressed under section 1.1 of the report, which covers the provisions on protection of various forms of intellectual property under Côte d'Ivoire's relevant legislation (see the introduction). Article 1 (Annex X to the Bangui Agreement), Article 3 of Annex VI, Article 5 of Annex IV, Article 4 of Annex III, Article 10 of Annex II, and Article 13 of Annex I deal specifically with national treatment.

B. COPYRIGHT AND RELATED RIGHTS

2. Please explain whether and how the copyright law of Côte d'Ivoire complies with Article 9 of the TRIPS Agreement requiring that Members comply with all Articles 1 through 22 of the Berne Convention (1971), except Article 6 *bis*, since Members do not have rights or obligations relating to the latter Article under the TRIPS Agreement.

Although it does not refer explicitly to Article 9 of the TRIPS Agreement, the Ivorian law on copyright and related rights nevertheless observes the provisions requiring that Members should comply with Articles 1 to 21 of the Berne Convention (1971) and the Appendix thereto because Côte d'Ivoire is party to the Berne Convention and the Marrakesh Agreement on the one hand and, on the other, its law on copyright and related rights specifically obliges it to respect the rules on protection in the international conventions it has signed (Article 2.3).

3. Please explain how the copyright law of Côte d'Ivoire protects computer programs as literary works and compilations of data as required by Article 10 of the TRIPS Agreement.

The special mention of the protection of computer programs (Article 5) and compilations of data (Article 7) is one of the areas where Ivorian law has been brought into conformity with the TRIPS Agreement.

4. Article 11 of the TRIP Agreement requires that rental rights for computer programs and cinematographic works be available. Please cite the corresponding provision of the copyright law of Côte d'Ivoire.

Recognition of a rental right (Article 23) is another of the areas where Ivorian law has been updated in the light of the TRIPS Agreement.

This right is covered as follows:

- The law does not specify the works concerned, which means that the rental right applies to all categories of work;
- the law does not provide the exemption for cinematographic works in cases where rental would not have any prejudicial effect on the right of reproduction, as called for by Article 11 of the TRIPS Agreement.

5. Please state the length and terms of protection the copyright law of Côte d'Ivoire provides for a work other than a photographic work or a work of applied art and cite the relevant provision of law.

The term of protection granted under Ivorian law is 99 years, irrespective of the nature of the work.

The determination of this period is nevertheless subject to nuances depending on whether it is a work of collaboration, an anonymous or pseudonymous work, a collective or audiovisual work, or a work of applied art.

Depending on the case, the term of protection runs either from the calendar year in which the last surviving co-author died, or the year of first publication or execution of the work, or the year in which the work was lawfully published or made available to the public, or the year in which the work was disclosed.

6. Please describe the protection the copyright law of Côte d'Ivoire provides for performers, and the term of the protection.

Côte d'Ivoire's law recognizes a performer's moral right (Article 60). Among the economic rights, a performer is given the exclusive right to authorize:

- Fixation and reproduction of his fixed performances, including audiovisual fixations, in any manner or form;
- communication to the public and rental of his performances (Article 61).

7. Article 14.2 of the TRIPS Agreement provides that producers of phonograms are to enjoy the right to authorize or prohibit the direct or indirect reproduction of their phonograms. Article 14.2 requires that producers of phonograms are to have the right to authorize or prohibit the commercial rental to the public of originals or copies of their phonograms. Please describe how the copyright law of Côte d'Ivoire implements these obligations and indicate the term of protection.

Ivorian law gives the producers of phonograms and videograms the exclusive right to authorize:

- Direct or indirect reproduction of their phonograms or videograms;
- communication to the public, rental or loan of their phonograms or videograms (Article 62).

C. TRADEMARKS

8. Please describe the subject matter that can comprise a trademark under the trademark law of Côte d'Ivoire.

Articles 2 and 3 of Annex III to the revised Bangui Agreement define signs that are allowed as trademarks and those that are excluded, as follows:

- The following are allowed as trademarks for goods or services: any visible sign used or intended to be used and capable of distinguishing the goods or services of any enterprise, including in particular surnames by themselves or in a distinctive form, special, arbitrary or fanciful designations, the characteristic form of a product or its packaging, labels, wrappers, emblems, prints, stamps, seals, vignettes, borders, combinations or arrangements of colours, drawings, reliefs, letters, numbers, slogans and pseudonyms.
- a trademark for goods or services whose conditions for use are laid down in rules approved by the competent authority and which may only be used by recognized professional associations may be considered a collective mark.
- a mark may not be validly registered if:
 - it is devoid of distinctiveness, notably owing to the fact that it consists of signs or indications constituting the necessary or generic designation of the product or the composition thereof;
 - it is identical to a mark that belongs to another owner and is already registered, or whose filing or priority date is earlier, and which relates to the same or similar goods or services, or where it so resembles such a mark that it is liable to mislead or confuse;
 - it is contrary to public order, morality or the law;
 - it is liable to mislead the public or business circles, notably as to the geographical origin, nature or characteristics of the goods or services in question;
 - it reproduces, imitates or incorporates armorial bearings, flags or other emblems, an abbreviated name or acronym or an official sign or hallmark

indicating control and warranty of a State or intergovernmental organization established by an international convention, except where the competent authority of that State or that organization has given its permission;

- the mark may be registered for one more classes of goods or one or more classes of services within the meaning of the Nice Agreement;
- foreigners not residing in Côte d'Ivoire or in a member State of the AIPO or not having an effective or serious establishment there must appoint an agent.

9. Please describe the procedure that must be followed to register a trademark in Côte d'Ivoire, citing the relevant provisions of the law, and describe the rights that the owner of a registered mark can exercise.

The procedure is described in Title II of Annex III to the Bangui Agreement.

Any person wishing to obtain the registration of a trademark in Côte d'Ivoire must file an application with the Ivorian Industrial Property Office (*Office ivoirien de la propriété industrielle*) (OIPI):

- The application must be addressed to the Director General of the African Intellectual Property Organization (AIPO) in five copies and contain the following:
 - a document proving payment of the filing fee to the Organization;
 - an unstamped private power of attorney if the applicant is represented by an agent;
 - a reproduction of the trademark, including a list of the goods or services to which the trademark applies, with the corresponding classes in the International Classification of Goods and Services for the Purposes of the Registration of Marks (Nice Agreement).

For every application for registration of a trademark, the Organization examines whether the conditions of form referred to in Articles 8 and 9 of Annex III to the Bangui Agreement have been met, and whether the prescribed fees have been paid.

Any application that contains elements that may not be registered is rejected (Article 13 of Annex III).

If there is any irregularity, it is notified to the applicant or his agent, who has three (3) months as of the date of notification in which to put the documents in order. This period may be extended in case of a proven necessity, at the request of the applicant or his agent.

If the documents are not put in order according to the aforementioned provisions, the application is rejected.

An application that meets all the requirements is registered and published in the Organization's official bulletin. A registration certificate is issued to the owner of the trademark:

- The application must indicate the name, address, nationality and domicile of the applicant;

- the application must be signed and if the applicant is a legal entity its identity and title must be specified;
- the Office receives the application and draws up a statement specifying the date and time of submission of the documents. A copy of the statement is given to the applicant. The Office transmits the documents to the Organization within five working days of the date of filing;
- the trademark is registered for ten years, which can be renewed indefinitely;
- a legal provision allows priority to be claimed for an earlier filing either at the time of filing the application or later, up to three months following the filing date.

According to Article 7 of Annex III, the registration of a trademark confers the following rights on the owner:

- (1) The exclusive right to use the trademark, or a sign resembling it, in connection with the goods or services for which it has been registered or similar goods or services;
- (2) the exclusive right to prohibit third parties from making use in business without his consent of identical or similar signs for goods or services that are themselves similar to those for which the trademark has been registered where such use is liable to cause confusion;
- (3) registration of a trademark does not confer on its owner the right to prohibit a third party from making use in good faith of their name or address, a pseudonym, a geographical name or accurate information concerning the nature, place of origin or time of production of their goods or rendering of their services, in so far as the use in question is limited to the purpose of mere identification or information and cannot mislead the public as to the source of the goods or services;
- (4) nor does registration of a trademark confer on its owner the right to prohibit a third party from making use of the mark in relation to goods that have been lawfully sold under the mark on the national territory of the member State in which the right of prohibition is exercised, on condition that the goods have not undergone any alteration.

10. Please provide the length and terms of protection the trademark law of Côte d'Ivoire provides for a trademark.

A trademark for goods or services is registered for a period of ten (10) years. The right to the trademark may be preserved indefinitely through successive renewals every ten years.

11. In determining whether a mark is well-known, do the relevant authorities in Côte d'Ivoire take account of knowledge of the trademark in the relevant sector of the public, including knowledge obtained as a result of promotion of the trademark, as required under Article 16.2 of the TRIPS Agreement? Please cite the relevant laws, regulations and judicial decisions.

Article 6 of Annex III to the revised Bangui Agreement, which is Côte d'Ivoire's national intellectual property legislation, protects the rights of the owner of a well-known mark. This provision reads as follows:

"The owner of a well-known mark within the meaning of Article 6*bis* of the Paris Convention for the Protection of Industrial Property and Article 16, paragraphs (2) and (3) of the Agreement on Trade-Related Aspects of Intellectual Property Rights may apply to the court for the invalidation, on the national territory of one of the member States, of the effects of the filing of a mark liable to be confused with his own. Such action may not be taken after a period of five years has expired following the date of the application in so far as the latter was filed in good faith."

D. GEOGRAPHICAL INDICATIONS

12. Please describe in detail how the laws of Côte d'Ivoire provide for the recognition and protection of geographical indications required by Article 22.2 of the TRIPS Agreement, citing the relevant provisions of law or regulation, and provide examples of geographical indications so protected.

In Côte d'Ivoire, geographical indications are protected in conformity with the provisions in Annex VI to the Bangui Agreement of 24 February 1999.

Protection is available for geographical indications that serve to identify a product as originating from a territory or region, or a locality within that territory, in those cases where the quality, reputation or other specific characteristic of the product may be essentially attributed to such geographical origin.

Requirements for protection

Geographical indications are protected if they have been registered by the African Intellectual Property Organization (AIPO) or are to be treated as having been registered by virtue of an international convention to which the member States are party.

Geographical indications foreign to the territories of the member States of the Organization may be registered by the Organization only where provided for in an international convention to which the member States are party or in the enforcing legislation.

The following are excluded from protection as geographical indications:

- Indications that do not correspond to the definition given in the Bangui Agreement;
- indications that are contrary to morality or public order or are liable to deceive the public as to the nature, the source, the manufacturing process, the characteristic qualities or the suitability for the purpose of the goods concerned;
- indications that are not protected in their country of origin or have ceased to be protected, or have fallen into disuse in that country.

Registration procedure

Natural or legal persons carrying on an activity as a producer in the geographical area specified in the application, with respect to the products specified in the application, as well as groups of such persons, groups of consumers and any competent authority are entitled to file an application for registration of a geographical indication.

For every application for registration of a geographical indication, the Organization examines whether the applicant is entitled to apply for registration, whether the application contains the indications relating to exclusion from protection, and whether it contains all the details required. If

there are no irregularities, the Organization registers the application, publishes the registration and issues the owner with a registration certificate.

Only producers carrying on their activity in the geographical area specified in the Register have the right to use a registered geographical indication with respect to the products specified in the register for commercial purposes, provided that such products possess the essential characteristic qualities specified in the Register.

Nevertheless, where the products have been put into circulation under the conditions defined above under a registered geographical indication, any person has the right to use the geographical indication for those products.

With the exception of the provisions on use set out above, it is unlawful to use, for commercial purposes, a registered geographical indication, or a similar designation, with respect to the products specified in the Register or similar products, even if the true origin of the products is indicated or if the geographical indication is in the form of a translation or is accompanied by terms such as "kind", "type", "make", "imitation" or the like.

At present, only one geographical indication has been protected by the AIPO, namely "Korhogo cotton".

13. Please describe in detail the manner in which the additional protection required for wines and spirits under Article 23.2 of the TRIPS Agreement is implemented, citing the relevant provisions of law or regulation, and provide examples of geographical indications for such products.

There is no special provision on wines and spirits in the legislation. These are protected under the general provisions applicable to the subject matter of geographical indications.

14. Please explain whether pre-existing trademarks are protected against usurpation by geographical indications, as required under Article 24 of the TRIPS Agreement. Please cite any relevant laws, regulations or judicial decisions.

Paragraph (6) of Article 15 of Annex VI to the Bangui Agreement of 24 February 1999 states that:

"The owner of an earlier mark that is identical with or similar to a geographical indication may continue to use his mark, except where such mark concerns wines or spirits."

E. INDUSTRIAL DESIGNS

15. Please describe the procedure that must be followed to obtain protection for industrial designs, citing the provisions of the law of Côte d'Ivoire, and describe the nature of the protection provided.

Industrial designs are protected by Annex IV to the Bangui Agreement of 24 February 1999.

Registration procedure

- (1) Any person wishing to have an industrial design registered must file an application with the Ivorian Industrial Property Office (OIP) or send the application to the Office by registered mail with a request for acknowledgement:

- (a) the application must be addressed to the Director General of the Organization in the number of copies prescribed by the regulations;
 - (b) a document proving payment of the prescribed fees to the Organization must be submitted;
 - (c) if the applicant is represented by an agent, an unstamped private power of attorney must be submitted;
 - (d) the type of product for which the design is to be used must be mentioned;
 - (e) on pain of invalidity of the application, a sealed package containing two identical copies of a graphic or photographic representation of the design, in dimensions specified by the regulations, must be submitted.
- (2) The same filing may include from one to 100 designs, which shall be numbered from first to last, provided that they belong to the same class of the International Classification (Locarno Agreement) or to the same set or range of articles. Designs additional to the hundredth shall not be considered validly filed.

The law allows priority for an earlier application to be claimed.

After receiving the application, the Ivorian Intellectual Property Office draws up a statement of receipt if all the application formalities have been met. This statement attests to the filing, showing the date and time of submission of the documents.

A copy of the statement is issued to the applicant. The Office transmits the documents to the Organization within a period of five working days from the filing date.

Registration of the application

1. For every application for registration of an industrial design, the Organization examines whether the conditions of form (Articles 8 and 9 of Annex IV to the Bangui Agreement) have been met and whether the prescribed fees have been paid.
2. If there is any irregularity, it is notified to the applicant or his agent, who has three (3) months in which to put the documents in order.

This period may be extended by 30 days in case of a proven necessity at the request of the applicant or his agent.

3. If the documents are not put in order within this period, the application is rejected.

The Organization registers designs where the application meets the conditions laid down. Registration is published in the official bulletin of the Organization.

Term of protection

Industrial designs are registered for a period of five years as of the date of filing of the application for registration. Registration may, however, be extended for a further two consecutive periods of five years upon payment of a renewal fee whose amount is fixed in the regulations.

Rights conferred by registration

- Designs deposited in the proper manner enjoy the benefits of Annex I to the Bangui Agreement;
- the ownership of a design belongs to the person who created it or his successors in title but, in the absence of proof to the contrary, the first applicant shall be presumed to be the creator of the design;
- any creator of an industrial design and his successors in title has the exclusive right to exploit the said design and to sell or cause to be sold for industrial or commercial purposes the goods in which the design is incorporated, subject to the conditions laid down in Annex IV, without prejudice to the rights conferred by other legal provisions;
- foreigners enjoy the benefits of Annex IV to the Agreement if they complete the formalities laid down therein.

16. Please describe the procedure that must be followed to obtain protection for textile designs and cite the relevant provisions of law or regulation.

Registration of designs for printed textiles follows the same procedure as that described above for other industrial designs.

F. PATENTS

17. Please describe in detail the way in which the patent law of Côte d'Ivoire implements Article 27 of the TRIPS Agreement, indicating any exceptions provided for, and including details regarding the protection for micro-organisms and non-biological and biological processes and plant varieties. Please cite the relevant provisions of the law.

In Côte d'Ivoire, patents are protected under Annex I to the Bangui Agreement of 24 February 1999. The provisions in this Annex provide that the following are patentable:

Any invention that involves an industrial activity and is industrially applicable. An invention may consist of or relate to a product, a process, or use thereof.

The law provides for exclusions from patentability. Article 6 of Annex I to the Bangui Agreement covers non-patentable subject matter as follows:

- Inventions whose exploitation is contrary to public order or morality, provided that the exploitation of the invention is not considered contrary to public order or morality merely because it is prohibited by law or regulation;
- discoveries, scientific theories and mathematical methods;
- inventions having as their subject matter plant varieties, animal species and essentially biological processes for the breeding of plants or animals other than microbiological processes and the products of such processes;
- schemes, rules or methods for doing business, performing purely mental acts or playing games;

- methods for the treatment of the human or animal body by surgery or therapy, including diagnostic methods;
- mere presentations of information;
- computer programs;
- works of an exclusively ornamental nature;
- literary, architectural and artistic works or any other aesthetic creation.

The exclusions from patentability in Côte d'Ivoire's legislation are in conformity with those in paragraphs 2 and 3 of Article 27 of the TRIPS Agreement.

18. Please describe in detail the rights provided patent holders under the patent law of Côte d'Ivoire and cite the relevant provisions of law.

Subject to the conditions and within the limits set in Annex I to the Bangui Agreement, a patent gives its owner the exclusive right to work the patented invention and to prohibit any person from working it.

Working may consist of:

- (a) In the case of a patent for a product:
 - (1) manufacturing, importing, offering for sale, selling and using the product;
 - (2) possessing the product for the purposes of offering it for sale, selling it or using it;
- (b) in the case of a patent for a process:
 - (1) using the process;
 - (2) engaging in the acts mentioned in subparagraph (a) in relation to a product resulting directly from use of the process.

Article 8 of Annex I determines the limitations on the rights conferred by the patent, in conformity with Article 30 of the TRIPS Agreement.

A patent expires at the end of the 20th calendar year following the filing date of the application.

19. Please describe in detail any provisions in the laws of Côte d'Ivoire permitting unauthorized use of a patent, citing the relevant provisions of law, and describe in detail the conditions under which such use can occur.

The rights deriving from a patent do not extend to the following:

- (a) Acts in relation to subject matter brought on to the market on the territory of a member State by the owner of the patent or with his consent;
- (b) the use of objects on board foreign aircraft, land vehicles or ships that temporarily or accidentally enter the airspace, territory or waters of a member State;

- (c) acts in relation to a patented invention that are carried out for experimental purposes in the course of scientific and technical research;
- (d) acts performed by any person who, in good faith, on the filing date, or where priority is claimed, on the priority date of the application on the basis of which the patent is granted on the territory of a member State, was using the invention or making effective and serious preparations for such use, in so far as those acts are not different in nature or purpose from the actual or planned earlier use.

20. What term of protection does the patent law of Côte d'Ivoire provide for patents? Please describe any provisions for extension of the term of protection and cite the relevant provisions of the law.

Patents are granted for 20 years and expire at the end of the 20th calendar year following the filing date of the application, subject to the provisions of Article 40 of Annex I. There is no provision allowing an extension of the term of protection.

G. LAY-OUT DESIGNS (TOPOGRAPHIES) OF INTEGRATED CIRCUITS

21. Please describe in detail the protection for lay-out designs of integrated circuits provided under the laws of Côte d'Ivoire, including the term of protection, and cite the relevant provisions of the law.

Annex IX to the Bangui Agreement contains provisions on the protection of lay-out designs.

Subject matter of protection (Article 2)

Lay-out designs of integrated circuits may be protected under Annex IX to the Agreement if they are original.

A lay-out design is original if it is the result of its creator's personal intellectual effort and is not in common use among creators of lay-out designs and manufacturers of integrated circuits (Article 3).

Registration may be applied for only if the lay-out design has not yet been commercially exploited or if has not been commercially exploited for more than two years anywhere in the world.

Right to protection

The right to protection of a lay-out design belongs to its creator. It may be assigned or transferred by succession

Where several persons have jointly created a lay-out design, the right belongs to them collectively.

Where a lay-out design has been created under a works or services contract, the right to protection belongs to the person who commissioned the work or service or to the employer, unless otherwise provided in the contract

Rights conferred

The protection granted under Annex IX is independent of the fact of whether or not the integrated circuit incorporating the protected lay-out design is itself incorporated in an article. Subject

to the provisions of Articles 6 and 15 of Annex IX, the following acts are unlawful when carried out without the authorization of the holder:

- (a) The act of reproducing, whether by incorporation in an integrated circuit or otherwise, a protected lay-out design in its entirety or any part thereof, except the act of reproducing any part that does not fulfil the requirement of originality referred to in Article 3;
- (b) the act of importing, selling or otherwise distributing for commercial purposes a protected lay-out design, an integrated circuit in which a protected lay-out design is incorporated or an article in which such an integrated circuit is incorporated if it continues to contain a lay-out design that is unlawfully reproduced.

Term of protection

The protection afforded a lay-out design under Annex IX to the Bangui Agreement takes effect:

- On the date of the first commercial exploitation of the lay-out design, anywhere in the world, by the holder or with his consent, provided that an application for protection is filed by the holder with the Ivorian Industrial Property Office or the African Intellectual Property Organization;
- on the filing date allocated to the application for registration of the lay-out design filed by the holder if the lay-out design has not been the subject of prior commercial exploitation anywhere in the world.

The protection afforded a lay-out design under the law ceases at the end of the tenth calendar year following the date on which it took effect.

H. PROTECTION OF UNDISCLOSED INFORMATION

22. Please describe in detail how the laws of Côte d'Ivoire provide for the protection of undisclosed information as required by Article 39.2 of the TRIPS Agreement and provide citations to the relevant provisions of law.

Undisclosed information is protected under Article 6 of Annex VIII to the Bangui Agreement of 24 February 1999.

Article 6 of this Annex deals with unfair competition concerning confidential information.

Information is considered confidential when:

- In its totality or in the configuration or precise assembly of its elements, it is not generally known to persons belonging to the circles that normally deal with that type of information or is not readily available to them;
- it has commercial value because it is confidential;
- its lawful holder has taken reasonable precautions, in view of the circumstances, to keep it confidential.

Any act or practice which, in the course of industrial or commercial activities, constitutes or leads to the following is considered unfair competition:

- Dishonest use in trade of confidential data obtained from tests or other confidential data whose production requires considerable effort and which have been communicated to a competent authority for the purpose of obtaining authorization to market pharmaceutical products or chemical products for agriculture comprising new chemical entities;
- disclosure of such data, except where necessary to protect the public unless measures have been taken to ensure that the data are protected against dishonest use in trade.

The legislation does not specify a defined period of time for the protection of undisclosed information.

23. Please describe in detail the manner in which protection is provided test data regarding pharmaceutical and agricultural chemical products submitted to the government in order to obtain marketing approval in Côte d'Ivoire and cite the relevant provisions of law.

Paragraph (4) of Article 6 of Annex VIII to the Bangui Agreement protects undisclosed information and data communicated to public authorities or their entities through provisions on unfair competition concerning confidential information.

24. Are other applicants for marketing approval for their own versions of previously approved pharmaceutical or agricultural chemical products permitted to rely on data submitted by the earlier applicant? If so, how long a period of exclusivity is given the earlier applicant before such reliance becomes possible.

See paragraph (4) of Annex VIII to the Bangui Agreement.

I. ENFORCEMENT

25. Please describe in detail the manner in which the laws of Côte d'Ivoire provide for effective action against infringement of intellectual property rights as required by Article 41.1 of the TRIPS Agreement.

The overall provisions in the revised Bangui Agreement, as described on page 4 of the report on the provisions in the national Codes of Criminal and Civil Procedure and the draft law on border measures described on page 5 of the report, show that Côte d'Ivoire now has legislation that ensures observance of industrial property rights.

The procedures described include the following:

- Summary judgements;
- rulings following a petition;
- seizure;
- infringement seizure.

These involve bailiffs, public or ministerial officials and customs officers, guarantee reliability, fairness, rapidity and effectiveness in applying measures that allow intellectual property rights to be respected.

26. Article 43.1 of the TRIPS Agreement requires that judges be authorized to order production of evidence necessary to substantiate a party's claims where that party has been unable to obtain such evidence from the opposing party. Please describe how the laws or regulations of Côte d'Ivoire provide this authorization, citing the relevant provisions of law or regulation.

An Ivorian judge has the power, when passing sentence, to compel the party concerned, under oath, to provide any evidence that may lie within its control, with full guarantees in regard to the protection of confidential information.

This provision is contained in Articles 54 *et seq* of the Code of Civil Procedure.

This possibility is also provided at the examination stage, pursuant to Article 97 of the Code of Criminal Procedure. The examining judge may order the presentation of any evidence that may be appropriate in order to reveal the truth.

27. Please describe in detail the provisional procedures and remedies available to right holders under the laws of Côte d'Ivoire, citing the relevant provisions of law and regulation, and indicate any condition under which a right holder may avail itself of those procedures and remedies.

The following are the civil penalties provided under Ivorian legislation:

- Damages;
- seizure;
- legal disqualification from membership of professional associations.

The following are the relevant texts:

- The Bangui Agreement: all the provisions on proceedings and penalties in the 10 Annexes (for example, Article 58 of Annex I, Article 41 of Annex II);
- the Civil Code: Articles 1382 *et seq*.

28. Please describe in detail the provisional procedures and remedies available to right holders under the laws of Côte d'Ivoire, citing the relevant provisions of law and regulation, and indicate any condition under which a right holder may avail itself of those procedures and remedies.

The procedures currently available to holders of intellectual property rights for the purpose of protecting their rights are:

- Preliminary investigation: this is covered by Article 74 of the Code of Criminal Procedure;
- information: this is covered by Article 77 of the Code of Criminal Procedure;
- direct summons: this is covered by Articles 377 *et seq* of the Code of Criminal Procedure;
- ruling by the magistrate's court.

The Bangui Agreement provides extensive penalties. See page 4 of the report. They are defined in the "Penalties" chapter in each of the ten (10) Annexes to the Agreement, which cover the ten (10) forms of intellectual property protected under the Agreement.

29. Please explain whether the judicial authorities of Côte d'Ivoire have the authority to order the infringer to pay the right holder's expenses, including attorney's fees, as required by Article 45 of the TRIPS Agreement. Please cite any relevant laws, regulations or judicial decisions.

In cases of conviction, a person infringing an intellectual property right may be ordered by the judge to pay damages, as well as the procedural costs incurred by the right holder. See Articles 1382 *et seq* of the Civil Code.

J. SPECIAL REQUIREMENTS RELATED TO BORDER MEASURES

30. Please describe in detail the procedures under the laws of Côte d'Ivoire that provide for border enforcement at least for trademark counterfeiting and copyright piracy, identifying the competent authority and citing the relevant provisions of law or regulation.

The draft law on protection of intellectual property rights at borders provides effective measures to combat counterfeiting and piracy at borders.

31. Please indicate if border enforcement is available to owners of other forms of intellectual property and, if so, please describe the procedures and remedies available in relation to each form of intellectual property, citing the relevant provisions of law.

The law mentioned in the reply to question 30 also applies for the purpose of combating infringement of any form of intellectual property right. At the request of the owner of intellectual property rights, the customs authority may suspend both the import and export clearance of goods suspected of being counterfeit.

The customs may also seize counterfeit goods *ex officio*. The clearance of goods suspected of being counterfeit is then suspended.

The owner of the right has ten working days in which to bring legal proceedings, following which, if the court does not take provisional measures to extend suspension of customs clearance within two days, the goods concerned are released.

If the court's decision confirms that the goods concerned are counterfeit and orders that they should be confiscated, the customs then destroys them, under official control.

32. Article 58 of the TRIPS Agreement specifies procedures to be followed where the competent authorities can act *ex officio*. Please explain whether the competent authorities in Côte d'Ivoire are empowered to act *ex officio* and, if so, please identify the intellectual property areas subject to *ex officio* action.

The customs authority is the competent authority for *ex officio* action in cases of infringement of intellectual property rights.

K. CRIMINAL PROCEDURES

33. Please describe in detail how the laws of Côte d'Ivoire implement Article 61 of the TRIPS Agreement that requires Members to have criminal procedures and penalties, including imprisonment and/or monetary fines sufficient to act as a deterrent, at least for cases of wilful trademark counterfeiting and copyright infringement on a commercial scale. Please cite the relevant provisions of law and regulation.

Ivorian legislation provides a range of penalties for combating infringement of intellectual property rights. These are described on page 4 of the report. They are contained in the Articles on penalties in the ten (10) Annexes and they vary according to the form of intellectual property. Articles 37 *et seq* of Annex III and Articles 61 *et seq* of the Annex specify the penalties applicable in cases of counterfeiting and piracy.

34. Article 61 also requires that remedies in appropriate cases include the seizure, forfeiture and destruction of infringing goods and any materials and implements the predominant use of which has been the commission of the offence. Please describe the provisions in the laws of Côte d'Ivoire that provide for such remedies, and describe the circumstances in which those remedies would be imposed, citing the relevant provisions of law or regulation.

There are legal provisions on dealing with counterfeit goods. For example, the court may order the following:

- Forfeiture of the counterfeit goods;
- seizure of the counterfeit goods;
- destruction of the goods;
- destruction of the tools and implements used to commit the offence.

35. Article 61 also indicates that Members may provide for criminal procedures and penalties in cases of wilful infringement of other forms of intellectual property. Please describe any provisions of the laws of Côte d'Ivoire that provide for such remedies, citing the relevant provisions of law or regulation.

The information furnished in the replies to questions 33 and 34 covers this question.
