

Referring to WIPO Circular C.8728

(i) We hereby inform you that the limitation of effects of patents, i.e. “Bolar Exception” in the Republic of Moldova, is not currently foreseen by Law 50-XVI/2008 on the Protection of Inventions (hereinafter - the Law), but the Republic of Moldova intends to introduce this limitation in **Art. 22 of the Law Limitation of Effects of a Patent** which will provisionally have the following content: “b¹) acts done for the purpose of obtaining an authorization for marketing the product, subject-matter of the invention;”.

(ii) For examining the patentability criterion - inventive step, the AGEPI (State Agency on Intellectual Property) examiner is governed by the provisions of Law No. 50-XVI / 2008 on the Protection of Inventions (hereinafter - the Law) and the Regulations on the Procedure of Filing and Examination of a Patent Application and of Issuance of a Patent, adopted by the Government Decision No. 528 of 1 September 2009 (hereinafter - the Regulations).

According to Article 10 of the Law an invention shall be considered as involving an inventive step if, having regard to the state of the art, it is not obvious to a person skilled in the art.

The state of the art according to Article 8 par. 2 and 3 of the Law the state of the art shall be held to comprise everything made available to the public by means of a written or oral description, by use, or in any other way, before the date of filing of the patent application or of the acknowledged priority. At the same time the state of the art shall also be held to comprise the content of patent applications as filed with the AGEPI and of European patent applications for which the validation fee has been paid, the dates of filing of which are prior to the date referred to in paragraph (2) and which were published on or after that date.

The inventive step shall be assessed in relation to the claims and the technical problem which the claimed invention solves in the patent application. Examination of inventive step shall be carried out only for the claims which fulfill the requirement of novelty.

Patent applications registered with the AGEPI, which were made available to the public after the filing date of the application under consideration, shall not be taken into consideration in assessing inventive step, even if their filing date is earlier. (Regulations ..., Rule 275). An invention shall not have on its basis an inventive step and shall be considered as obvious, if from the analysis of the totality of prior art solutions it is obvious by a further synthesis that the person skilled in the art, using his general knowledge, may arrive at the solution which forms the subject-matter of the patent application. (Regulations ..., Rule 278). A person skilled in the art

shall represent a person considered to have access to the whole prior art, possessing common abilities and general knowledge in the technical field in which the technical problem solved in the invention on the date of filing or of recognized priority is set. (Regulations ..., Rule 279).

According to Rule 280 of the Regulations, assessment of inventive step may be made by the problem-solution type approach providing for the following stages:

- a) selecting the proximate analogue of the prior art;
- b) determining the objective technical problem to be solved;
- c) assessing the extent to which the claimed invention, starting from the proximate analogue and the objective technical problem, would have been obvious to the skilled person at the date of filing or at the date of recognized priority.

An invention shall be considered as involving an inventive step if it fulfills at least one of the following conditions:

- a) it is not obvious to a person skilled in the art from a field of application of the invention or from a field close thereto;
- b) the person skilled in the art cannot, on the basis of knowledge in the prior art, solve the problem as the invention solves it;
- c) the need for the solution of the problem is present for a long time, and the known solutions are up to the level of solution in the invention;
- d) it is used, with or without amendments, in another field, for the solution of another problem, and the obtained effect is either the same or unexpected, or superior to the effects produced by other inventions in the field in which the invention is superposed, provided the two fields may not be close to each other;
- e) consists in the combination of known features in the prior art so that a functional organic relation, a mutual influence, a synergistic effect, an interaction or an interconditioning leading to the achievement of a new technical result is obvious;
- f) has as subject-matter an analogous process by which a new effect or a substance with new, unexpected or superior qualities is obtained, or if the raw materials are new, even if the achieved results are the same;

g) represents a selection in a process of particular technical parameters covered within a known range, producing unexpected effects in the operation of the process or the properties of the resulting product;

h) represents a selection from a very large group of compounds having unexpected advantages (Regulations ..., Rule 282).

An invention shall not be considered as involving an inventive step if:

a) it consists in a simple enunciation of a problem without solving it, even if the problem is new;

b) it can be arrived at merely one problem concerning the saving of materials or energy, optimization of dimensions or reduction in cost prices, without achieving new or superior results;

c) it can be arrived at a problem merely by a simple substitution of materials with known characteristics making them suitable for that use and leading to predictable effects;

d) the problem it solves refers merely to a change in form or aspect for aesthetic purpose;

e) it can be arrived at a problem by a simplification, without maintaining at least the known performances in the prior art;

f) it differs from the known art merely in the use of well-known equivalents;

g) it can be arrived at a problem by the common use of two or more known solutions, and the predictable effect results from the simple summation of the effects of each solution (the juxtaposition of known solutions);

h) it can be arrived at a problem in the field of chemistry or biology consisting in a selection of a particular case from amongst a plurality of previously protected components, provided that such selected case would not lead to special qualities or results in comparison with those of the plurality of components from which it was selected;

i) the solution of the problem relates to the selection of a corresponding known material and/or to the making of certain constructive changes according to rules known by itself;

j) it relates to a natural product which was not influenced technologically;

k) it resides in the choice of particular parameters, dimensions, temperature ranges from a limited range of possibilities, which could be arrived at by successive routine trial or by the application of known design procedures;

l) it can be arrived at merely by a simple extrapolation in a straightforward way from the known art.

NB - a means shall be considered to be an equivalent of a feature specified in the claims if it is obvious to a person skilled in the art that such means in the claimed invention performs essentially the same function, in the same way and with the essential achievement of the same result (Regulations ..., Rule 284).

As regards the information on the legal provisions of the SCP member states

(i) For the Heading at http://www.wipo.int/scp/en/annex_ii.html, AGEPI informs you that no amendments have occurred

(ii) As regards the information on patent revocation and revocation procedure, which needs to be placed at the following address: http://www.wipo.int/scp/en/revocation_mechanisms/, we can mention the following:

According to Article 64 of Law 50-XVI/2008 of 7 March 2008 (hereinafter - the Law)

(1) A patent granted by AGEPI and a validated European patent may be revoked in whole or in part, on the following grounds:

a) if the subject-matter of the patent is not patentable within the meaning of Articles 6-11 and, as the case may be, Article 12;

b) if the patent does not disclose the invention in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art;

c) if the subject-matter of the patent extends beyond the content of the application as filed, or, if the patent was granted on a divisional application or on a new application filed in accordance with Article 16, beyond the content of the earlier application as filed;

d) if the protection conferred by the patent has been extended;

e) if the patent owner is not the person entitled to obtain a patent under Article 14 or, in the case of employee inventions, under Article 15.

(2) If the grounds for revocation only affect the patent in part, revocation shall be pronounced in the form of a corresponding limitation of the said patent, by an amendment to the claims, the description or the drawings.

(3) Non-compliance with one or more formal requirements in respect of a patent application may not form grounds for revocation of the patent, in whole or in part, except where it results from a fraudulent intention.

(4) Effects of a patent referred to in Articles 19-23 shall be considered to be null and void, as from the outset, to the extent that the patent has been so declared null and void in whole or in part.

(5) The retroactive effect of the patent revocation shall not prejudice:

a) final and irrevocable decisions in actions related to the infringement of rights, which have come into effect prior to the revocation decision;

b) contracts concluded prior to the revocation decision, to the extent of their execution degree before such decision. Furthermore, claims may be made on grounds of equity to redeem the payments already made under the contract, the amount of the claim to be justified by circumstances.

According to Article 65 of the Law

(1) Proceedings for revocation of patent may be instituted at any time during the term of validity of the patent and solely on the grounds mentioned in Article 64.

(2) Any person may institute proceedings for revocation of patent with the court. For the cases referred to in Article 64 paragraph (1) letter e) proceedings may be instituted solely by a person entitled to be entered in the National Register of Patents as patent owner or jointly by other persons entitled to be registered as co-owners of that patent under Article 62.

(3) Proceedings for revocation of patent may be instituted even if the rights conferred by the patent have terminated or if the patent is renounced.

(4) Proceedings for revocation of Eurasian patent on the territory of the Republic of Moldova should be instituted in accordance with the Eurasian Convention, Implementing Guidelines to the Eurasian Convention and the national legislation.

(5) A final and irrevocable decision for revocation of patent, in whole or in part, shall be communicated to the AGEPI by the interested person. Mention of revocation shall be entered in the National Register of Patents and published in BOPI.

(iii) As far as the information on privacy is concerned, and which is contained in the following address

http://www.wipo.int/scp/en/confidentiality_advisors_clients/national_laws_practices.html, we inform you that changes have not occurred.