

Referring to WIPO Circular C.8787

- (i) At present Law No.50-XVI/2008 on the Protection of Inventions provides for the following exceptions to patentability:

Article 7. Exceptions to Patentability

(1) Patents shall not be granted within the meaning of this Law in respect of:

a) inventions the publication or exploitation of which would be contrary to “ordre public” or morality, including those harmful for human, animal or plant life or health, and which are likely to cause serious prejudice to the environment, provided that such exclusion is not made merely because the exploitation is prohibited by a clause;

b) plant or animal varieties;

c) essentially biological processes for the production of plants or animals; this provision shall not apply to microbiological processes or the products thereof;

d) inventions concerning the human body, at the various stages of its formation and development, and the simple discovery of one of its elements, including the sequence or partial sequence of a gene.

(2) Patents shall not be granted within the meaning of paragraph 1 letter a), in particular in respect of:

a) processes for cloning human beings;

b) processes for modifying the germ line genetic identity of human beings;

c) uses of human embryos for industrial or commercial purposes;

d) processes for modifying the genetic identity of animals which are likely to cause them suffering without any substantial medical benefit to man or animal, and also animals resulting from such processes.

This legal norm is quite clear, understood and does not create difficulties in implementing this norm in the Republic of Moldova.

- (ii) On this subject, the legal provisions of the Republic of Moldova have not been amended and correspond to the provisions indicated at the address below:
http://www.wipo.int/scp/en/confidentiality_advisors_clients/national_laws_practices.html.

As regards updating the information on some national legal aspects relating to patents for invention, indicated at the following address: http://www.wipo.int/scp/en/annex_ii.html, it is necessary to replace the existing text at the aforesaid address by the text presented below, as follows:

- (i) For **Prior Art**

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. 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 aforesaid date and which were published on or after that date under Article 49 of Law No.50-XVI/2008 on the Protection of Inventions.

For **Novelty**

An invention shall be considered to be new if it does not form part of the state of the art.

For **Inventive Step**

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.

For **Grace Period**

A disclosure of the invention shall not be taken into consideration if it occurred no earlier than 6 months preceding the filing date of the patent application and if it was due to, or in consequence of:

- a) an evident abuse in relation to the applicant or his legal predecessor;
- b) the fact that the applicant or his legal predecessor has displayed the invention at an international exhibition. An exhibition shall be considered as international if it is officially organized, if producers of more states participate therein and if the information about such exhibition has correspondingly been made available to public.

For **Sufficiency of Disclosure**

The invention shall be disclosed in the patent application in a manner sufficiently clear, complete and correct from the technical-scientific point of view for it to be carried out by a person skilled in the art.

For **Exclusions from Patentable Subject Matter**

The following shall not be regarded as inventions according to Article 6 paragraph 2 of Law 50-XVI/2008 on the Protection of Inventions:

- a) discoveries, scientific theories, ideas and mathematical methods;
- b) aesthetic creations;
- c) schemes, rules and methods for performing mental acts, playing games or doing business, and programs for computers;
- d) presentations of information.

For **Exceptions and Limitations of the Rights**

Patents shall not be granted according to Art. 7(1) of Law 50-XVI/2008 on the Protection of Inventions in respect of:

- a) inventions the publication or exploitation of which would be contrary to “ordre public” or morality, including those harmful for human, animal or plant life or health, and which are likely to cause serious prejudice to the environment, provided that such exclusion is not made merely because the exploitation is prohibited by a clause;
- b) plant or animal varieties;
- c) essentially biological processes for the production of plants or animals; this provision shall not apply to microbiological processes or the products thereof;
- d) inventions concerning the human body, at the various stages of its formation and development, and the simple discovery of one of its elements, including the sequence or partial sequence of a gene;

Patents shall also not be granted within the meaning of Art. 7(1) in particular in respect of:

- a) processes for cloning human beings;
- b) processes for modifying the germ line genetic identity of human beings;
- c) uses of human embryos for industrial or commercial purposes;
- d) processes for modifying the genetic identity of animals which are likely to cause them suffering without any substantial medical benefit to man or animal, and also animals resulting from such processes.

The rights conferred by a patent shall not extend according to Art. 22 of Law 50-XVI/2008 on the Protection of Inventions to:

- a) acts done privately on a non-commercial scale;
- b) acts done for experimental purposes relating to the subject-matter of the patented invention;
- c) extemporaneous preparation for individual cases, in a pharmacy, of a medicine in accordance with a medical prescription or acts concerning the medicine so prepared;
- d) use of the subject-matter of a patented invention on board of any foreign vessel of a

State party to the international conventions in the field of inventions to which the Republic of Moldova is also party which temporarily or accidentally enters the waters of the Republic of Moldova, provided that the invention is used exclusively for the needs of the vessel;

e) use of the subject-matter of the patented invention in the construction or operation of foreign aircraft or land vehicle or other means of transport of a State party to the international conventions in the field of inventions to which the Republic of Moldova is also party, or in the manufacture of spare parts for such vehicles when such means of transport temporarily or accidentally enter the territory of the Republic of Moldova;

f) acts done for the purpose of ensuring state security.

(ii) As far as the national opposition system and the revocation of patent is concerned, we can report that the information at:

http://www.wipo.int/scp/en/revocation_mechanisms/, which refers to the national opposition system of the Republic of Moldova and can be found at:

http://www.wipo.int/export/sites/www/scp/en/revocation_mechanisms/opposition/pdf/opposition_republic_moldova.pdf, is necessary to be replaced by the

information presented below:

Opposition

According to Article 57 of Law No.50-XVI/ 2008 on the Protection of Inventions, within 6 months from the publication of the mention of the grant of the patent, any person may give notice of opposition to the patent granted by filing a request in this regard with the Appeals Board of AGEPI. Opposition shall only be filed in writing and on the grounds that:

a) the subject-matter of the patent is not patentable, it is an exception to patentability, the invention is not new, is not involving an inventive step or is not susceptible of industrial application, or on taking the decision was based on non-prejudicial disclosures, which are in fact prejudicial disclosures and, where appropriate, short-term patents were granted in respect of inventions concerning a biological material, chemical or pharmaceutical substances and processes for their preparation, which in fact cannot be protected by such a means of protection as a short-term patent for invention.

b) 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) 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 by a non-entitled person, the subject-matter of the patent extends beyond the content of the earlier application as filed.

The opposition filed shall have suspensive effect. It shall not be deemed to have been filed until the opposition fee has been paid.

If AGEPI is of the opinion that at least one of the grounds for opposition referred to above is against the grant of the patent, it shall revoke the respective decision. Otherwise, it shall reject the opposition.

If AGEPI is of the opinion that, taking into consideration the amendments made by the applicant during the opposition proceedings, the patent and the invention to which it relates:

a) meet the requirements of this law, it shall decide to maintain the decision to grant a patent as amended;

b) do not meet the requirements of this law, it shall revoke the decision to grant a patent.

If a patent is amended as a result of opposition, the AGEPI shall, after payment of the prescribed fee, publish a new specification of the patent containing the description, the claims and, as the case may be, any drawings, in the amended form.

Similarly, the information relating to the revocation of patent found at http://www.wipo.int/export/sites/www/scp/en/revocation_mechanisms/administrative_revocation/pdf/admin_revocation_moldova.pdf, is necessary to be replaced by the information below:

Revocation of Patent

A patent granted by AGEPI and a validated European patent may be revoked in whole or in part, in accordance with Art. 64 of Law No.50-XVI/2008 on the Protection of Inventions, on the following grounds:

a) the subject-matter of the patent is not patentable, it is an exception to patentability, the invention is not new, does not involve an inventive step or is not susceptible of industrial application, or on taking the decision it was based on non-prejudicial disclosures, which are in fact prejudicial disclosures and, where appropriate, short-term patents were granted in respect of inventions concerning a biological material, chemical or pharmaceutical substances and processes for their preparation, which in fact cannot be protected by such a means of protection as a short-term patent for invention;

b) 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) 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 by a non-entitled person, the subject-matter of the patent extends beyond the content of the earlier application as filed;

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

e) 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 of Law No.50-XVI/2008 on the Protection of Inventions.

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. 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.

Proceedings for revocation of patent may be instituted with the court at any time during the term of validity of the patent and solely on the grounds mentioned above. Proceedings for revocation of patent may be instituted even if the rights conferred by the patent have terminated or if the patent is renounced. 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. 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.

Regarding information on **Re-examination Systems**, we can inform you that the re-examination of patent applications in the Republic of Moldova is carried out in the cases listed below, and that the given information is required to be placed at: http://www.wipo.int/scp/en/revocation_mechanisms/re-examination/index.html.

The examination of the appeal shall be conducted in accordance with Article 58 and 59 of Law No.50-XVI/2008 on the Protection of Inventions. The appeal shall be filed within 2 months from the date of dispatch of the decision.

In the examination of the appeal, which shall be conducted in accordance with the provisions of the Regulations and the Regulations on the Appeals Board of the AGEPI, the parties shall be invited, as often as necessary, to file observations, within a period to be fixed by

the Appeals Board, on notifications addressed to them or on communications from another parties.

Following the examination of the appeal, the Appeals Board may either take a final decision or remit the case to the AGEPI subdivision whose decision was appealed for re-examination. The decision of the Appeals Board of the AGEPI shall be published in BOPI. Any decision adopted by the Appeals Board of the AGEPI may be appealed before a court in whose jurisdiction the AGEPI headquarters is located, within 2 months following the date of communication.

Following the examination of appeal, according to Article 59 paragraph 2 of the Law and Rule 353 of the Regulations on the Procedure of Filing and Examination of a Patent Application and of Issuance of a Patent, the Appeals Board may adopt one of the following decisions:

- a) to refuse an appeal, while maintaining the appealed decision in force;
- b) to partially or fully admit an appeal, disposing the revocation or amendment of the adopted decision;
- c) to remit the case to the AGEPI subdivision whose decision was appealed for remit the case to the AGEPI subdivision whose decision was appealed for re-examination.

The Appeals Board shall transmit, in accordance with Rule 356 of the Regulations on the Procedure of Filing and Examination of a Patent Application and of Issuance of a Patent, the application for re-examination, the latter shall be carried out within six months by an examiner appointed by the chief of the examining subdivision or by the Appeals Board. In accordance with Rule 422 of the Regulations on the Procedure of Filing and Examination of a Patent Application and of Issuance of a Patent, the Examining Board may be formed, where necessary, within the examining subdivision and shall consist of a chairman and two or four members appointed by an order of the head of the examining subdivision. At the same time, in accordance with Rule 424 of the aforementioned Regulations, the Examining Board shall be formed in the following cases:

- a) the claimed invention relates to more than one field and requires the participation of examiners in different fields;
- b) the claimed invention is complicated and there are doubts as to the accuracy of the decision to be issued (especially, in the case of decisions on refusal of an application or limitation of the extent of protection by exclusion of certain features from the claims);

The Examining Board shall, on the basis of the examination results, adopt a decision by a simple majority of its members, which shall be signed by the chairman and by the members of the Board having voted for such decision, and shall be communicated to the applicant for or owner of the patent or other persons concerned.

The examiner may require from the appellant the additional information necessary for the examination of the application. A re-examination report shall be drawn up on the basis of the re-examination results, which shall be transmitted to the Appeals Board for the purpose of adopting a decision on appeal. The decision of the Appeals Board shall be communicated to the parties within one month following the date of issuance and shall be published in BOPI within three months from the same date.

Similarly, the re-examination is also carried out within the opposition, in accordance with the provisions of Article 57 paragraph 4 of Law No.50-XVI/2008 on the Protection of Inventions stipulating that if AGEPI is of the opinion that at least one of the grounds for opposition referred to above is against the grant of the patent, it shall revoke the respective decision, and Rule 335 of the Regulations on the Procedure of Filing and Examination of a Patent Application and of Issuance of a Patent stipulating that in the course of examination of opposition in defining prior art, the Appeals Board may, where appropriate, request that the responsible AGEPI subdivision shall carry out an additional documentary search, the results of which will make it possible to assess the patentability of the invention.

As far as the information on **Submission of Information by Third Parties** is concerned, we can inform you that in the Republic of Moldova there is an observation system regarding the

published patent applications, and the given information is required to be placed at the following address as follows: http://www.wipo.int/scp/en/revocation_mechanisms/third_party/index.html. Any third party may, in accordance with Article 89 of Law No.50-XVI/2008 on the Protection of Inventions, file observations with the AGEPI. In any proceedings before the AGEPI, following the publication of the patent application, any third party may, in accordance with the Regulations, present observations concerning the patentability of the invention to which the application relates. The third parties who file observations shall not be parties to the proceedings before the AGEPI. Observation shall be presented in a free form and shall contain:

- a) the identification data of the person filing the observation (the name or name of the enterprise, address, telephone, e-mail address);
- b) the identification data of the representative, if the person who filed the observation has appointed a representative;
- c) indications regarding the patent application in respect of which the observation is made (the application number, the name or the denomination of the applicant for the application and the number of the BOPI in which the particulars were published);
- d) the grounds of the observation;
- e) the documents, evidence and arguments presented in support of the observation (documents with a certain date, made public prior to the filing date or the priority date, as the case may be, also specifying the object to which the observation is made).

The observation and the materials in support thereof shall be filed in duplicate – one for the file and one for the applicant for the application.

AGEPI shall send to the applicant a copy of the prejudicial documents, giving him a period of 3 months from the date of dispatch, if on that date the substantive examination was requested, in order to present its reasoned opinion or description, the figures, the claims amended according to the observation made, without, however, exceeding the limits of the initial disclosure.

The applicant's response may be presented at the same time as the request for substantive examination is filed.

The observations by third parties, the response and any changes made by the applicant will be taken into account in the subsequent examination of the application. If several observations are presented in relation to a patent application, the AGEPI may combine the procedures of examination of the observations filed.

- (iii) As far as the cooperation on search and examination of patent applications is concerned, we can inform you that AGEPI carries out the substantive examination of patent applications. In the search, the AGEPI examiners use the database of the European Patent Office (EPO), consult the Global Register and the search reports drawn up by the EPO, consult the Patentscope, as well as carry out the search in the database of the Russian Federal Institute of Industrial Property and in the database of the Eurasian Patent Office. At the same time, on 26.05.2017, AGEPI of the Republic of Moldova and OSIM of Romania concluded a Memorandum on Acceleration of Patent Procedure, thus AGEPI acknowledges the search report drawn up by OSIM and vice versa OSIM acknowledges the one drawn up by AGEPI.