

**Parliament of the Republic of Moldova**

**LAW**

**Amending and Supplementing the Law No. 50 -XVI of 7 March 2008 on the Protection of Inventions**

Parliament hereby adopts this organic Law.

**Unique Article.** – Law No. 50-XVI on the Protection of Inventions of 7 March 2008 (Official Gazette of the Republic of Moldova, 2008, No.117-119, Art.455), with subsequent amendments, shall be amended and supplemented as follows:

1. In Article 2, paragraph (2) shall have the following wording:

“(2) The rights resulting from:

- a) a Eurasian patent issued on the basis of a Eurasian application;
- b) a validated European patent

shall be recognized and protected on the territory of the Republic of Moldova in accordance with this Law”.

2. Article 3 shall have the following wording:

**“Article 3. Main Terms**

For the purposes of this Law, the main terms below shall have the following meaning:

*Applicant* means a natural or legal person applying for the issuance of a patent;

*Patent owner* means a natural or legal person to whom the right conferred by a patent belongs;

*European patent application* means an application for a European patent filed under the European Patent Convention, adopted in Munich on 5 October 1973, as well as an international application filed under the Patent Cooperation Treaty for which the European Patent Office (hereinafter referred to as *EPO*) acts as designated or elected Office and in which the Republic of Moldova is designated;

*International application* means an application for the protection of an invention filed under the Patent Cooperation Treaty;

*Eurasian application* means an application for the grant of a Eurasian patent filed until 26 April 2012 under the Eurasian Patent Convention, adopted in Moscow on 17 February 1994;

*Patent* means a patent for invention and a short-term patent for invention;

*Validated European patent* means a patent issued by the EPO under the European Patent Convention, adopted in Munich on 5 October 1973, on the basis of a European patent application in respect of which validation in the Republic of Moldova has been requested;

*Eurasian Patent* means a patent issued under the Eurasian Patent Convention, adopted in Moscow on 17 February 1994;

*Validation of European patent* means the recognition, on request, of the effects of the European patent application and the European patent in the Republic of Moldova;

*PCT* means the Patent Cooperation Treaty, adopted in Washington on June 19, 1970, as revised and amended;

*Eurasian Convention* means the Eurasian Patent Convention, adopted in Moscow on 17 February 1994;

*Paris Convention* means the Paris Convention for the Protection of Industrial Property adopted in Paris on March 20, 1883, as amended.

*Validation Agreement* means the Agreement between the Government of the Republic of Moldova and the European Patent Organization on Validation of European Patents, signed on 16 October 2013”.

3. In Article 4:

paragraph (1) shall have the following wording:

“(1) Inventions shall be protected by the titles of protection, granted in accordance with this Law, and by the Eurasian patent and the validated European patent”.

paragraph (2) shall be supplemented by the letters d) and e) as follows:

“d) Eurasian patent;

e) validated European patent”.

4. In Article 5, paragraph (2):

letter c) shall be supplemented in the end by the text “, carries out the procedures for validation of effects of the European patent applications and European patents in the Republic of Moldova”;

letter f) shall have the following wording:

“(f) acts as Receiving Office for the international applications filed by the national applicants in accordance with the provisions of the PCT”;

the paragraph shall be supplemented by letter f<sup>l</sup>) as follows:

“f<sup>1</sup>) is the only national authority carrying out the search and drawing up the search report with the view to assess compliance with the criteria of patentability in order to provide for the legal protection of inventions;”

5. In Article 6, paragraph (2) letter a), following the words “scientific theories” shall be introduced the word “, ideas”.

6. In Article 8, paragraph (3), following the words “filed with the AGEPI”, shall be introduced the words “and of European patent applications for which the validation fee has been paid”.

7. Article 12:

in paragraph (2 ), following the words “if it” shall be introduced the words “does not directly result from the state of the art”; and

in paragraph (3) letter b) shall have the following wording:

“b) chemical or pharmaceutical substances and processes for their preparation”.

8. In Article 18, paragraph (2):

in the second sentence, following the words “to carry out a research”, shall be introduced the text “for the state of the art under Art. 8 and draw up a search report accompanied by an opinion on patentability”;

the paragraph shall be supplemented by the text: “Where it is found that, taking into account the search results, the patent and the invention which forms the subject-matter thereof:

a) meet the requirements of this Law, a decision to extend the term of the patent shall be taken;

b) do not meet the requirements of this Law, the request for extension of the term of the patent shall be rejected.

9. In Article 19, paragraphs (4) and (5) shall be repealed.

10. In Article 20, paragraph (1) shall have the following wording:

“(1) A patent for invention, short-term patent for invention, Eurasian patent and validated European patent shall confer on its owner an exclusive right to exploit the invention for the entire term thereof”.

11. Article 22, paragraph (1):
  - in letter a), the word “and” shall be excluded;
  - the paragraph shall be supplemented by letter f) with the following wording:  
“f) acts done for the purpose of ensuring state security”.
  
12. In Article 26, paragraph (10), the words “for invention” shall be excluded in both cases.
  
13. In Article 32, paragraph (3), cipher “2” shall be replaced by cipher “3”.
  
14. Article 33:
  - paragraph (1):
    - in letter a), the word “grant” shall be replaced by the word “issuance”;
    - letter f) shall be repealed;
    - in paragraph (4), cipher “2” shall be replaced by cipher “3”;
    - paragraph (5) shall have the following wording:  
“(5) In the case of applicant’s representation in accordance with Article 86 paragraph (2) and (3), to the patent application shall be attached a power of attorney, submitted at the time of filing of the patent application or within 3 months following the filing date thereof”;
    - in paragraph (9), the text “letter a), c), e)” shall be substituted for the text “letter a) and c)”.
  
15. In Article 34, paragraph (8) shall have the following wording:
  - “(8) In the event of an international application, the filing date shall be the date resulting from the international treaties to which the Republic of Moldova is a party”.
  
16. In Article 36, paragraph (1), the words “clear and complete” shall be substituted for the words “scientifically and technically clear, complete and correct”.
  
17. In Article 37:
  - paragraph (1) shall be supplemented in the end by the words “ by the technical features of the invention”;
  - paragraph (3) shall have the following wording:  
“(3) The claims shall define the scope of the legal protection conferred by the patent through the totality of technical features of the invention included in the independent claim. In determining the scope of legal protection, it shall be taken into account any feature equivalent

with a feature specified in the claims, known prior to the filing date or, where priority is claimed, the priority date”.

18. Article 40:

in paragraph (8), following the words “of the patent application”, shall be introduced the text “, on payment within the said time limit of the prescribed fee for each priority claimed,”;

in paragraph (12), the words “shall result in” shall be substituted for the words “, as well as nonpayment of the fee for claiming priority shall result in”.

19. In Article 43, paragraphs (1) and (2) shall have the following wording:

“(1) Where an applicant for an international application wishes to obtain a patent in the Republic of Moldova, he shall file with the AGEPI, within a time limit of 31 months following the international filing date or the priority date:

- a) an application containing the explicit or implicit request for opening the national phase;
- b) a copy of the international application and a translation in the state language of the international application, certified accordingly;
- c) the proof of payment of the prescribed fee.

“(2) Where the requirements of paragraph (1) are not satisfied or if the translation of the international application documents is not filed with the AGEPI within 3 months following the date of entry into the national phase and the proof of payment of the fee is not filed within 2 months following the opening date of the national phase, the international application shall be refused”.

20. In article 44, paragraph (1) shall be repealed.

21. The Law shall be supplemented by Articles 44<sup>1</sup>–44<sup>4</sup> as follows:

**“Article 44<sup>1</sup>. European Patent Application and Validated European Patent**

(1) A European patent application and a European patent validated in the Republic of Moldova shall, subject to the provisions of Article 44<sup>1</sup>–44<sup>3</sup>, have the same effects and be subject to the same conditions as a national patent application or a national patent in accordance with this Law.

(2) A European patent application which has been accorded a filing date shall be equivalent to a regular national patent application, benefiting, where appropriate, from the priority claimed for the European patent application, whatever its outcome may be.

(3) A published European patent application shall provisionally confer the same protection as is conferred by a published national patent application, in accordance with this Law, as from the date on which a translation of the claims of the published European patent application into the state language has been made available to the public by the AGEPI, following the payment of the prescribed publication fee.

(4) A validated European patent shall confer as from the date of publication of the mention of the issuance of the patent by the EPO the same rights as would be conferred by a national patent in accordance with this Law.

(5) A European patent application for which the validation fee has been paid and a validated European patent shall have, with regard to a national patent application and a national patent, the same prior-art effect as a national patent application and a national patent in accordance with this Law.

(6) A national patent application and a national patent shall have, with regard to a validated European patent, the same prior-art effect as they have with regard to a national patent.

(7) A European patent application shall be deemed not to have had *ab initio* the effects referred to in paragraph (3) where the request for validation is withdrawn or deemed withdrawn.

(8) A validated European patent and the European patent application on which it is based shall be deemed not to have had *ab initio* the effects specified in paragraph (3) and (4) to the extent that the patent has been revoked in opposition or revocation proceedings or limited in limitation proceedings before the EPO.

(9) A European patent application for which the validation fee has been paid may be converted into a national patent application by submitting to the AGEPI a request for conversion, which will contain the request for the grant of a patent, a copy of the European patent application, a translation into the state language of the European patent application, certified accordingly, and the proof of payment of the prescribed fee, within 3 months following the date on which the European patent application has been refused, withdrawn or deemed withdrawn. If the translation of the European patent application is not filed with the AGEPI or the prescribed fee is not paid at the date of filing of the request for conversion or within 3 months of that date, the request for conversion shall be deemed withdrawn”.

#### **Article 44<sup>2</sup>. European Patent Validation Procedure**

(1) A European patent application and a European patent issued on such application shall be validated in the Republic of Moldova where the request for validation is mentioned by the applicant in the European patent application. The request for validation shall be deemed to be filed with any European patent application filed on or after the date on which the validation agreement with the EPO enters into force.

(2) AGEPI shall publish any request for validation and enter it in the National Register of Patent Applications after it has been informed by the EPO that the prescribed validation fee has been paid, but not before the expiry of a time limit of 18 months from the filing date or, if priority has been claimed, the earliest priority date.

(3) The request for validation may be withdrawn at any time. It shall be deemed withdrawn where the prescribed validation fee has not been paid in time or where the European patent application has been finally refused, withdrawn or deemed withdrawn. AGEPI shall publish such information if the request for validation has already been published by it in accordance with paragraph (2). The manner of publication and the content of the information published under paragraph (2) and (3) shall be specified in the Regulations.

(4) The validation fee under paragraph (2) shall be paid to the EPO within 6 months from the date on which the European Patent Bulletin mentions the publication of the European search report or, where applicable, within the period for performing the acts required for entry into the European phase of an international application, for which the EPO acts as designated or elected Office and in which the Republic of Moldova is designated. The validation fee payable under the rules governing the payment of fees in the EPO shall not be refunded.

(5) The validation fee may still be validly paid within 2 months of expiry of the relevant period referred to in paragraph (4), provided that a 50% surcharge is paid within this additional period.

(6) Within 3 months of the date on which the mention of the issuance of the European patent has been published, the patent owner shall furnish to the AGEPI the translation in the state language of the patent specification and pay the prescribed publication fee.

(7) If, as a result of an opposition or a request for limitation filed with the EPO, the European patent is maintained in amended form, the patent owner shall, within 3 months of the date on which the mention of the decision to maintain the European patent as amended or to limit was published, furnish to the AGEPI the translation into the state language of the amended claims and pay the prescribed publication fee.

(8) Where the text of patent specification and of claims contains reference signs used in the drawings, such drawings shall be attached to the translation referred to in paragraph (6) and (7).

(9) If the requirements provided by law are met, AGEPI shall publish any translation filed in due time under paragraph (6) or (7) and enter the validated European patent in the National Register of Patents. AGEPI shall certify, on request, the validation of the European patent in the Republic of Moldova in accordance with the Law.

(10) If the translation specified in paragraph (6) or (7) is not filed in due time or the publication fee is not paid within the prescribed time limit, the validated European patent shall be deemed void *ab initio*. The translation may still be validly filed within an additional period of 3 months of expiry of the relevant period referred to in paragraphs (6) and (7), provided that a 100% surcharge on the publication fee is paid within this additional period.

(11) For maintenance in force of the validated European patent, annual fees shall be paid in accordance with Article 93.

#### **Article 44<sup>3</sup>. Authentic Text of European Patent Applications or European Patents**

(1) The text of a European patent application or a European patent in the language of the proceedings before the EPO shall be the authentic text in any proceedings in the Republic of Moldova.

(2) The translation shall be regarded as authentic, except in revocation proceedings, should the European patent application or European patent in the language of the translation confer protection which is narrower than that conferred by it in the language of the proceedings before the EPO.

(3) The applicant for a European patent or patent owner of a validated European patent may file, at any time, a corrected translation. The corrected translation of the claims of a published European patent application or a validated European patent specification shall not have any legal effects until it has been made available to the public by the AGEPI, following the payment of the prescribed publication fee.

(4) Any person who, in good faith, uses or has made effective and serious preparations for using the invention, the use of which would not constitute infringement of the application or patent in the original translation may, after the corrected translation takes effect, continue such use in the course of his business or for the needs thereof without payment.”

23. In Article 46, paragraph (2) shall finally be supplemented by the text “ , giving him a time limit for response under the Regulations. If the answer is not furnished within the established time limit, the examination procedure shall be suspended in accordance with the Regulations”.



23. Article 48:

in paragraph (2) letter e), the text “paragraph (2)” shall be excluded;

in paragraph (4), following the text “Article 33 paragraph (9) and (10)”, shall be introduced the text “as well as Article 86, ”.

24. Article 49:

in paragraphs (1), (2), (3) and (6), the words “for invention” shall be excluded;

in paragraph (6), following the word “rejected” shall be introduced the words “and for which the opportunities of appeal have been exhausted”.

25. Article 50 shall have the following wording:

**“Article 50. Patent Search**

The applicant may request, subject to payment of the prescribed fee, a prior art search, of which results will enable the patentability of the invention to be assessed. The search for a published patent application may be requested by any interested person, subject to payment of the prescribed fee. Based on the search results, AGEPI shall draw up a search report or a search report accompanied by a written opinion on patentability, on the basis of the claims, with due regard to the description and, where appropriate, any drawings, in the form prescribed in the Regulations”.

26. In Article 51, paragraph (2), following the words “of the patent application” shall be introduced the words “or following the date of entry into the national phase”.

27. In Article 52:

paragraph (1) shall finally be supplemented by the text “and shall check whether the claimed invention meets the requirements of Article 11 and 12”;

paragraph (2 ) shall have the following wording:

“(2) In the examination, under paragraph (1), AGEPI shall conduct a prior art search, covering the patents, patent applications, utility models filed with the AGEPI having a filing date earlier to the filing date of the examined application and which have been published, under Article 49, on or after that date, European patent applications for which the validation fee has been paid and validated European patents, Eurasian applications and Eurasian patents, and the general knowledge included in sources intended for the general public, which became available to the public before the filing date of the patent application”.

28. Article 53:

in paragraph (1), the text “The provisions of this paragraph shall not apply to short-term patents for invention” shall be excluded;

in paragraph (6), following the word “claims”, shall be introduced the words “ , search report”.

29. Article 57:

paragraph (1) shall have the following wording:

“(1) 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.”

in paragraph (4), the words “the AGEPI division which took the decision to grant a patent” shall be substituted for the abbreviation “AGEPI”.

30. Article 60:

paragraph (1) shall have the following wording:

“(1) If no opposition and/or appeal has been filed against the decision to grant a patent, under CHAPTER IV Section 2, or if any opposition and/or appeal filed has been rejected, the AGEPI shall issue a patent to the entitled person, subject to payment of the prescribed fees, and shall publish a mention concerning the issuance of patent in BOPI.”

in paragraph (3), the words “Date of grant of a patent” shall be substituted for the words “Date of issuance of a patent”.

31. In Article 64, paragraph (1), the words “A patent may be revoked” shall be substituted for the words “A patent granted by AGEPI and a validated European patent may be revoked”.

32. Article 69

paragraph (3) shall finally be supplemented by the text “ , subject to payment of the prescribed fee for maintenance of the certificate”;

the Article shall be supplemented by paragraph (3<sup>1</sup>) as follows:

“(3<sup>1</sup>) In the case of a patent whose subject-matter is a medicinal product for which pediatric studies have been conducted, and the results of those studies are reflected in the information on the product for which an authorization for marketing has been issued, the periods

specified in paragraph (2) and (3) shall be extended by 6 months, while the period referred to in paragraph (2) may be extended once.

33. Article 73:

shall be supplemented by paragraph (1<sup>1</sup>) as follows:

“(1<sup>1</sup>) A product shall be deemed manufactured according to the invention protected by patent, and a process protected by patent shall be deemed applicable, if within it is used every feature of the invention contained in an independent claim”.

paragraph (3) is amended and shall have the following wording:

“(3) The court shall request an opinion on patentability of the invention and shall suspend the proceedings where the subject-matter of the litigation is a short-term patent or a patent issued without carrying out the substantive examination on the patentability of the invention until a copy of the search report, drawn up by AGEPI and accompanied by a written opinion on patentability, within the period prescribed in the Regulations, at the request of the patent owner or interested third parties has been submitted.”

34. In Article 90, paragraph (3), following the text “Art. 39-42” shall be introduced the text “Article 43 paragraph (1) and (2)”.

35. In Article 92 paragraph (3), the words “and the facts” shall be excluded.

36. Article 93:

paragraph (1) shall finally be supplemented by the text “Any procedure carried out on the basis of an application shall be deemed requested from the date of payment of the prescribed fee”.

in paragraphs (4) and (5) the words “for invention” shall be excluded;

the Article shall be supplemented by the paragraph (4<sup>1</sup>) with the following wording:

“(4<sup>1</sup>) The annual maintenance fees for a validated European patent shall be paid with the AGEPI for the years following the year in which the mention of the issuance of the European patent has been published by the EPO. If the annual fees for the European patent are due within 2 months from the date on which the mention of the grant of the European patent has been published, these fees shall be deemed validly paid if the payment was made within that period”.

in paragraph (7), following the words “execution of the procedures” shall be introduced the words “for substantive examination and search”;

37. In Article 94, paragraph (1) shall be supplemented by letter f) with the following wording:

“f) re-establishment of rights”.

38. In Article 95, paragraph (1) shall finally be supplemented by the text: “The register keeping rules shall be specified in the Regulations”.

39. Article 96 shall be supplemented by paragraph (5) as follows:

“(5) Assignment, license, pledge and franchise contracts or other documents attached to the application for the registration of such contracts shall be made available for public inspection only if there is express agreement of the contracting parties or pursuant to a court decision, except as provided by legislation in force.”

40. In Article 97, paragraph (3) shall finally be supplemented by the text “The provisions relating to the maintenance, surrender, limitation, revocation of patent, anticipated forfeiture of rights of the patent owner and re-establishment of rights shall apply *mutatis mutandis* to the utility model certificate”.

**CHAIRMAN OF THE PARLIAMENT**

**Andrian CANDU**

**No. 160. Chisinau, July 30, 2015.**