

PARLIAMENT OF THE REPUBLIC OF MOLDOVA

**LAW
on the protection of inventions**

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the Law no.101 of 26.05.2016
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Article 98. Implementation of This Law

The Parliament hereby adopts this organic Law.

This Law establishes the necessary framework for the application of the Convention on the Grant of European Patents (European Patent Convention) adopted in Munich on 5 October 1973 with the subsequent amendments as well as the Act of November 29, 2000 revising it, adopted in Munich, Council Regulation (EEC) No. 1768/92 of June 18, 1992 Concerning the Creation of a Supplementary Protection Certificate for Medicinal Products (published in the Official Journal of the European Union No. L 182 of 02.07.1992), Regulation of the European Parliament and of the Council (EC) No. 1610/96 of July 23, 1996 Concerning the Creation of a Supplementary Protection Certificate for Phytopharmaceutical Products (published in the Official Journal of the European Union No. L 198 of 08.08.1996), Directive of the European Parliament and of the Council 98/44/EC of July 6, 1998 on the Legal Protection of Biotechnological Inventions (published in the Official Journal of the European Union No. L 213 of 30.07.1998), Directive of the European Parliament and of the Council 2004/48/EC of April 29, 2004 for

the Enforcement of Intellectual Property Rights (published in the Official Journal of the European Union No. L 157 of 30.04.2004).

CHAPTER I

GENERAL PROVISIONS

Article 1. Scope

This Law lays down the rights and obligations resulting from the creation, legal protection and use of inventions.

Article 2. Legal Framework

- (1) The rights in inventions shall be obtained and protected on the territory of the Republic of Moldova via grant of patents by the State Agency on Intellectual Property, under the conditions specified in this Law.
- (2) The rights resulting from:
 - a) a Eurasian patent issued on the basis of a Eurasian application;
 - b) a validated European patentshall be recognized and protected on the territory of the Republic of Moldova in accordance with this Law.
- (3) If the provisions of an international treaty to which the Republic of Moldova is party differ from those set out in this Law, the provisions of such international treaty shall prevail.

Article 3. Basic Concepts

For the purposes of this Law, the concepts as set forth 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 subsequently amended and revised;

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

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

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Article 4. Forms of Protection of Inventions

- (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 .
- (2) Inventions shall be protected by the following titles of protection:
 - a) patent for an invention;
 - b) short-term patent for an invention;
 - c) supplementary protection certificate;
 - d) Eurasian patent;
 - e) validated European patent.
- (3) The provisions of this Law shall apply equally to the patents for invention and the short-term patents for invention, except for the provisions of Chapter V Section 2 of this Law, which only apply to patents for invention.

Article 5. National Office

- (1) The State Agency on Intellectual Property, hereinafter *AGEPI*, is the national office in the intellectual property protection field and is the sole authority that provides for the legal protection of inventions on the territory of the Republic of Moldova under this Law.
- (2) In accordance with this Law, AGEPI shall have the following responsibilities:
 - a) coordinates the implementation of the invention protection policy in the Republic of Moldova;
 - b) elaborates draft legislative and other regulatory acts on the protection of inventions, approves instructions, standardized forms and other procedural steps necessary for the application of this Law;

- c) registers and prosecutes patent applications with the view of granting and issuing, on behalf of the state, titles of protection of inventions; publishes patent applications and patent specifications, carries out the procedures for validation of effects of the European patent applications and European patents in the Republic of Moldova;
 - d) it is the depository of the National Register of Patent Applications, the National Register of Short-Term Patent Applications, the National Register of Patents and the National Register of Short-Term Patents;
 - e) edits the Official Bulletin of Intellectual Property, hereinafter *BOPI*, and publishes therein data on patent applications, patents and supplementary protection certificates;
 - f) acts as Receiving Office for the international applications filed by the national applicants in accordance with the provisions of the PCT;
 - f¹) is the only national authority carrying out the search and drawing up the search report with a view to assessing compliance with the criteria of patentability in order to provide for the legal protection of inventions;
 - g) maintains and administers the National Collection of Patents by means of acquisitions and exchanges of information with international organizations and foreign patent offices;
 - h) participates in the application of proof maintenance measures in case any rights provided for herein are infringed;
 - i) performs other functions provided for in this Law.
- (3) AGEPI shall represent the Republic of Moldova in the World Intellectual Property Organization, as well as in other international, intergovernmental or interstate organizations for the protection of intellectual property and it shall maintain relations of multilateral and bilateral cooperation with them in the respective field.

[Art. 5(2), letter e),(3) amended by the [Law No.101 of 26.05.2016](#), in force as from 24.06.2016].

CHAPTER II

SUBSTANTIVE PATENT LAW

Section 1

Patentability

Article 6. Patentable Inventions

- (1) A patent shall be granted for any invention having as subject a product or a process, in all fields of technology, provided that such invention is new, involves an inventive step and is susceptible of industrial application.
- (2) The following shall not be regarded as inventions within the meaning of paragraph (1):
 - 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.
- (3) The provisions of paragraph (2) shall exclude the patentability of the subject-matter or activities referred to therein only to the extent to which a patent application or patent relates to such subject-matter or activities as such.
- (4) Inventions in the field of biotechnology shall be deemed patentable if they concern:
 - a) biological material which is isolated from its natural environment or produced by means of a technical process even if it previously occurred in nature;
 - b) plants or animals if the technical feasibility of the invention is not confined to a particular plant or animal variety;
 - c) a microbiological process or other technical process, or a product obtained by means of such a process other than a plant or animal variety;
 - d) an element isolated from the human body or otherwise produced by means of a technical process, including the sequence or partial sequence of a gene, even if the structure of that element is identical to that of a natural element.

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(a) in respect of biotechnological inventions which, in particular, concern the following:
 - 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.

Article 8. Novelty

- (1) An invention shall be considered to be new if it does not form part of the state of the art.
- (2) 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.

- (3) 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 under Article 49.

Article 9. Non-Prejudicial Disclosure

- (1) For the application of Article 8, 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.
- (2) The provisions of paragraph 1(b) shall apply only if the applicant states, when filing the patent application, that the invention has been so displayed and files a supporting certificate within the time limit and under the conditions laid down in the Implementing Regulations on patent application filing and examination and patent granting procedure, hereinafter *Regulations*, approved by the Government.

Article 10. Inventive Step

- (1) 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.
- (2) If the prior art also includes documents referred to in Article 8 paragraph (3), these documents shall not be considered in deciding whether there has been an inventive step.

Article 11. Industrial Application

- (1) An invention shall be considered as susceptible of industrial application if it can be made or used in any kind of industry, including agriculture.
- (2) The industrial application of a sequence or a partial sequence of a gene must be disclosed in the patent application.

Article 12. Subject-Matter Protected by a Short-Term Patent for Invention

- (1) A short-term patent for invention shall be granted for any invention which is new, involves an inventive step and is susceptible of industrial application.
- (2) An invention shall be considered as involving an inventive step within the meaning of paragraph (1) if it does not directly result from the state of the art and gives a technical or practical advantage.
- (3) Additionally to Article 7, short-term patents for invention shall not be granted in respect of inventions concerning:
 - a) biological material;

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

Section 2

Persons Entitled to Apply for and Obtain a Patent

Article 13. Entitlement to File a Patent Application

- (1) Any natural or legal person shall be entitled to apply for a patent by filing a patent application with the AGEPI.
- (2) A patent application may be filed by multiple applicants.

Article 14. Right to a Patent

- (1) The right to a patent shall belong to the inventor or his successor in title.
- (2) If two or more persons have made an invention independently of each other, the right to a patent shall belong to the person whose patent application has the earliest date of filing, provided that this first application has been published in accordance with Article 49.

Article 15. Employee Inventions

- (1) If the inventor is an employee, in the absence of a contractual provision more advantageous for him, the right to the patent shall be regulated by the provisions of paragraphs (2)–(4) of this article.
- (2) The inventions made by an employee either in the exercise of a labor contract, which provides for an inventive mission, corresponding to his duties, or of some study or research explicitly entrusted to the employee, shall belong to the entity. In any of the above situations the inventor shall be entitled to an additional remuneration laid down in a contract. In case of a research contract concluded between two or more entities, in the absence of any provision to the contrary, the inventions shall belong to the entity having ordered the research.
- (3) The inventions made in the circumstances other than those referred to in paragraph (2) shall belong to the employee.
- (4) By way of derogation from paragraph (3), if the invention was made by an employee either in the accomplishment of his duties, or in the activity field of the entity, or by virtue of knowledge and use of the employer's equipment or specific assets, or the data existing within the entity, or with the material assistance of the entity, the entity shall be entitled to own the invention or to benefit, in whole or in part, from the rights conferred by the patent which protects the employee's invention. In that case the inventor's remuneration shall be set out by contract.
- (5) In the cases provided for in paragraphs (2) and (4), the inventor and the entity shall be mutually obliged to inform each other in writing of the creation and the progress of implementation of an invention and to abstain from any disclosure that could prejudice the exercise of the rights of the other party. A party who infringes this obligation shall be required to pay damages to the other party, including damages for loss of earnings, in accordance with the applicable legislation.
- (6) If, in the cases referred to in paragraph (2), within a period of 60 days from the date on which the employee has informed the entity in writing of the invention that has been

made, the entity has failed to file a patent application or to transfer to another party its right to file such application or to require the employee in writing to maintain the secrecy of the invention, the right to a patent shall belong to the employee.

- (7) In the cases provided for in paragraph (4), where the patent belongs to the employee, the entity shall enjoy a preferential right to a nonexclusive license to exploit the invention.
- (8) Where the entity has obtained a patent for the invention made in accordance with paragraphs (2) or (4), the employee shall enjoy a preferential right to a free nonexclusive license to exploit the invention.
- (9) If the parties fail to reach agreement on the amount of the remuneration due to the employee or on the price of the license, the amount will be determined by the courts as a function of the contribution made by each party to the creation of the invention and of its commercial value.
- (10) The procedure of creation and utilization of employee inventions is established in the Regulations on intellectual property objects made in the accomplishment of duties approved by the Government.

[Art. 15(10) amended by the [Law No.101 of 26.05.2016](#), in force as from 24.06.2016].

Article 16. Patent Applications Filed by Non-Entitled Persons

- (1) If prior to the granting by the AGEPI of the patent it is adjudged by a final decision that a person other than the applicant is entitled to the grant of a patent, that person may, in accordance with Article 14 paragraph (1) and within a period of three months after the decision has become final:
 - a) prosecute the patent application as his own application in place of the applicant;
 - b) file a new patent application in respect of the same invention; in that case the AGEPI shall consider the initial application withdrawn;
 - c) request that the patent application be refused.
- (2) The provisions of Article 35, paragraphs (3) and (4), shall apply *mutatis mutandis* to a new application filed under paragraph (1) of this article.

Article 17. Right of the Inventor

- (1) The natural person whose creative work has led to the invention shall be deemed the inventor (author of the invention).
- (2) The right to authorship of an invention shall constitute an inalienable, indefeasible personal right and shall enjoy protection without limitation in time.
- (3) Where an invention results from the work of more than one person, each such person shall be deemed a joint inventor and the right to authorship of the invention of the inventor shall belong to each of them.
- (4) A natural person who has furnished to the inventor technical, logistic or material assistance in the creation of the invention or who has simply given help in preparing the patent application, in obtaining the patent or in exploiting and using the invention shall not be deemed an inventor.
- (5) The inventor shall have the right to be mentioned as such in the patent application, in the patent and in the AGEPI publications in respect of the application or the patent.

- (6) The inventor shall have the right to renounce the mention of his name in the patent application, in the patent and in the AGEPI publications in respect of the application or the patent, by filing a written request with the AGEPI.

Section 3

Effects of the Patent and the Patent Application

Article 18. Term of the Patent

- (1) The term of a patent for invention shall be 20 years as from the date of filing of the patent application.
- (2) The term of a short-term patent for invention shall be 6 years as from the date of filing of the short-term patent application. The patent owner may file with the AGEPI an application for the extension of the time limit for a period not exceeding 4 years, provided that the patent owner requests the AGEPI to carry out a search for the state of the art under Article 8 and draw up a search report accompanied by an opinion on patentability relating to the invention which forms the subject-matter of the respective patent on payment of the prescribed fee, but not earlier than one year and not later than 6 months prior to the expiration of the term of the short-term patent. 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.
- (3) Supplementary protection may be obtained in respect of the medicines and phytopharmaceutical products which form the subject-matter of a patent for invention, under the terms and conditions laid down in Chapter V Section 2 hereof.

Article 19. Rights Conferred by a Patent Application after Publication

- (1) A patent application shall, from the date of its publication and up to grant of the patent, provisionally confer upon the applicant the protection provided for by Article 20 paragraph (2).
- (2) Any natural or legal person who exploits the invention during the period referred to in paragraph (1) above shall be required, after grant of a patent, to pay a reasonable monetary compensation to the owner. The amount of such compensation shall be determined by agreement between the parties, taking account of the good faith of the person who exploited the invention, or by the court, where it cannot be determined by amicable arrangement.
- (3) The effects of the patent application referred to in paragraph (1) shall be considered to be null and void when the patent application has been withdrawn by the applicant and when it has been withdrawn or refused in accordance with the provisions of this Law.

Article 20. Rights Conferred by a Patent

- (1) A patent for invention, a short-term patent for invention, a Eurasian patent and a validated European patent shall confer on its owner an exclusive right to exploit the invention for the entire term thereof.
- (2) The patent shall confer on its owner, in accordance with paragraph (1), the right to prevent third parties from performing, without his authorization, on the territory of the Republic of Moldova, the following acts:
 - a) manufacture, offering for sale, selling, use, importing or stocking for these purposes of the protected product;
 - b) the using of a process which is the subject-matter of the patent or, where the third party knows, or it is obvious in the circumstances, that the process cannot be used without the consent of the patent owner, offering of the process for use;
 - c) offering for sale, selling, use, importing or stocking for such purposes of the product obtained directly by a process which is the subject-matter of the patent.
- (3) Where there is more than one owner, relations concerning the exploitation of the invention protected by the patent shall be determined by agreement between the owners. In the absence of such agreement, each of the joint owners shall enjoy the right to exploit the invention at his discretion and to take legal action for infringement of the exclusive right against any person who exploits the invention without the authorization of all the joint owners; on the other hand, he may not, without the agreement of the other joint owners, renounce the patent without notifying the other joint owners thereof, as well as conclude a licensing contract nor perform any act involving assignment of rights in the patent.

Article 21. Prohibition of Indirect Exploitation of an Invention

- (1) A patent shall confer on its owner, in addition to the right conferred in accordance with Article 20, the right to prevent third parties not having his consent from supplying or offering to supply, on the territory of the Republic of Moldova, a person, other than a party entitled to exploit the patented invention, with means relating to an essential element of that invention, for carrying out the invention, when the third party knows, or it is obvious in the circumstances, that those means are suitable and intended for carrying out that invention.
- (2) The provisions of paragraph (1) above shall not apply when the supplied or offered means are staple commercial products, except when the supplier or offerer deliberately incites his client to commit the acts prohibited by Article 20 paragraph (2).
- (3) Persons performing acts referred to in Article 22 paragraph (1) letter a) and b) shall not be considered to be parties entitled to exploit the invention within the meaning of paragraph (1) above.

Article 22. Limitation of Effects of a Patent

- (1) The rights conferred by a patent shall not extend 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.
- (2) The use referred to in paragraph (1) above shall be allowed, provided that it does not unreasonably conflict with a normal use of the patented invention and does not unreasonably prejudice the legitimate interests of the patent owner, taking account of the legitimate interests of third parties. In the contrary case, the patent owner is entitled to an adequate compensation for the injury suffered because of the unauthorized exploitation of the invention.

Article 23. Exhaustion of Rights

- (1) The rights conferred by a patent shall not extend to acts concerning the patented product insofar as such acts are performed on the territory of the Republic of Moldova, after that product has been so put on the market in the Republic of Moldova by the patent owner or with his express consent.
- (2) The protection referred to in Article 24 paragraphs (5) - (7) shall not extend to biological material obtained by propagation or multiplication of a biological material put on the market or offered for sale on the territory of the Republic of Moldova by the patent owner or with his consent, when the multiplication or propagation necessarily results from the use for which the biological material has been so put on the market, provided that the material obtained is not subsequently used for other propagation or multiplication.
- (3) By way of derogation from Article 24 paragraphs (5) – (7), the sale or other form of commercialization of the plant propagating material to a farmer by the owner of the patent or with his consent for agricultural use implies authorization for the farmer to use the product of his harvest for propagation or multiplication by him on his own farm.
- (4) By way of derogation from Article 24 paragraphs (5) – (7), the sale or other form of commercialization of breeding stock or other animal reproductive material to a farmer by the owner of the patent or with his consent implies authorization for the farmer to use the protected livestock for an agricultural purpose, with the exception of breeding holdings; this includes making the animal or other animal reproductive material available for the purposes of pursuing his agricultural activity.

Article 24. Extent of Protection

- (1) The extent of the protection conferred by a patent or a patent application shall be determined by the terms of the claims. The description and drawings shall be used to interpret the claims.
- (2) For the period up to grant of the patent for invention, the extent of the protection conferred by a patent application shall be determined by the claims contained in the application as published under Article 49.
- (3) The patent as granted or as amended in opposition, limitation or revocation proceedings shall determine retroactively the protection conferred by the patent application, in so far as such protection is not thereby extended.
- (4) The protection conferred by a patent on a process which is the subject-matter of the patent shall extend to any product directly obtained by the patented process.
- (5) The protection conferred by a patent on a biological material possessing specific characteristics as a result of the invention shall extend to any biological material derived from that biological material through propagation or multiplication in an identical or divergent form and possessing those same characteristics.
- (6) The protection conferred by a patent on a process that enables a biological material to be produced possessing specific characteristics as a result of the invention shall extend to the biological material directly obtained by that process and to any other biological material derived from the biological material obtained directly through propagation or multiplication in an identical or divergent form and possessing those same characteristics.
- (7) The protection conferred by a patent on a product containing or consisting of genetic information shall extend to any other material in which the product is incorporated and in which the genetic information is contained and performs its function, except for the human body, in different formation and development stages, and to the elements thereof.

Article 25. Right of Prior User of Invention

- (1) Any person who in good faith, before the filing date, or, where priority is claimed, the priority date of the application on which the patent is granted and within the territory of the Republic of Moldova was using the invention or was making effective and serious preparations for such use, shall be personally entitled, for the purposes of his enterprise or business, to continue such use or to use the invention within the limits and/or scope envisaged in such preparations, without having to pay a royalty and on condition that he does not extend its scope.
- (2) The right of prior user referred to in paragraph (1) may only be transferred during the user's lifetime or by hereditary or testamentary succession together with his enterprise or business, or with that part of his enterprise or business in which the use or preparations for use have been made.

Section 4

Patent Application and Patent as an Object of Property

Article 26. Transfer and Constitution of Rights

- (1) A patent application and a patent may be transferred or give rise to any rights.
- (2) The right to a patent, the right to grant of a patent and the rights deriving from a patent application or a patent may be transferred in whole or in part.
- (3) Rights may be transferred under an assignment contract, contract on exclusive or nonexclusive license, or by hereditary or testamentary succession.
- (4) A patent application or a patent possessed by a business may be transferred independently of the transfer of business.
- (5) The transfer of a business in its totality shall imply the transfer of a patent application and/or patent except where the applicable legislation provides otherwise or where it is obvious from the circumstances. This provision shall apply to the contractual obligation concerning the transfer of a business.
- (6) Under a licensing contract, the patent owner (licensor) shall afford to any other person (licensee) the right to exploit a patent application or a patent, maintaining his right of property in it. Where there is more than one licensee for a patent application or a patent, the licenses may be solely nonexclusive or limited exclusive. The license contract may contain provisions concerning the payment of royalty by the licensee.
- (7) Any provisions containing exclusive grantback conditions, conditions containing challenges to validity and coercive package licensing as well as any other conditions limiting fair competition based on professional principles shall not be included in license contracts.
- (8) Any transfer of rights under an assignment or license contract must be in writing and signed by the contracting parties except where the transfer is adjudicated by a court decision; otherwise the transfer shall not be registered with the AGEPI.
- (9) Without prejudice to the cases referred to in Article 16 or Article 63 paragraph (1), the transfer of rights shall not affect the rights obtained by any third party prior to the date of transfer.
- (10) Any transfer or change made by the applicant or patent owner in a patent application or a patent shall be entered, on request of any of the parties, in the National Register of Patent Applications or the National Register of Patents and published in BOPI.
- (11) Any transfer of rights in a patent application or a patent shall solely have effect for third parties as from the date of publication in BOPI of the notice of transfer registered with the AGEPI.

Article 27. Real Rights

- (1) A patent may, independently of the proprietor business, be pledged or become a subject-matter of any other real right.
- (2) The pledge on patents shall be recorded in the Register of security interests under the Law on Pledge. Other patent rights are registered in the National Register of Patents of Inventions at the request of one of the parties, and become opposable to third parties from the registration date, and data on these rights shall be published in BOPI.

Article 28. Compulsory License

- (1) If after the expiration of a period of 4 years from the day of filing of the patent application or 3 years from the grant of the patent, whichever is later, the patent owner has not exploited the patent in the territory of the Republic of Moldova or if he has not undertaken serious and effective preparations for such purpose, the courts may grant a compulsory license, on request, to any interested person, unless the patent owner justifies the lack or insufficiency of exploitation. No distinction shall be made between the domestic products or imported products for the purposes of establishing the fact of the lack of exploitation or insufficient exploitation of the patent.
- (2) A compulsory license shall be granted solely where the proposed user has made efforts to obtain authorization from the patent owner on reasonable commercial terms and conditions and that such efforts have not been successful within a reasonable period of time. This requirement may be waived in the cases referred to in paragraph (3) below. In such cases, the patent owner shall be notified as soon as reasonable practicable.
- (3) A compulsory license may be granted in the case of national emergency or other circumstances of extreme urgency or in cases of public non-commercial use.
- (4) In the case of semiconductor technology, a compulsory license may only be granted for public non-commercial use or to remedy a practice, determined after judicial or administrative process to be anti-competitive.
- (5) A compulsory license may be granted to a patent owner or an owner of a plant variety patent who cannot exploit his invention or protected plant variety (the second patent) without infringing another patent (the first patent), provided the invention or plant variety claimed in the second patent shall involve an important technical advance of considerable economic significance in relation to the invention claimed in the first patent. The court shall have the authority to review the existence of these circumstances. In the case of a compulsory license in respect of a patent for an invention or a patent for a plant variety, the owner of the first patent shall be entitled to a cross-license on reasonable terms to use the patented invention or the protected plant variety.
- (6) The respective methods and procedures for the implementation of principles contained in this article are laid down in the Regulations.

Article 29. Conditions Applicable to Compulsory Licenses

- (1) At the time of grant of a compulsory license to exploit the patent under Article 28 above, the court shall specify the types of use covered by such license and the terms and conditions to be observed. The following conditions shall apply:
 - a) the scope and duration of such use shall be limited to the purpose for which it was authorized;
 - b) such use shall be non-exclusive;
 - c) such use shall be non-assignable, except with that part of the enterprise or goodwill which enjoys such use;
 - d) any such use shall be authorized predominantly for the supply of the domestic market, except where such use is permitted to remedy a practice determined after judicial or administrative process to be anti-competitive;

- e) a court may authorize, upon motivated request, that authorization for such use shall be liable, subject to adequate protection of the legitimate interests of the persons so authorized, to be terminated if and when the circumstances which led to it cease to exist and are unlikely to recur. The judicial authority shall have the authority to refuse termination of authorization if and where the circumstances which led to such authorization are likely to recur;
 - f) the license holder shall pay the patent owner an adequate remuneration, taking into account the economic value of the authorization and, eventually, the need to remedy an anti-competitive practice;
 - g) in case of a compulsory license for a dependent patent or a plant variety patent, the use authorized in respect of the first patent shall be non-assignable, except with the assignment of the second patent.
- (2) The legal validity of any decision relating to the authorization of use referred to in paragraph (1) and any other decision relating to the remuneration provided for in respect of such use shall be subject to judicial review or other independent review by a higher authority.
 - (3) The holder of the license shall notify the AGEPI the decision of the judicial authority to grant or, where appropriate, to terminate a compulsory license. The Agency shall enter the court decision in the National Register of Patents and publish it in BOPI.
 - (4) If the holder of a compulsory license has not undertaken any effective and serious preparation for exploiting the invention within one year following grant of the license, the compulsory license may be cancelled by the decision of the court. In any event, a compulsory license shall terminate if its holder has not begun exploitation of the invention within 2 years following the date on which the license was granted to him.

Article 30. Acts Infringing the Licensee's Rights

- (1) Without prejudice to the provisions of the license contract, the licensee may only institute proceedings for infringement of his rights in relation to a patent application or patent with the consent of the applicant or owner.
- (2) The beneficiary of an exclusive or compulsory license may only institute proceedings for infringement of rights where the patent owner notified formally fails to take such action in his own name within 2 months.

CHAPTER III PATENT APPLICATION

Section 1

Filing of the Patent Application and Requirements to Be Met

Article 31. Filing of an Application

- (1) A patent application shall be filed with the AGEPI, directly or by other means provided for in the Regulations, by the person entitled under Article 14 paragraph (1).
- (2) Inventions made in the Republic of Moldova may only be patented abroad after the date of filing a patent application with the AGEPI.

Article 32. Language of Procedure

- (1) A patent application shall be filed with the AGEPI in the Moldovan language.
- (2) With the exception of documents referred to in Article 33 paragraph (1) letter a) and Article 34 paragraph (1) letters a) and b), the application documents may be filed in any other language.
- (3) If the application documents are filed in another language, the applicant shall be obliged to submit a properly certified translation into the Moldovan language within 3 months following the filing date of the patent application.
- (4) The Moldovan language shall be used in all procedures before the AGEPI relating to the application or the patent granted as a result of such application.

Article 33. Requirements to Be Met by a Patent Application

A patent application shall contain:

- a) a request for the issuance of a patent;
 - b) a description of the invention;
 - c) one or more claims;
 - d) any drawings referred to in the description or the claims;
 - e) an abstract.
-
- (2) The patent application shall be subject to the payment of the filing fee.
 - (3) The patent application shall satisfy the requirements laid down in the Regulations.
 - (4) If the invention concerns reproducible biological material, the patent application may contain, where appropriate, an attestation certifying the deposit of that biological material with a depositary institution, in accordance with Article 36 paragraph (2), submitted at the time of filing of the patent application or within 3 months following the filing date of the latter.
 - (5) In the case of applicant's representation in accordance with Article 86 paragraphs (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 .
 - (6) The patent application shall contain the mention of the inventor and indications allowing his identity to be established.
 - (7) If the applicant is not the inventor or is one of multiple inventors, the application shall contain the applicant's declaration by which he identifies the inventors and indicates the origin of the right to patent.
 - (8) The application complying with the requirements referred to in paragraphs (1)-(3) above and, where appropriate, in Article 32 paragraph (3), shall constitute a regular national application.

- (9) The documents referred to in paragraph (1) letters a) and c) and the proof of payment of the prescribed fee referred to in paragraph (2) above shall be submitted at the time of filing of the patent application or within 2 months following the filing date of the latter.
- (10) Where the description of the invention is replaced with a reference to an earlier application in accordance with Article 34 paragraph (1) letter c), the applicant shall, for the purpose of establishing the filing date, submit to the AGEPI, within 4 months following the filing date of the patent application containing such reference, a certified copy of the earlier registered application and, where appropriate, its translation. If the earlier application has been submitted by a person other than the applicant, a document shall be attached confirming the applicant's entitlement to file the application.

Article 34. Date of Filing

- (1) The filing date of a patent application shall be the day on which the documents filed with the AGEPI by the applicant contain at least:
 - a) an indication that the granting of a patent is sought;
 - b) indications allowing the identity or contact of the applicant to be established;
 - c) a part which on the face of it appears to be a description of the invention or a reference to an earlier filed application.
- (2) The reference to an earlier filed application shall be deemed to replace the description and, where appropriate, the drawings, if it contains the filing date and the number of the earlier application as well as the name of the office with which that application has been registered.
- (3) If the initially filed application does not comply with one or several of the requirements referred to in paragraph (1) and, where appropriate, in paragraph (2), the filing date shall be the day on which it is brought subsequently in compliance with all those requirements. The requirements to be fulfilled subsequently are provided for in the Regulations.
- (4) If one or several of the requirements referred to in paragraph (1) have not been fulfilled within the term provided for in the Regulations, the application shall be treated as if it had not been filed.
- (5) If at the time of establishing the filing date the AGEPI reveals that a part of the description or a drawing referred to in the description appear to be missing, it shall invite the applicant to file the missing part within the term established in the Regulations.
- (6) If the missing part is filed with the AGEPI within the established term, the filing date of the application shall be the date of receipt of the respective part or the date on which all requirements specified in paragraph (1) were fulfilled, whichever is later.
- (7) If the missing part of the description in an application claiming priority in respect of an earlier application is included in the earlier application, the filing date may be established, upon the applicant's request, on the date of receipt by the AGEPI of the documents referred to in paragraph (1) above, subject to the compliance with the requirements provided for in the Regulations.
- (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 party.

Article 35. Unity of Invention

- (1) A patent application shall relate to one invention only or to a group of inventions so linked as to form a single general inventive concept.
- (2) If the patent application as filed does not meet the requirement referred to in paragraph (1) above, the applicant may divide it, on his own initiative or at the request of the AGEPI, by filing a divisional application, prior to a decision on the patent application.
- (3) The divisional application may be filed only for the elements which do not go beyond the disclosure of the initial application as filed.
- (4) The divisional applications complying with the requirements of paragraph (3) shall be deemed filed on the filing date of the initial application and shall benefit from its priority rights.
- (5) The procedure of application of the provisions of paragraph (2), the special requirements to be fulfilled by the divisional application and the term of payment of the fees are provided for in the Regulations.

Article 36. Disclosure of the Invention

- (1) The patent application shall disclose the invention in a manner sufficiently scientifically and technically clear, complete and correct for it to be carried out by a person skilled in the art.
- (2) Where the invention refers to biologically reproducible material which is not available to the public, the conditions referred to in paragraph (1) shall only be fulfilled if the applicant proves with a document that, prior to the filing date of the patent application or the acknowledged priority, the biological material has been deposited with an international depository authority or a depository institution designated by the Government.

Article 37. Claims

- (1) The claims shall define the matter for which protection is sought by the technical features of the invention ;
- (2) The claims shall be clear and concise and shall be supported by the description of the invention.
- (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.
- (4) The description and drawings shall only be used to interpret the claims.
- (5) The limited or extensive interpretation of claims shall be excluded (using the description and drawings for the purpose of identifying the general inventive concept). If the patent application contains examples of embodiment of invention or examples of the functions and results of the invention, the claims shall not be interpreted as limited to those examples. The merely fact that the product or the process includes additional elements missing in the examples disclosed in the patent application and the absence in the examples of the elements not contributing to the obtaining of the result or not

possessing declared or inherent advantages shall not lead to the exclusion of the product or the process from the scope of legal protection defined by the claims of the invention.

Article 38. Abstract

The abstract shall serve the purpose of technical information only. It may not be taken into account for any other purpose, in particular for interpreting the scope of the protection sought or applying Article 8, paragraph (3).

Section 2

Priority

Article 39. Right of Priority

- (1) A person who has duly filed in or for any State party to the Paris Convention for the Protection of Industrial Property or any Member of the World Trade Organization an application for a patent, a utility model, a utility certificate or an inventor's certificate, or his successor in title, shall enjoy, for the purpose of filing a patent application in respect of the same invention, a right of priority during a period of twelve months from the date of filing of the first application; the day of filing shall not be included in the period.
- (2) Every filing that is equivalent to a regular national filing under the national law of the State where it was made or under bilateral or multilateral agreements or regional conventions, shall be recognised as giving rise to a right of priority.
- (3) The right of priority may be transferred under an assignment contract. Assignment of a priority right shall be in writing, the assignor loses his right of priority for the first application.

Article 40. Claiming Priority

- (1) An applicant desiring to take advantage of the priority of a previous application shall file a declaration of priority, a copy of the previous application and, where appropriate, a translation thereof in the Moldovan language, as well as he shall pay the prescribed fee for each priority claimed.
- (2) Multiple priorities may be claimed in respect of a patent application, notwithstanding the fact that they originate in different countries. Where appropriate, multiple priorities may be claimed for any one claim. Where multiple priorities are claimed, time limits shall run from the earliest date of priority.
- (3) If one or more priorities are claimed in respect of a patent application, the right of priority shall cover only those elements of the patent application that are included in the application or applications whose priority is claimed.
- (4) If certain elements of the invention for which priority is claimed do not appear among the claims formulated in the previous application, priority may nonetheless be granted, provided that the documents of the previous application as a whole specifically disclose such elements.
- (5) Priority claimed in a patent application as a consequence of exhibiting the invention in an exhibition in accordance with Article 9 paragraph (1) letter b), organized in a State

party to the Paris Convention or a Member of the World Trade Organization, may be acknowledged from the date of its introduction into the exhibition.

- (6) The provisions of paragraph (5) shall apply only if the patent application has been filed within 6 months following the date of introduction of the invention into the exhibition. The 6-month term shall not extend the term of priority referred to in Article 39 paragraph (1).
- (7) The applicant or his successor in title shall be entitled to claim priority of an earlier application in a subsequent application filed with the AGEPI in respect of the same invention, if the priority is claimed within 12 months following the filing date of the earlier application (internal priority). In such case, the earlier application shall be deemed withdrawn.
- (8) Priority shall be claimed when filing the application or within 2 months from the filing date of the patent application, on payment within the said time limit of the prescribed fee for each priority claimed, and shall be justified by a priority document.
- (9) The document justifying the priority claim under Article 39 paragraph (1), the copy of the earlier application, certified by the authority with which that application was filed and, where appropriate, its translation shall be filed by the applicant within 16 months following the filing date of the earlier application or, where more than one earlier application exist, the earliest filing date of the respective applications.
- (10) The document justifying the priority claim under paragraph (5) above, the certificate issued by the authorities - organizers of the relevant exhibition, shall be filed by the applicant together with the patent application or within 3 months following the date of filing.
- (11) Where the applicant claims a right of priority belonging to another person, a legal act is necessary, for the purpose of acknowledging the priority, to be filed with the AGEPI confirming the transfer or an authorization on behalf of the assignor, indicating the legal grounds of his entitlement to claim the priority of the first filing, which is filed at the time of priority claiming or within 16 months following the priority date of the first application.
- (12) Non-compliance with the terms laid down in paragraphs (8) - (11) , as well as nonpayment of the fee for claiming priority shall result in the refusal to acknowledge the claimed priority.

Article 41. Correction or Addition of a Priority Claim

- (1) An applicant may correct or add a priority claim in respect of the patent application by a notice submitted within a time limit of 16 months from the priority date or, where the correction or addition would cause a change in the priority date, 16 months from the priority date as so changed, whichever 16-month period expires first, provided that the notice for correction or addition is filed with the AGEPI within 4 months from the filing date of the patent application.
- (2) Filing of the notice under paragraph (1) shall be subject to the payment of a prescribed fee. If the fee is not paid, the notice shall be considered not to have been filed.
- (3) If the notice referred to in paragraph (1) is submitted after the applicant has made a request for early publication of the application under Article 49 paragraph (2), it shall be considered not to have been submitted, unless that request is withdrawn before the technical preparations for publication have been completed.

- (4) Where the correction or addition of a priority claim causes a change in the priority date, any time limit which is computed from the previously applicable priority date and which has not already expired shall be computed from the priority date as so changed.

Article 42. Re-establishment of Priority Right

- (1) Where the priority of an earlier application is claimed in a subsequent patent application which was filed after the expiration of the time limit referred to in Article 39 paragraph (1), but no later than 2 months after the expiration of that time limit, AGEPI may re-establish the priority right, if at the time of filing the application the applicant submits a request, which confirms that the due diligence required by the circumstances was exercised or that non-compliance with the time limit was unintentional.
- (2) The request for re-establishment of rights referred to in paragraph (1) above shall be filed within 2 months of expiry of the priority time limit referred to in Article 39 paragraph (1), but no later than the completion of the technical preparations for publication of the respective application under Article 49.
- (3) The request for re-establishment of rights shall be accompanied by the evidence of payment of the prescribed fee; otherwise the request shall be considered not to have been filed.
- (4) If the copy of the earlier application has not been submitted to the AGEPI within the time limit referred to in Article 40 paragraph (9), the AGEPI may re-establish the priority right where the following conditions are fulfilled cumulatively:
- a) the applicant has made a request in that matter with the AGEPI before the expiration of the time limit specified in Article 40 paragraph (9);
 - b) the applicant has submitted to the AGEPI a confirmation of the request made with the office which registered the earlier application, certifying that the copy of the earlier application was requested within a period not exceeding 14 months following the filing date of such earlier application;
 - c) the certified copy of the earlier application was submitted to the AGEPI within one month from the date on which the office with which was registered the earlier application issued the respective copy to the applicant.

Section 3

Procedure for Applications Filed Under the International Conventions

Article 43. International Patent Application

- (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.
- (3) International publication of an international application shall produce effects to the provisional legal protection referred to in Article 19 following the publication date of the international application translation in the Moldovan language.

Article 44. Eurasian Patent Application

- (1) The same invention disclosed in a Eurasian patent and, respectively, in a national patent, originating from the same applicant, having the same filing date or, where a priority is claimed, the same priority date, cannot be protected simultaneously by both patents. The patent granted by the AGEPI shall cease to produce effects after the grant of the Eurasian patent from the date of expiration of the time limit for filing of an opposition in respect of that Eurasian patent or, where an opposition is formulated, the date on which following the examination of the opposition a decision to maintain the Eurasian patent has been taken.
- (2) The provisions of paragraph (2) shall not apply where the owner of the Eurasian patent renounces it on the territory of the Republic of Moldova under Rule 55 of the Implementing Guidelines of the Eurasian Convention or the rights conferred by the Eurasian patent ceased to be effective on the territory of the Republic of Moldova by non-payment of applicable maintenance fees under Rule 56 of the Implementing Guidelines of the Eurasian Convention.

Article 44¹. European Patent Application and Validated European Patent

- (1) A European patent application and a validated European patent shall, subject to the provisions of Articles 44¹–44³, 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 paragraphs (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 44². 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 with the EPO on or after the date on which the validation agreement 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 paragraphs (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 paragraphs (6) and (7).
- (9) If the requirements provided by law are met, AGEPI shall publish any translation filed in due time under paragraphs (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 paragraphs (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 44³. 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 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.

CHAPTER IV
PROCEDURE UP TO GRANT OF A PATENT

Section 1

Examination up to Grant of a Patent

Article 45. Patent Applications of Which Disclosure Can Prejudice the National Security

- (10) Inventions containing the information which, if disclosed, can prejudice the national security of the Republic of Moldova, shall be removed from AGEPI, based on the decision of the commission respectively empowered by the Government, within 30 days from the filing date, with the respective notice to the applicant.
- (11) An invention created in the Republic of Moldova may only be patented abroad upon expiry of the term specified in paragraph (1).

Article 46. Examination of Patent Application

- (1) AGEPI shall examine, in accordance with the Regulations, whether the patent application and the invention which forms its subject-matter meet the requirements of the law. For that purpose AGEPI shall undertake a formal and a preliminary examination and, upon request, a substantive examination of the patent application.
- (2) AGEPI may invite the applicant to furnish additional elements that are considered to be essential for identification of the applicant or inventor, the constituted regular national filing or compliance with the patentability requirements, 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.

Article 47. Formal Examination

- (1) In the formal examination, AGEPI shall check whether the patent application meets the formal requirements laid down in the Regulations and the conditions for accordance of a filing date under Article 34.
- (2) If the patent application does not comply with one or more requirements prescribed in Article 34, AGEPI shall give the applicant an opportunity to correct the deficiencies within the term prescribed in the Regulations.
- (3) If the applicant fails to furnish the required information or fails to meet the requirements referred to Article 34 within the prescribed time limit, the application shall be deemed not to have been filed; the applicant shall be notified of the fact.
- (4) If a date of filing has been accorded to the patent application, the Agency shall enter it in the National Register of Patent Applications. The data shall be treated as confidential prior to the publication of the patent application.

Article 48. Preliminary Examination

- (1) If a patent application has been accorded a date of filing, AGEPI shall undertake a preliminary examination.
- (2) In the preliminary examination AGEPI shall examine whether:
 - a) the patent application meets the requirements laid down in Article 33;
 - b) the subject-matter of the invention is patentable within the meaning of Article 6 and Article 7 and, in case of short-term patents, of Article 12 paragraph (3);
 - c) the patent application meets at the first examination the requirements of Article 35;
 - d) the requirements of Article 40 paragraph (8) - (11) concerning the priority claim have been satisfied and, where appropriate, the claimed priority is acknowledged;
 - e) the requirements of Article 86 have been satisfied.
- (3) Where AGEPI notes that there are deficiencies which may be corrected, it shall give the applicant an opportunity to correct them in accordance with the Regulations.
- (4) Where the examination undertaken under paragraph (2) above finds that the requirements of Article 32 paragraph (3) and Article 33 paragraphs (9) and (10) as well as Article 86, have not been satisfied, the patent application shall be refused. If the applicant disregards the provisions of Article 40 concerning the priority right, the deficiency shall lead to the loss of this right for the application.
- (5) If the designation of the inventor has not been made in the patent application in accordance with Article 33 paragraph (6) and the omission of the designation of the inventor is not corrected within 16 months from the date of filing of the patent application or, if priority is claimed, from the date of priority, the patent application shall be deemed to be withdrawn.
- (6) If the claimed invention is not patentable within the meaning of Article 6, Article 7 and, as the case may be, Article 12 paragraph (3), AGEPI shall take a decision to refuse the application, which is notified to the applicant. The notice concerning the refusal shall be published in BOPI.

Article 49. Publication of Patent Application

- (1) A patent application shall be published after the expiry of a period of eighteen months from the date of filing or, if priority has been claimed, as from the date of priority. The particulars to be published in BOPI shall be determined by the AGEPI.
- (2) At the request of the applicant and on payment of the prescribed fee, the patent application may be published before the expiry of the period referred to in paragraph (1) above.
- (3) The patent application shall be published simultaneously with the publication of the decision to grant a patent when the grant of the patent has become effective before the expiry of the period referred to in paragraph (1) above.
- (4) International patent applications shall be published before the expiry of a time limit of 6 months from the date on which the national phase was initiated, subject to the compliance with the requirements of Article 43 paragraph (1).
- (5) The publication referred to in paragraph (1) above shall contain the description, the claims and, where appropriate, any drawings as filed and, in an annex, the search report

and the abstract, in so far as the latter is available before the termination of the technical preparations for publication. If the search report has not been published at the same time as the application, it shall be published subsequently separately.

- (6) Patent applications withdrawn or rejected and for which the opportunities of appeal have been exhausted prior to the termination of the technical preparations for publication shall not be published.
- (7) For short-term patents, a patent application shall be published simultaneously with the publication of the decision to grant a patent, and the search report shall be published immediately after it has been drawn up on the basis of the patent search undertaken under Article 18 paragraph (2) or Article 50 paragraph (1).

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.

Article 51. Substantive Examination of Patent Application

- (1) The AGEPI shall examine, on written request, whether the patent application and the invention which forms its subject-matter meet the requirements of this law.
- (2) The substantive examination of the patent application shall be carried out within 18 months, excluding the time limits for correspondence and subject to the compliance with the provisions of art. 48. A request for substantive examination may be filed prior to the expiry of 30 months following the filing date of the patent application or following the date of entry into the national phase. The request shall only be deemed to be filed on payment of the examination fee and may not be withdrawn.
- (3) If the request for substantive examination is not submitted prior to the expiry of the time limit specified in paragraph (2), the patent application shall be deemed to be withdrawn.
- (4) In the substantive examination, the AGEPI shall check whether the application meets, in particular, the requirements set out in Article 6-11, Article 36 and Article 37.
- (5) If the examination of a patent application reveals that the application or the invention which makes its subject-matter does not meet the requirements of this law, the AGEPI shall invite the applicant, as often as necessary, to file his observations and, subject to Article 87, to amend the application within a period to be fixed.
- (6) If the applicant fails to reply in due time to any communication from the Agency under paragraph (5), the patent application shall be deemed to be withdrawn.
- (7) Upon completion of the substantive examination of the patent application and based on the examination report, the AGEPI shall decide either to grant a patent or to refuse the patent application.
- (8) The provisions of this article shall not apply to short-term patents.

Article 52. Examination of Conditions for Grant of a Short-Term Patent

- (1) For the purpose of granting a short-term patent, AGEPI shall undertake a formal examination and a preliminary examination of the patent application in accordance with Article 47 and Article 48 and shall check whether the claimed invention meets the requirements of Articles 11 and 12.
- (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.
- (3) Where AGEPI finds that the patent application meets the requirements of paragraph (2) above, it shall decide to grant a short-term patent.
- (4) Where AGEPI finds that the patent application does not meet the requirements of paragraph (2) above, it shall decide to refuse the short-term patent application.

Article 53. Grant of Patent or Refusal of Patent Application

- (1) If AGEPI is of the opinion that the patent application and the invention which forms its subject-matter meet the requirements of this law, it shall decide to grant a patent, provided that it is established, in accordance with the provisions of the Regulations, that the applicant approves the text of the description and claims in which AGEPI intends to grant the patent.
- (2) If AGEPI is of the opinion that the patent application and the invention which forms its subject matter do not meet the requirements of this law, it shall decide to refuse the patent application unless this Law provides for a different procedure.
- (3) The AGEPI decisions shall indicate the grounds on which they are taken and shall only be based on the grounds upon which the interested parties have had an opportunity to express their opinions.
- (4) The decision to grant a patent or to refuse a patent application shall take effect on the date on which the mention of the decision is published in BOPI.
- (5) The mention of the decision to grant a patent or to refuse a patent application shall be published upon expiry of the term in which the decision mentioned above could be opposed in accordance with the provisions of the present Law.
- (6) AGEPI shall publish, at the same time as it publishes the mention of the grant of the patent, a specification of the patent containing the description, the claims, the search report and, where appropriate, any drawings.

Article 54. Conversion of Patent Application

- (1) A patent application may be converted, at the request of the applicant, into an application for a short-term patent prior to the date on which the mention of the decision to grant a patent is published or, at the latest, within 2 months following the date on which a decision to refuse the patent application has been sent, on conditions provided by the Regulations.
- (2) An application for a short-term patent may be converted, at the request of the applicant, into a patent application before the decision to grant a short-term patent has been taken.
- (3) For patent applications resulting from the conversion of the application under paragraphs (1)-(2) of this article the filing date and, where appropriate, the priority date of the initial application shall be applied.
- (4) The conversion of application referred to in paragraphs (1)-(3) above shall be subject to the payment of the prescribed fee.

Article 55. Seeking Two Kinds of Protection

- (1) The same invention may form at the same time a subject-matter of a patent application and of an application for a short-term patent.
- (2) Both kinds of protection may be sought by the same applicant concomitantly filing the respective applications on the same date.
- (3) If the applicant has filed a patent application and an application for a short-term patent for the same invention, in that case:
 - a) the short-term patent shall be deemed null and void upon granting of the regular patent;
 - b) the application for a short-term patent, which is under examination on the date on which the decision is made to grant a regular patent, shall be deemed to be withdrawn as of that date.
- (4) The provisions of paragraph (3) shall not apply where the patent owner renounces the patent under Article 66 or where the rights conferred by the patent became ineffective due to non-payment of the maintenance fee in accordance with Article 61.

Article 56. Withdrawal of Patent Application

- (1) The applicant may withdraw the patent application at any time prior to the date on which a decision concerning that application has been taken.
- (2) In the event of more than one applicant, the application may only be withdrawn with the agreement of each applicant.
- (3) Any applicant other than the inventor shall be obliged to notify the inventor, at the same time as he submits his written request to the AGEPI, of his intention to renounce the application. In such case, the inventor shall have a preferential right to request the continuation of procedures in respect of the application as an applicant within a period of 2 months as from the date on which the applicant has informed him of his intention to renounce the application.

Section 2

Opposition and Appeals Procedure

Article 57. Opposition

- (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.
- (2) Opposition shall only be filed in writing and on the grounds that:
 - a) 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) 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 under Article 16, beyond the content of the earlier application as filed.
- (3) The opposition filed shall have suspensive effect. It shall not be deemed to have been filed until the opposition fee has been paid.
- (4) IF AGEPI is of the opinion that at least one of the grounds for opposition referred to in paragraph (2) above prejudices the maintenance of the patent, it shall revoke the respective decision. Otherwise, it shall reject the opposition.
- (5) 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, provided that the conditions laid down in the Regulations are fulfilled;
 - b) do not meet the requirements of this law, it shall revoke the decision to grant a patent.
- (6) If a patent is amended under paragraph (5) above, 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.

Article 58. Appeal

- (1) Any decision taken by the AGEPI subdivisions may be appealed with the Appeal Board of the AGEPI by any person who is affected by the decision.
- (2) The appeal filed under paragraph (1) of this article shall have suspensive effect.
- (3) The appeal shall be filed in writing, within 2 months from the date of the dispatch of the decision and shall contain the reasons justifying the appeal. The appeal will be considered filed only after the payment of the established fee.

Article 59. Examination of the Appeal

- (1) In the examination of the appeal, which shall be conducted in accordance with the provisions of the Regulations and the Regulations on the Appeal Board of the AGEPI, the Appeal Board shall invite the parties, as often as necessary, to file observations, within a period to be fixed by the Appeal Board of the AGEPI, on communications from another party or issued by itself.
- (2) Following the examination of the appeal, the Appeal Board of the AGEPI may either take a final decision or remit the case to the AGEPI subdivision whose decision was appealed for further prosecution.
- (3) The decision of the Appeal Board of the AGEPI shall be published in BOPI.
- (4) Any decision taken by the Appeal Board of the AGEPI may be appealed, within 2 months following the date of dispatch of the notice concerning the decision, in the court within whose jurisdiction the AGEPI premises are located.

[Art. 59(4), amended by [the Law no.254 of 01.12.2017](#), in force as from 05.01.2018].

CHAPTER V

PROCEDURE AFTER GRANT OF A PATENT

Section 1

Maintenance, Termination and Revocation of a Patent

Article 60. Grant of Patent

- (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.
- (2) The grant of a patent shall not be refused and a patent shall not be revoked on the ground that the sale of the patented product or of a product obtained by means of a patented process is subject to restrictions or limitations resulting from the domestic law.
- (3) Date of issuance of a patent shall be the date on which the mention of the grant appears in BOPI. The particulars to be published shall be determined by the AGEPI.
- (4) Granted patents shall be entered in the National Register of Patents.
- (5) If the fees for grant of the patent are not paid in due time after the publication of the mention to grant a patent under the Regulations, the patent shall not be granted. The mention of the exhaustion of rights shall be entered in the National Register of Patents and published in BOPI.

Article 61. Maintenance of Patent

- (1) For the maintenance of a patent, annual fees, in accordance with Article 93, shall be paid.
- (2) The maintenance fee shall be payable after the publication of the mention of the decision to grant a patent and shall be deemed to have been paid to all effects, if it is paid within the established period.

- (3) If the maintenance fee has not been paid within the prescribed time limit, it may still be validly paid within 6 months from the expiry of the prescribed time limit for payment, provided that an additional fee is paid at the same time.

Article 62. Patents Granted to Non-Entitled Persons

- (1) If by a final court decision it is adjudged that a person referred to in Article 14, other than the applicant, is entitled to the grant of a patent, that person may, without prejudice to any other rights or actions, claim that the patent be transferred to him as the rightful owner.
- (2) If a person is entitled only to a part of the patent, he may claim under paragraph (1) above that the patent be transferred to him as a co-owner.
- (3) The rights mentioned in paragraph (1) and paragraph (2) above may be exercised legally within the prescribed time limit under the applicable law, which starts from the date on which the mention of the grant has been published in BOPI.
- (4) Filing of a claim with the court shall give rise to the entry in the National Register of Patents. A certified copy of the court decision shall be submitted to the AGEPI by the interested party. Mention of the final and irrevocable court decision shall be entered in the National Register of Patents. The decision mentioned shall produce legal effects for any third party as from the date of its publication in BOPI.

Article 63. Effects of Change of the Patent Owner

- (1) If the patent owner is changed as a result of a legal proceeding under Article 62, the licenses and other rights shall be terminated upon registration of the person entitled to the patent in the National Register of Patents.
- (2) If, prior to the filing of a claim with the court, the patent owner or the holder of a license has exploited the invention on the territory of Moldova or has made effective and serious preparations for that purpose, he may continue such exploitation, provided he applies for a non-exclusive license to the new patent owner entered in the National Register of Patents. Such application shall be filed within the term provided for in the Regulations. The license should be granted for a reasonable period and on reasonable terms and conditions.
- (3) Paragraph (2) above shall not apply where the patent owner or the holder of a license has not acted in good faith at the time of starting the exploitation of the invention or preparations for that purpose.

Article 64. Revocation of Patent

- (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.

Article 65. Procedure for Revocation of Patent

- (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.

Article 66. Surrender of Patent

- (1) The patent owner may surrender the patent by submitting a written declaration to that effect to the AGEPI. The patent may only be surrendered in its totality.

- (2) Surrender of patent shall only take effect upon introduction of the corresponding entry in the National Register of Patents and publication of notice thereof in BOPI.
- (3) The patent owner shall be required to inform the inventor, at the same time as he submits his written declaration to the AGEPI, of his intention to surrender the patent. In such case, the inventor shall have a preferential right to the grant of a patent in his name during a period of 3 months as from the date on which the patent owner has informed him of his intention to surrender the patent.

Article 67. Limitation of Patent

- (1) At the request of the patent owner, filed with the AGEPI and subject to the payment of the prescribed fee, the patent may form the subject-matter of a limitation, provided that the patent in the amended form satisfies the protection requirements. The limitation shall be effected by way of an amendment to the claims, the description or the drawings.
- (2) The request for limitation may not be filed during the period when eventual opposition is formulated or when opposition or revocation proceedings are pending.
- (3) The request for limitation may only be submitted with the consent of the person who benefits from the real right entered in the National Register of Patents or in whose name the entry was made under Article 62 paragraph (4).
- (4) If the AGEPI states that, taking into consideration the amendments made by the patent owner following the patent revocation proceedings, the grounds for revocation mentioned in Article 64 do not prejudice the maintenance of the patent, it shall decide to limit the patent. If the amendments are not admissible, it shall reject the request for limitation.
- (5) If a patent is amended under paragraph (1) above, AGEPI shall publish, on payment of the prescribed fee, a new specification of the patent containing the description, the claims and, as the case may be, any drawings, in the amended form.

Article 68. Termination of Rights Conferred by a Patent

- (1) Rights conferred by a patent shall terminate:
 - a) upon expiry of the legal protection period referred to in Article 18;
 - b) if the owner renounces the patent under conditions referred to in Article 66;
 - c) in the event of failure to pay the patent issuance and maintenance fees in due time.
- (2) Termination of rights for failure to pay the annual fee or, where appropriate, the additional fee, shall be deemed to have effect as from the date of expiration of the time limit established for payment of such annual fee.
- (3) AGEPI shall publish in BOPI a notice of the termination of rights conferred by a patent.

Section 2

Supplementary Protection Certificate

Article 69. Certificate

- (1) The owner of a patent with effects in the Republic of Moldova, the subject-matter of which is a medicinal product or a phytopharmaceutical product (basic patent) for which an authorization for marketing the product has been granted, shall avail himself, in accordance with the requirements of this law and the Regulations, of a supplementary protection certificate, hereinafter *certificate*, for those parts of the primary patent which correspond to the authorization.
- (2) The certificate shall take effect upon expiry of the legal protection term of the basic patent, for a period equal to the period covered between the date of filing of the patent application and the date of issuance of the first authorization under paragraph (1), minus 5 years.
- (3) Without prejudice to the provisions of paragraph (2), the duration of the certificate may not exceed 5 years from the expiration date of the legal protection term in respect of the basic patent, subject to payment of the prescribed fee for maintenance of the certificate.
- (3¹) 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 paragraphs (2) and (3) shall be extended by 6 months, while the period referred to in paragraph (2) may be extended once.
- (4) Within the limits of the protection conferred by the basic patent, the protection conferred by the certificate shall only extend to the product which forms the subject-matter of the authorization mentioned in paragraph (1) and any use of such product as a medicinal or phytopharmaceutical product, which was authorized prior to the expiration of the certificate.
- (5) The provisions of this law relating to patents shall apply *mutatis mutandis* to supplementary protection certificates in the absence of any provisions to the contrary and with the exception of the opposition proceedings under CHAPTER IV Section 2 of this Law.

Article 70. Application for the Grant of a Certificate

- (1) The application for the grant of a certificate shall be filed with AGEPI within 6 months following the date of issuance of the authorization mentioned in Article 69. If the authorization has been issued prior to the grant of the primary patent, the application shall be filed within 6 months from the date of grant of the patent. The application shall not be deemed filed until after the prescribed fees have been paid.
- (2) The application for the grant of a certificate must satisfy the requirements laid down in the Regulations.

Article 71. Conditions for Grant of a Certificate

- (1) A certificate shall be granted where an application is filed under Article 70 and where the following requirements are satisfied at the date of filing of that application:
 - a) the product is protected by a basic patent valid in the Republic of Moldova;

- b) the product was granted an effective authorization for marketing as a medicinal or phytopharmaceutical product;
 - c) the product is not yet a subject-matter of a certificate in the Republic of Moldova;
 - d) the authorization mentioned in letter b) is the first authorization for marketing in the Republic of Moldova of the respective product as a medicinal or phytopharmaceutical product.
- (2) If the requirements referred to in paragraph (1) above are met, the AGEPI shall take the decision to grant a supplementary protection certificate and enter the particulars of the certificate in the National Register of Patents for Invention. Mention of the decision to grant a certificate shall be published in BOPI.
- (3) The owner of more than one patent which relates to the same product may not obtain more than one certificate for that product. However, where two or more applications which relate to the same product are under examination and were submitted by two or more owners of different patents, each of such owners may obtain a certificate for that product.

Article 72. Revocation of a Certificate

- (1) The supplementary protection certificate shall be declared null and void if:
- a) it was issued in violation of Article 71;
 - b) the rights conferred by the basic patent have terminated in accordance with Article 68 before the expiration of the legal protection term;
 - c) the basic patent was cancelled or limited to the effect that the product covered by the certificate is no longer protected by the claims of the basic patent or grounds are in existence after termination of rights conferred by the basic patent, which justify the revocation or limitation of the patent.
- (2) If the basic patent is declared null and void only in a part which forms a subject matter of the authorization for marketing, the certificate shall be declared null only for the corresponding part.

CHAPTER VI

ENFORCEMENT OF RIGHTS

Article 73. Proceedings for Infringement of Rights

(1) Any natural or legal person, or any other interested bodies which have claims regarding the use of a patent application or a patent, causing direct or indirect prejudice to a natural or manufactured product, contrary to the origin of that product, may institute Court proceedings to prohibit the use of the patent application or the patent.

(1¹) 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.

(2) The following parties may institute proceedings for infringement of rights conferred under Articles 20-23:

- a) the applicant of a patent application or the patent owner;
- b) any other person entitled to use the patented invention, and in particular licensees;

c) other natural or legal persons entitled to represent the right holder.

(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.

(4) The examination of proceedings shall be suspended until the decision to grant the patent has become final.

(5) The institution of proceedings for infringement of rights deriving from a Eurasian patent shall be performed in accordance with the Eurasian Convention, the Implementing Guidelines to the Eurasian Convention as well as the applicable national legislation.

Article 74. Proceedings for a Declaration of Non-infringement of Rights

(1) Any interested person may institute proceedings against the owner of the patent or the beneficiary of an exclusive license, seeking to establish the fact that economic operations which such person performs or for which he has made effective and serious preparations, do not prejudice the rights referred to in Articles 20 and 21.

(2) Where the owner's position is not satisfactory or where the owner is unable to determine his position within 3 months, the interested person shall be entitled to institute proceedings with the competent court seeking to establish the fact of non-infringement of rights.

(4) The validity of a patent may not be challenged in proceedings for declaration of non-infringement of rights.

Article 75. Measures to Preserve Evidence up to Institution of Proceedings

(1) Any entitled person, who has presented reasonably available evidence sufficient to support his claims for infringement, may request the court prior to the institution of proceedings against illegal actions, to adopt provisional measures to preserve relevant evidence, subject to conditions which ensure the protection of confidential information and provision of a security or a corresponding equivalent assurance, which would be necessary to repair the eventual damage which might be caused to the defendant in case the infringement is not confirmed.

(2) In terms of the measures to preserve evidence, the court shall have the authority to:

a) request the detailed description of the infringing goods;

b) lay a distraint upon the infringing goods;

c) lay a distraint upon the materials and tools used to produce and/or distribute such goods, and the documents relating thereto.

(3) The proceedings for the application of measures to preserve evidence referred to in this article and Article 76 shall be performed by the court or other competent authorities in accordance with the respective provisions of the Civil Procedural Code. Measures to preserve evidence shall be taken with the participation of a court bailiff, who might be assisted by a representative of the AGEPI and a police officer.

Article 76. Preservation of Evidence in Urgent Cases

(1) Measures to preserve evidence may be established without hearing the defendant where any delay is likely to cause irreparable harm to the right holder or where there is a demonstrable risk of evidence being destroyed. The final court decision shall be communicated promptly to the affected party.

(2) The affected party shall have the right to request a review of final decisions on preservation of evidence.

Article 77. Revocation of Measures to Preserve Evidence

(1) Measures to preserving evidence shall be considered null or void:

a) where the plaintiff does not institute court proceedings for infringement of his rights within 20 working days after such measures are taken;

b) as a consequence of any harmful actions or inactions on the part of the plaintiff;

c) where it is subsequently found that there has been no infringement or threat of infringement of rights deriving from the patent application or the patent;

d) by court decision where other reasons exist provided for in the applicable law.

(2) Where the measures to preserve evidence have caused damage and have been declared null or void, the plaintiff must pay to the defendant an adequate compensation.

Article 78. Presentation and Preservation of Evidence in the Proceedings for Infringement of Rights

(1) The court shall have the authority, where a party presents reasonably available evidence to support its claims and specifies evidence relevant to substantiation of its claims which lies in the control of the opposing party, to order that this evidence be produced in sufficient and reasonable amounts, subject to conditions which ensure the protection of confidential information. Where substantial damage is incurred, in order to assess such damage the court may order the parties to produce additionally the relevant banking, financial or commercial documents.

(2) Where a party to the proceedings voluntarily and without good reason refuses access to, or otherwise does not provide necessary information within a reasonable period, or significantly impedes a procedure relating to an enforcement action, the court shall decide on the acceptance or rejection of the brought action on the basis of the information presented to it, including the complaint or the allegation presented by the party adversely affected by the denial of access to information, subject to providing the parties an opportunity to be heard on the allegations or evidence.

(3) In the examination of infringements of the owner's rights, if the subject-matter of a patent is a manufacturing process of a product, the court shall have the authority to order the defendant to prove that the process used by him to manufacture an identical product is different from the patented process. In the adduction of proof to the contrary, the legitimate interests of the defendant in protecting his manufacturing and business secrets shall be taken into account.

(4) If the defendant fails to provide such evidence, any identical product when produced without the consent of the patent owner shall, in the absence of proof to the

contrary, be deemed to have been manufactured by the patented process in the following two circumstances:

- a) if the product manufactured by the patented process is new;
- b) if there is a substantial likelihood that the identical product was manufactured by the patented process and the patent owner has been unable through reasonable efforts to determine the process actually used.

Article 79. Right to Information

(1) The court shall have the authority, where it is found during the examination of the case that the rights deriving from a patent application or a patent are infringed, to order that the information regarding the origin and channels of distribution of the infringing goods or services be provided by the defendant and/or any other person which is:

- a) found to possess the infringing goods intended for commercialization;
- b) found to use for commercial purposes the services with infringing goods;
- c) found to supply for commercial purposes services with goods used in infringing activities; or
- d) was indicated by any person mentioned under letters a), b) or c) as being involved in the production, manufacture or distribution of goods or provision of services.

(2) The information mentioned in paragraph (1) may include, where appropriate:

- a) the names and addresses of producers, distributors, suppliers and other previous possessors of the goods or services as well as the target wholesalers and retailers;
- b) the information regarding the quantities produced, supplied, received or ordered as well as the prices for the respective goods or services.

(3) Paragraph (1) and (2) shall be applied without prejudice to other legal and regulatory provisions which:

- a) entitle the right owner to more detailed information;
- b) regulate the use of the information provided under this article in civil or penal law proceedings;
- c) regulate the responsibility for the abuse of the right to information;
- d) provide the possibility of refusal to provide the information, which prevents the person mentioned in paragraph (1) from admitting his own involvement or that of his close relatives in the actions infringing the rights conferred by a patent application or a patent; or
- e) regulate the protection of confidentiality of the information sources or processing of personal data.

Article 80. Measures to Ensure the Proceedings for Infringement of Rights

(1) Where the court establishes the actual or imminently threatening infringement of the rights conferred by a patent application or a patent, it may, upon request of the patent owner, institute certain measures to ensure the proceedings for infringement of rights against the defendant and/or intermediaries, such as to:

- a) issue a provisional ruling to prohibit any activities which constitute an infringement of rights or to permit the continuation of such activities, subject to the provision of a security sufficient to cover the eventual damage to the patent owner;

b) lay a distraint upon goods suspected of infringing a right conferred by a patent application or a patent with the aim to prevent their release into the channels of commerce;

c) lay a provisional distraint upon defendant's assets, including the arrest of banking accounts, presentation of banking, financial or commercial documents, where the infringement was committed on commercial scale and there exists a risk of the impossibility to recover the incurred damage.

(2) Measures to ensure the proceedings for infringement of rights may be ordered under Article 75 without hearing the defendant, where any delay is likely to cause irreparable harm to the patent owner or where there is a demonstrable risk of evidence being destroyed. The court decision shall be communicated promptly to the affected party.

Article 81. Corrective measures

(1) The court shall have the authority, where an infringement is stated, to order, upon request of the plaintiff, taking of measures in respect of the goods found to be infringing the rights conferred by a patent application or a patent and, where appropriate, the materials and implements used for the creation and manufacture of such goods. Such measures may include, in particular:

- a) provisional disposal of the infringing goods outside the channels of commerce;
- b) final disposal of the infringing goods outside the channels of commerce; or
- c) destruction of the goods infringing the rights conferred by a patent application or a patent.

(2) The measures mentioned in paragraph (1) above shall be performed at the infringer's expense, unless this would be contrary to existing substantiated reasons.

(3) In considering the request for application of the corrective measures, the court shall be guided by the principle of equity, the seriousness of the infringement and the remedies ordered as well as the interests of third parties.

Article 82. Enforcement of a Court Decision

Where a court decision is issued stating the infringement of rights conferred by a patent application or a patent, the court may, upon request of the right owner, take measures to enforce the court decision against the defendant, ordering the latter to terminate any infringing activities. To that end, the court may order the defendant to provide a corresponding security or equivalent assurance. The right owner may request to apply similar measures against the intermediaries whose services are used by a third party to infringe the owner's rights conferred by a patent application or a patent.

Article 83. Alternative Measures

Where the infringer did not knowingly, or with reasonable grounds to know, engage in infringing activity, the court may order him, upon request of the interested person, to pay certain pecuniary compensation, in place of the measures to enforce the rights provided for in this chapter, if the application of such measures would cause disproportionate damage and if the plaintiff is reasonably satisfied with the pecuniary compensation.

Article 84. Damages

(1) Upon request of the affected party, the infringer who knowingly, or with reasonable grounds to know, engaged in an activity infringing the rights conferred by a patent application or a patent shall be ordered to pay the right holder damages adequate to compensate for the injury the right holder has suffered because of the infringement of his rights. In evaluating the damage:

a) due account shall be taken of the respective circumstances, such as the negative economic effect, including the lost profits suffered by the affected party, the benefits received unfairly by the infringer and, as the case may be, other aspects, such as moral damage the affected party has suffered because of the infringement of his rights; or

b) alternatively, a lump amount may be fixed on the basis of certain components, such as, at least, the amount of the royalty or fees which would have been payable, had the infringer applied for the authorization to use the respective patent application or patent.

(2) When the infringer commits the infringement not knowingly, or with reasonable grounds to know about it, he shall be obliged to repay the lost profits or the damages suffered by the right holder, established by the applicable law.

Article 85. Publication of Court Decisions

(1) In the proceedings for infringement of rights conferred by a patent application or a patent, the competent court may order, upon the plaintiff's request and at the expense of the infringer, respective measures to disseminate the information regarding the court decision, including the bill sticking as well as publication of the respective decision in whole or in part.

(2) The competent court may also order, at the expense of the infringer, additional publication-related measures in line with the particular circumstances, including a large-scale publication.

(3) The court shall furnish to the AGEPI a copy of the final decision.

CHAPTER VII COMMON PROVISIONS

Section 1

General provisions governing procedure

Article 86. Representation

(1) Subject to the provisions of paragraph (2) below, no person shall be compelled to be represented by an authorized professional representative in proceedings before the AGEPI.

(2) Natural or legal persons not having their residence or principal place of business in the Republic of Moldova shall be represented by a professional representative and act through him in all proceedings established by this Law, other than in the following situations:

- a) filing of a patent application;
- b) payment of fees;

c) filing of an earlier application.

(3) Natural or legal persons not having their residence or principal place of business in the Republic of Moldova may be represented in proceedings before the AGEPI by an employee.

(3) Representation shall be based on a power of attorney registered with the AGEPI, on terms and conditions provided by the Regulations.

(4) The professional representatives shall act on the basis of the Regulations on Patent Attorneys, approved by the Government.

Article 87. Amendments

(1) A patent application or a patent may be amended in proceedings before the AGEPI, in accordance with the Regulations. In any event, the applicant shall be given at least one opportunity to amend the description, the claims and the drawings of his own volition, subject to payment of the prescribed fee.

(2) The patent application or patent may not be amended in such a way that it contains subject-matter which extends beyond the content of the application as filed.

(3) The patent may not be amended in such a way as to extend the protection it confers.

Article 88. Ex Officio Examination

(1) The AGEPI may act upon its own initiative in the examination of the facts or revocation of its decisions on grounds of non-compliance with the requirements of this Law; it shall not be restricted in this examination to the analysis of facts, evidence and arguments provided by the parties.

(2) AGEPI may disregard facts or evidence which are not claimed or submitted in due time by the parties concerned.

Article 89. Observations by Third Parties

(1) 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.

(2) The third parties shall not be parties to the proceedings before the AGEPI.

Article 90. Extension of Time Limits

(1) Time limits provided for in this Law or in the Regulations for an action in a proceeding before the AGEPI related to an application or a patent may be extended by a request filed with the AGEPI before the expiry of the prescribed time limit. Any time limit may not be extended for more than 6 months from the date of expiry of the prescribed time limit.

(2) A request for extension shall be subject to payment of a prescribed fee; in the opposite case the application for extension shall be deemed not filed.

(3) The provisions of this article shall not be applicable to the time limits referred to in paragraph (1) of this article as well as in Article 15 paragraph (6), Article 32

paragraph (3), Article 33 paragraphs (9) and (10), Articles 39–42, Article 43 paragraphs (1) and (2), Article 51 paragraph (2), Article 57 paragraph (1), Article 58 paragraph (3), Article 61, Article 70 paragraph (1), Article 91 paragraph (2), Article 92 paragraph (2).

Article 91. Continuation of Proceedings after Non-Observance of the Time Limit

- (1) Where the applicant was unable to observe a prescribed time limit for proceedings before AGEPI, he may request re-establishment of the omitted term and continuation of the proceedings in relation to the patent application.
- (2) The request must be filed in writing within 6 months following the expiry of the prescribed time limit. The omitted act must be completed within this period. The request shall not be deemed to have been filed until the fee for re-establishment of the omitted term has been paid; otherwise it shall be rejected.
- (3) Time limits referred to in Article 90 paragraph (3) shall be excluded from re-establishment of the omitted time limit.
- (4) If the request is granted, the legal consequences of the failure to observe the time limit shall be deemed not to have ensued.

Article 92. Re-establishment of Rights (*restitutio in integrum*)

- (1) The applicant for or owner of a patent who, in spite of all due care required by the circumstances having been taken, was unable to observe a time limit vis-à-vis AGEPI, shall have his rights re-established upon request if the non-observance of this time limit has the direct consequence of causing the refusal of the patent application, or of a request, or the deeming of the patent application to have been withdrawn, or the revocation of the patent, or the loss of any other right or means of redress.
- (2) The request must be filed in writing within 2 months from the removal of the cause of non-compliance with the time limit, but no later than 12 months following the expiry of the unobserved time limit. If the respective request relates to revalidation of the patent in connection with non-payment of the annual maintenance fee, the period of 12 months shall be deemed to start from the date of expiry of the time limit specified in Article 61 paragraph (3).
- (3) The request must state the grounds on which it is based. It shall not be deemed to have been filed until the fee for re-establishment of rights has been paid.
- (4) The provisions of paragraph (1) of this article shall not be applicable to the time limits referred to in paragraph (2) of this Article as well as in Article 15 paragraph (6), Article 16 paragraph (1), Article 40 paragraph (6), Article 41 and 42, Article 51 paragraph (2), Article 57 paragraph (1) and Article 58 paragraph (3).
- (5) Any person who has in good faith used or made effective and serious preparations for using an invention which is the subject of a published patent application or a patent in the period between the loss of rights referred to in paragraph (1) and publication of the mention of re-establishment of those rights, may without payment of any compensation and within the limits of the existing volumes continue such use in the course of his business or for the needs thereof.

Article 93. Fees

- (1) The procedures carried out by the AGEPI in respect of patent applications and granted and issued patents, specified in this Law and in the Regulations, shall be subject to the levying of patent fees. Any procedure carried out on the basis of an application shall be deemed requested from the date of payment of the prescribed fee.
- (2) Fees for the actions relating to protection of inventions, their amount and payment terms shall be governed by the Government.
- (3) Fees shall be paid by the applicant, the patent owner or by any other natural or legal person concerned.
- (4) Fees for maintenance of a patent and a supplementary protection certificate shall be paid for each year calculated from the date of filing of the application and for each year of effectiveness of the certificate following the procedures specified in the Regulations on Fees.
- (4¹) 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.
- (5) Paid fees, except for the fee for filing of a patent application, shall be repaid to the payer upon his application, where the procedures or actions for which they were paid did not take place.
- (6) The fee paid in an amount below the established rate shall be taken into account only upon payment of the difference, and the procedure shall start upon payment of the full fee.
- (7) Where urgent execution of the procedures for substantive examination and search is requested, the fees payable for the urgency shall increase by 100% as compared to the established fee for the respective procedure, and the term for the execution of the respective actions shall decrease by half.
- (8) Oppositions and appeals of the central and local public authorities shall be examined free of charge where they act in the interests of the state or in the public interests.

Article 94. Hearing of Litigation

- (1) The Appeals Board of the AGEPI shall hear litigation with respect to:
 - a) the grant or rejection of a patent application;
 - b) the grant or refusal of any priority right;
 - c) division of a patent application;
 - d) withdrawal of a patent application or renunciation of a patent;
 - e) limitation of patent protection;
 - f) re-establishment of rights.
- (2) The courts shall hear litigations in accordance with the competence specified in the Civil Procedural Code.

Section 2

Information

Article 95. Registers

- (1) AGEPI shall keep the National Register of Patent Applications, the National Register of Short-Term Patent Applications, the National Register of Patents and the National Register of Short-Term Patents which shall contain those particulars the registration of which is provided for by this Law and by the Regulations. The register keeping rules shall be specified in the Regulations.
- (2) The National Register of Patents and the National Register of Short-Term Patents shall be open to public inspection. Entries in the National Register of Patent Applications and the National Register of Short-Term Patent Applications shall be deemed confidential up to the publication of the patent application.
- (3) AGEPI may upon request and subject to the payment of the prescribed fee issue extracts from registers, subject to compliance with the provisions of paragraph (2).

Article 96. Public Inspection

- (1) The files relating to patent applications which have not yet been published shall not be made available for inspection without the consent of the applicant.
- (2) Any person who can prove that the applicant for a patent has invoked the rights under the patent application against him may subject to obligation to keep confidentiality obtain inspection of the files before the publication of that application and without the consent of the applicant.
- (3) After the publication of the patent application, the files relating to such application and the resulting patent may be inspected on request, subject to the restrictions laid down in the Regulations.
- (4) Even before the publication of the patent application, AGEPI may communicate to third parties or publish the particulars specified in the Regulations.
- (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 the legislation in force.

CHAPTER VIII

TRANSITIONAL AND FINAL PROVISIONS

Article 97. Entry into Force and Applicability

- (1) This Law shall enter into force at the expiration of 3 months from the date of its publication, except for Articles 75, 76, 77 and 78 to be published with the entry into force of the corresponding amendments made in the Civil Procedural Code.
- (2) The following shall be abrogated on the date of entry into force of this Law:
 - a) Law No. 461-XIII on Patents for Invention of May 18, 1995;

b) Article 12 and Article 13 of the Law No. 412 – XIV on Animal Breeding of May 27, 1999.

(3) This Law shall not prejudice the patents and utility model registration certificates granted and valid on the territory of the Republic of Moldova before entry into force thereof, as well as the utility model registration renewal procedure. 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.

(4) This Law shall not apply to patent applications and applications for the registration of utility models in respect of which the procedure undertaken in accordance with the Law No. 461-XIII on Patents for Invention of May 18, 1995 and the Provisional Regulations on the Protection of Industrial Property in the Republic of Moldova approved by the Government Decision No. 456 of July 26, 1993 has not been completed.

(5) The provisions referred to in paragraph (2) shall apply to patents and utility model registration certificates in respect of which opposition proceedings are underway or the period for opposition has not yet expired as on the date of entry into force of this Law.

Article 98. Implementation of This Law

Within 3 months following the entry into force of this Law, the Government:

- shall submit to Parliament proposals to adapt the current legislation to this Law, including proposals to amend the Civil Procedural Code;
- shall adapt its regulatory texts to this Law.

CHAIRMAN OF THE PARLIAMENT MARIAN LUPU

Chisinau, 7 March 2008. Nr.50-XVI