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PATENT LAW NO.64/1991¹

CHAPTER I - GENERAL PROVISIONS

Art. 1 - The rights in inventions shall be recognized and protected on the territory of Romania by the grant of a patent by the State Office for Inventions and Trademarks under the conditions specified by the law.

The rights arising from the European patent shall also be recognized and protected, according to the law.

Art.2 - For the purposes of this Law, the terms and phrases below shall be defined as follows:

- a) *European patent* - the patent granted under the European Patent Convention;
- b) *international application* - the application for the protection of an invention, filed under the Patent Cooperation Treaty;
- c) *industrial property attorney* - the person specialized in rendering assistance in the industrial property field (inventions, trademarks, industrial design etc.) which legally carries out said activity.
- d) *European Patent Convention* - the Convention on the Grant of European Patents concluded in Munich on 5 October 1973, as amended by the act revising Article 63 EPC of 17 December 1991 and by the decisions of the Administrative Council of EPO of 21 December 1978, 13 December 1994, 20 October 1995, 5 December 1996

¹Republished within the meaning of Art. IV of the Law no.28/2007 for amending and completing the Patent Law no. 64/1991, published in the Official Gazette of Romania, Part I, no. 44 of 19 January 2007 and rectified in the Official Gazette of Romania, Part. I, no.351 of 23 May 2007, the texts being given a new numbering.

Patent Law no. 64/1991 was republished in the Official Gazette of Romania, Part I, no. 752 of 15 October 2002, and subsequently amended by:

- Law no. 571/2003 on the Fiscal Code, published in the Official Gazette of Romania, Part I, no. 927 of 23 December 2003;

- Government Emergency Ordinance no. 190/2005, concerning necessary measures to be taken within the European integration process, published in the Official Gazette of Romania, Part I, no.1179 of 28 December 2005, approved with the corresponding amendments and completions by the Law no. 332/2006, published in the Official Gazette of Romania, Part I, no. 629 of 20 July 2006.

- Law no. 278/2006 for amending and completing the Criminal Code, as well as for amending and completing other laws, published in the Official Gazette of Romania, Part I, no. 601 of 12 July 2006;

and 10 December 1998, as well as by the Revision Act adopted in Munich on 20 November 2000;

e) *Paris Convention* - Paris Convention for the Protection of Industrial Property of 20 March 1883, as revised and amended;

f) *description* - the presentation of the invention in writing;

g) *inventor* - the person who created the invention;

h) *professional representative* - industrial property attorney who may also undertake representation in proceedings before the State Office for Inventions and Trademarks;

i) *OSIM* - the State Office for Inventions and Trademarks;

j) *predecessor* - natural or legal person entitled to the patent before the filing of the patent application;

k) *publication* - dissemination of information in a manner accessible to the public;

l) *applicant* - the natural or legal person applying for the grant of a patent;

m) *successor in title* - any natural or legal person to whom either the right to the grant of the patent, or the rights arising from a granted patent, was transferred;

n) *claim* - the part of the patent comprising the subject-matter of the requested protection and whose contents determine the scope of protection;

o) *patent owner* - the natural or legal person to whom the right conferred by the patent belongs;

p) *employer* - legal person functioning legally;

q) *person exploiting the invention* - natural or legal person who legally applies the invention. The person exploiting the invention may be the same person as the patent owner.

Art. 3 - The right to the patent shall belong to the inventor or his successor in title.

Art. 4 - Where the invention has been created jointly by several inventors, each of them shall have the status of joint inventor and the right shall belong to them jointly.

If two or more persons have created the same invention independently of one another, the right to the patent shall belong to the person who filed the patent application having the earliest filing date.

Art. 5 - Where the inventor is an employee, in the absence of a contractual provision more favourable to him, the right to the invention shall belong:

a) to the employer, in the case of inventions made by the employee under a contract of employment that explicitly provides for an inventive mission corresponding to his duties; the inventor shall be paid additional remuneration specified by contract;

b) to the employee, in the case of inventions made by him, either in the course of his duties, or in the field of activity of the employer, through knowledge or use of technology or means specific to the employer, or information available on the premises of the employer, or again with material assistance from the employer, except where otherwise provided by the contract.

Where the invention is the result of a research contract, unless otherwise provided, the right to the patent shall belong to the employer who commissioned the research, the inventor being entitled to additional remuneration specified in an additional clause of the contract.

In the cases provided for in paragraph 1 a) and b) and in paragraph 2, the inventor and the employer shall have the obligation to inform each other in writing on the creation and the stage of development of the invention and to refrain from disclosing it.

Failure to observe the obligation to inform shall result in the liability of the person responsible.

If, in the cases provided for in paragraph 1 a) and paragraph 2, the patent application has not been filed with OSIM within 60 days of the employee's having informed the employer in writing on the drawing up of the description of the invention, the right to be granted the patent shall belong to the employee under the conditions provided for in paragraph 1 b), unless otherwise agreed between the parties.

In the case provided in paragraph 1 b), the employer shall have a preferential right to conclude a contract in respect of the invention of his employee and it shall be exercised within 3 months from the employee's offer; in the absence of an agreement on the contract price, it shall be fixed by judicial decision.

Art. 6 - Foreign natural or legal persons having their domicile or registered office outside the territory of Romania shall benefit by the provisions of this law, according to international treaties and conventions on inventions to which Romania is a party.

CHAPTER II - PATENTABLE INVENTIONS

Art. 7 - A patent shall be granted for any invention having as a subject-matter a product or a process, in all technological fields, provided that it is new, involves an inventive step and is susceptible of industrial application.

Inventions in the field of biotechnology shall be patentable if they relate to:

- a) biological material which is isolated from its natural environment or produced by any technical process, even if it previously occurred in nature;
- b) plants or animals, if the technical feasibility of the invention is not limited to a particular plant variety or animal breed;
- c) a microbiological process or other technical process or a product, other than a plant variety or animal breed, obtained by means of said process;
- d) an element isolated from the human body or otherwise produced by 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.

Art. 8 - The following in particular shall not be considered as inventions, within the meaning of Art. 7:

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

The provisions of paragraph 1 shall exclude the patentability of the subject-matters or activities referred to therein, only to the extent to which the patent application or patent relates to such subject-matter or activities as such.

Art. 9 - Patents shall not be granted under this Law in respect of:

a) inventions the exploitation of which would be contrary to public order or morality, including inventions harmful to the health or life of persons, animals or plants, and which are likely to seriously harm the environment, provided that such exception from patentability shall not depend merely on the fact that exploitation is prohibited by a legal provision;

b) plant varieties and animal breeds, as well as the essentially biological processes for the production of plants or animals. This provision shall not apply to microbiological processes or products obtained thereby;

c) the inventions having as a subject-matter the human body in its various stages of formation and development, as well as the mere discovery of one of its elements, including the sequence or partial sequence of a gene;

d) methods of treatment concerning the human or animal body, by surgery or therapy and methods of diagnosis applied to human or animal body.

The provisions of paragraph 1 d) shall not apply to products, in particular substances or compositions to be used in any such method.

Art.10 - An inventions shall be considered to be new if it does not form part of the state of the art.

The state of the art shall be held to comprise all knowledge that has been 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.

The state of the art shall be also held to comprise the content of the patent applications filed with OSIM and international applications that have been entered the national phase in Romania or European patent applications designating Romania as filed, provided that their filing date is prior to the date referred to in paragraph 2 and they were published on or after that date, according to the Law.

The provisions of paragraphs 2 and 3 shall not exclude the patentability of any substance or composition comprised in the state of the art, to be used in a method referred to in Art. 9, paragraph 1 d), provided that its use in any such method is not comprised in the state of the art.

The provisions of paragraphs 2 and 3 shall not exclude the patentability of any substance or composition referred to in paragraph 4, for any other specific use, in any method referred to in Art. 9, paragraph 1 d), provided that its use in any such method is not comprised in the state of the art.

Art. 11 - For the application of Art. 10, the disclosure of the invention shall not be taken into consideration if it occurred within the six months preceding the filing of the patent application, and if 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 official or officially recognized international exhibition falling within the terms of the Convention on international exhibitions signed at Paris on 22 November 1928 with the subsequent revisions.

The provisions of paragraph 1 b) shall be applicable only if the applicant states, when filing the patent application, that the inventions has been actually displayed and if

he files a document supporting his statement within the time limit and under the conditions provided for by the implementing regulations concerning this Law.

Art. 12 - 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.

Patent applications referred to in Art. 10, paragraph 3, although included in the state of the art, are not to be considered in deciding whether there has been an inventive step.

Art. 13 - An invention shall be considered as susceptible of industrial application if it can be made or used in any industry, including agriculture.

The industrial application of a sequence or partial sequence of a gene must be disclosed in the patent application.

CHAPTER III - REGISTRATION, PUBLICATION, AND EXAMINATION OF PATENT APPLICATION, GRANT OF THE PATENT

Art.14 - The patent application drawn up in Romanian must contain:

- a) the request for the grant of a patent;
- b) applicant's identification data;
- c) a description of the invention;
- d) one or more claims;
- e) drawings referred to in the description or the claims.

If the applicant is not the inventor, the patent application shall also contain particulars serving to identify the inventor and shall be accompanied by a document indicating the origin of the right to the grant of the patent.

The document referred to in paragraph 2 shall be filed before a decision is taken in respect of the patent application.

The patent application shall be filed by the person entitled to the grant of the patent, either in person, or in any manner specified by the regulations for implementing this Law.

In all the proceedings before OSIM, the applicant shall be regarded as the person entitled to the grant of the patent. The patent application shall be filed with OSIM, at the applicant's choice on paper or in any other form and means of transmittal agreed by OSIM and provided in the regulations for implementing this Law.

The patent application shall be accompanied by an abstract which may not be filed later than 2 months before the patent application publication date.

The abstract shall exclusively serve for use as technical information; it may not be taken into account for other purposes, in particular not for the purpose of interpreting the scope of protection nor for the purpose of applying the provisions of Art. 10, paragraph 3.

Art. 15 - The date of filing of the patent application shall be the date on which the following are registered with OSIM:

- a) an explicit or implicit indication that the grant of a patent is requested;
- b) indications serving to identify the applicant or to make possible for OSIM to

contact him:

c) a part which should, at first sight, seem to be a description of the invention.

Where a part of the description is missing, for the purposes of according the filing date, said part can be subsequently filed, the filing date being the date on which said part is filed and on which the fee for the registration of that part is paid.

If the missing and subsequently filed part of the description specified under paragraph 1 c) is withdrawn, the filing date shall be the date on which the requirements referred to in paragraph 1 are fulfilled.

The conditions for the subsequent filing and those for the withdrawal of the missing and subsequently filed part pursuant to the paragraph 2 shall be laid down by the Implementing Regulations in respect of this Law.

Where the patent application does not comprise a part which, at first sight seems to be a description, for the purpose of according a filing date, reference may be made in the patent application, in the Romanian language, to a prior application filed with any office, which replace the description, while observing the provisions of the regulations for implementing this Law. Otherwise, the application shall not be treated as a patent application.

The patent application shall be registered in the National Register of Patent Applications. The data contained in the Register shall not be available to the public, until their publication in the Official Industrial Property Bulletin, according to the special law.

The claims and drawings relating to the invention may be filed within two months from the date of filing the patent application, provided that the legal fee is paid.

In the case of the international patent application or the European patent application, the filing date shall be the date resulting from the international treaties and conventions to which Romania is party and that date shall be registered in the National Register of Patent Applications.

Art. 16 - Natural or legal persons may, on justified reasons, file the description, claims and drawings in a foreign language, provided that a certified translation of said documents in the Romanian language is filed with OSIM within 2 months from the registration of the patent application or from the date of entering the national phase, as the case may be, and the legal fee is paid.

There shall be considered as complying with the requirements concerning the form and the content of an application under this Law:

a) international applications complying with the requirements concerning the form and the content prescribed by the Patent Cooperation Treaty adopted by the Diplomatic Conference in Washington on 19th of June 1970, ratified by the Decree no. 81 of 2nd of March 1979 of the Council of State with its subsequent modifications;

b) international applications complying with the requirements concerning the form and the content prescribed by the Patent Cooperation Treaty and required by OSIM or EPO, when acting on behalf of OSIM, after their processing or examination has begun.

Any other requirements regarding the form and the content of the application, provided by the Implementing Regulations to this Law shall be observed.

The filing of the patent application shall produce the effects of a regular national filing provided that the provisions of Art. 14, paragraph 1 or Art. 16, paragraph 1 are fulfilled.

Regular national filing means any filing that is sufficient for establishing the date on which the application was filed, whatever may be the outcome of the application.

Art. 17 - Any person who has duly filed a patent application with OSIM in compliance with Art. 14, paragraph 1 and Art. 16, paragraph 1, or his successor in title, shall, from the date of filing the application, enjoy a right of priority relative to any other subsequent filing in respect of the same invention.

Art. 18 - The invention shall be disclosed in the patent application in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art.

If the invention relates to a biological material or to the use of a biological material which is not available to the public and which cannot be described in the patent application in such a manner as to enable the invention to be carried out by a person skilled in the art, the requirements prescribed in paragraph 1 shall only be considered fulfilled if the applicant produces a document attesting that, prior to the date of filing of the patent application, the biological material was deposited with an international depository institution.

The claims shall define the matter for which protection is sought and shall be clear and concise and be supported by the description of the invention.

Art. 19 - A patent application shall relate to one invention only or to a group of inventions so linked as to form a single inventive concept.

Patent applications that fail to meet the condition specified in the first paragraph may be divided by the applicant, either on his own initiative or at the request of OSIM, until such time as a decision has been made on the said patent applications.

An application resulting from the division shall only claim the elements that do not go beyond the content disclosed in the original application. Applications resulting from the division complying with that requirement shall be considered to have been filed on the filing date of the original application, and each of them shall enjoy the right of priority claimed thereby.

Art. 20 - Any person who has duly filed, in any State party to the Paris Convention for the Protection of Industrial Property or Member State of the World Trade Organization, an application for a patent, utility model or utility certificate, or his successor in title, shall enjoy, for the purpose of filing a subsequent patent application in Romania in respect of the same invention, a right of priority during a period of twelve months of the date of filing of the earlier application.

Every filing that is equivalent to a regular national filing under the national law of any State party to the Paris Convention for the Protection of Industrial Property or Member State of the World Trade Organization where it was made, shall be recognized as giving rise to a right of priority.

A European patent application having Romania as a designated State and for which a filing date was accorded, is equivalent in Romania to a regular national filing, the priority claimed for the European patent application being taken into consideration, where appropriate.

The applicant for a patent application may take advantage of the priority of a

previous application for the same invention if he files with the patent application a declaration claiming the priority of the earlier application justified by priority documents under the provisions laid down by the Implementing Regulations to this Law.

Multiple priorities may be claimed and recognized in respect of a patent application, while observing the provisions of paragraph 1, only for those elements of the patent application comprised in the application(s) whose priority is claimed; multiple priorities may also be claimed, where appropriate, for the same claim.

Priority may be recognized only for those elements which are clearly disclosed in the patent application as a whole.

Priority may also be recognized for an application which claims or may have claimed the priority of an earlier application, on a filing date subsequent to the expiry of the priority time limit, but no later than two months from the expiry of said time limit, against payment of the prescribed fee, provided that:

a) an express request to that effect is drawn up under the conditions laid down by the Implementing Regulations to this Law;

b) the application is drawn up within the prescribed time-limit;

c) the application presents the reasons why the priority time limit was not observed;

d) OSIM finds that the subsequent patent application was not filed within the priority time limit, although concerned diligence was exercised, or non-observance of time limit was unintentional.

Where the applicant claims a right of priority belonging to another person, an authorization shall be filed with OSIM by the assignor, attesting the fact that the applicant is entitled to claim the priority of the earlier application.

The authorization shall be filed within three months from the date on which priority was claimed, at the most.

Art. 21 - If a subsequent patent application is filed by the applicant of the earlier application or by his successor in title, within a time limit of 12 months from the filing date of a patent application accorded by OSIM, a priority right named *internal priority right* may be claimed in the subsequent application for the same invention. Where an internal priority right is claimed in a subsequent application, the earlier application whose priority is claimed shall be deemed to be withdrawn, if a decision has not been made thereon.

Internal priority may be claimed on the date of filing the subsequent application or within two months of that date.

The internal priority of an earlier application claimed in a subsequent application shall not be recognized if:

a) at least one of the patent applications enjoyed a priority right under Art. 17 above;

b) internal priorities were claimed in the earlier application, the date of one such priority being earlier than the 12-month time-limit calculated from the filing date of the subsequent application;

c) the internal priority document was not filed within the time limit prescribed by the Implementing Regulations to this Law.

Art. 22 - Where the applicant has failed to claim priority at the time of filing the patent application, he may claim it, pursuant to the provisions of the Implementing Regulations to this Law, up to two months following that date, against payment of the prescribed fee.

Priority documents shall be filed within a time limit of 16 months from the date of the earliest priority or 4 months from the date of opening the national phase, as the case may be.

Where the translation of an earlier patent application used as a basis for priority claim is needed in the examination procedure, OSIM shall invite the applicant to file a certified translation into Romanian of the earlier application, while observing the provisions of the Implementing Regulations to this Law.

Non-recognition of priority for failure to comply with the provisions of paragraph 2 or Art. 20 shall be determined by OSIM within 6 months of the filing date or of the date of entering the national phase.

Art. 23 - Patent applications filed by national route, for which the regular national filing has been effected, shall be published as soon as possible after the expiry of a period of 18 months from the date of filing or, if priority has been recognized, as from the date of priority, except in the case provided for in Art. 40, paragraph 2.

Patent applications filed under the Patent Cooperation Treaty shall be published as soon as possible after the expiry of a period of 6 months from the opening of the national phase.

At the request of an entitled natural or legal person, publication may be effected within a shorter time than that prescribed in paragraphs 1 and 2, under the provisions of the Implementing Regulations to this Law.

Where the decision to grant the patent has been made before the expiry of the time limit prescribed in paragraph 1, the patent application shall be published simultaneously with the publication of the notice mentioning the decision to grant the patent.

Patent applications referred to in Art. 40, paragraph 2, shall be published within 3 months from the date on which the classified status of the information comprised therein has been lifted.

Where before the expiry of the 18-month period a decision to reject has been made or the patent application has been withdrawn or declared as deemed to be withdrawn, the patent application shall not be published.

The publication of the application shall be mentioned in the Official Industrial Property Bulletin and shall be effected under the provisions of the Implementing Regulations to this Law.

Art. 24 - At the request of the applicant, OSIM shall draw up a search report which may be accompanied by a written opinion concerning the patentability, where appropriate, and shall publish the search report under the provisions of the Implementing Regulations to this Law.

If the search report is not published at the same time as the patent application, it shall be published subsequently.

Art. 25 - Examination of the patent application may be requested on the filing date of the patent application or, as the case may be, upon the opening of the national phase or within 30 months from one of these dates.

For the patents applications containing information classified as secret of State, examination may be requested on the filing date of the patent application or within 3 months from the date on which such secrecy has been lifted, but no later than 30 months before the expiry of the patent duration prescribed under Art. 31.

Art. 26 - OSIM shall examine whether:

A. the patent application satisfies:

- a) the provisions of Art. 6;
- b) the requirements concerning filing, prescribed under Art. 14 - 16;
- c) the requirements for recognizing the priority, prescribed under Art. 20, 21 and

22;

- d) the requirement of unity of invention, prescribed under Art. 19, paragraph 1;

B. the invention which is the object of the application:

- a) is disclosed in accordance with Art. 18;
- b) is not excluded from patentability under Art. 8, paragraph 1, or does not fail to comply with the requirements under Art. 9;
- c) satisfies the patentability conditions under Art. 7 and Art. 10 - 13.

Art. 27 - OSIM is authorized to request the applicant to provide explanations and documents considered necessary in connection with the identity of the applicant or the inventor, with the regular national filing effected or in order to meet the conditions of patentability.

In all the procedures related to the patent application or the patent, OSIM may send notifications to the applicant, the patent owner or the interested person, and they may send communications to OSIM, observing the time limits prescribed by the Implementing Regulations to this Law, time-limits that may be extended by OSIM upon request, against payment of the prescribed fee.

The absence of notifications shall not absolve the applicant, patent owner or interested person from the obligation to meet the requirements of this Law.

The applicant shall file with OSIM all public documents connected to his invention, including copies of patents granted in other States.

At the request of OSIM or on his own initiative, the applicant or his successor in title may, until such time as a decision is made, modify the patent application, provided that the disclosure of the invention do not extend beyond the content of the patent application on the filing date.

Art. 28 - On the basis of the patent application examination report, OSIM shall decide through the specialized Examination Board, to grant a patent or to refuse the patent application.

OSIM shall decide to refuse the patent application in the following cases:

- a) the patent application does not meet the requirements laid down in Art. 6, Art. 16 paragraphs 1 and 4 and Art. 39 paragraph 2;
- b) the invention to which the application relates is not patentable within the

meaning of Art. 8 or is covered by the provisions of Art. 9 or does not meet the patentability conditions laid down in Art. 7, 10, 12 and 13;

c) the invention to which the application relates does not meet the requirements of Art. 18;

d) the time-limit for opening the international phase for internationally registered applications has expired;

e) the 12-month time-limit from the date on which applications under the paragraph 4, b) were deemed to be withdrawn has elapsed;

f) refusal of the patent application in accordance with Art. 66, paragraph. 2, c) has been requested;

g) the applicant, other than the inventor, has not proved, within the time-limit prescribed in Art. 29, paragraph 2, that he is entitled to the grant of the patent;

h) examination of the patent application in view of the grant of a patent has not been requested within the time-limits prescribed in Art. 25.

OSIM shall take note of the withdrawal of the patent application provided that the applicant expressly requests the withdrawal, in writing.

Patent applications shall be declared as deemed to be withdrawn in the following cases:

a) the inventors were not declared within 18 months from the date on which substantive examination was requested;

b) the applicant did not respond, within the established time-limit, to the notifications of OSIM to make the form of the description and drawings correspond to the content of admitted claims;

c) the application lay at the basis of the priority claim in a subsequent application filed either by national route or by international route and which has been entered the national phase in Romania;

d) the patent application is in the circumstance provided for in Art. 66, paragraph 2, b).

e) the applicant did not submit the claims within the time-limit prescribed in Art. 15, paragraph 7;

f) one of the legal fees, namely filing fee, fee for the subsequent filing of claims, fee for opening the national phase, publication fee or examination fee, has not been paid in the amount and within the time-limits prescribed by the law and the Implementing Regulations to this Law;

g) patent application in respect of which a decision to grant the patent has been taken but the publication fee, printing fee and patent issuance fee have not been paid within the time-limit provided by the law.

All decisions issued by OSIM in respect of patent applications shall be substantiated, registered in the National Register of Patent Applications and shall be communicated to the applicant within 1 month from the date on which a decision was taken. In the same register there shall be also registered the mentions concerning withdrawn patent applications or the mentions concerning the declarations pursuant to which the patent applications are deemed to be withdrawn, which shall be also communicated.

The mention of the decision to grant a patent or to refuse the patent application shall be published in the Official Industrial Property Bulletin within 1 month from the date

on which the legal time-limit for appeal has been elapsed and under the conditions laid down by the Implementing Regulations to this Law.

OSIM shall publish the mention of the decision to grant the patent and, simultaneously with the publication, it shall make the patent description and drawings available to the public, provided that publication fee, printing fee and patent issuance fee are paid.

If publication fee, printing fee and patent issuance fee are not paid within the time limits laid down by the law, the patent application shall be deemed to be withdrawn and the patent shall not be deemed to have been granted.

The decision to grant the patent shall only take effect from the date on which the mention thereof is published in the Official Industrial Property Bulletin.

In case of decisions to grant a patent for an invention containing classified information, after such secrecy has been lifted, the provisions of paragraphs 7 and 9 and Art. 23, paragraph 4 shall be applied.

In case of death of the applicant - natural person or dissolving the legal person, the examination procedure shall be discontinued until OSIM is notified of the successor in title, under the conditions laid down by the Implementing Regulations to this Law.

Where judicial procedures have commenced regarding the right to the patent or the right to the grant of the patent, the patenting procedure shall be suspended until the court decision becomes final and irrevocable.

The interested party shall communicate to OSIM the decision under paragraph 12.

Art. 29 - OSIM may revoke its decisions "ex officio" for failure to comply to the conditions laid down by this Law, until notification.

Where OSIM, on the basis of solid proofs, finds that the applicant, other than the inventor, is not entitled to the grant of the patent, it may proceed to postpone the notification of the decision made, not exceeding a 6-month period since its date; if, within that period of time, the applicant cannot prove that he is entitled to the grant of the patent, the decision to grant the patent shall be revoked according to paragraph 1 and the patent application shall be refused.

Art. 30 - Patents shall be issued by the Director general of OSIM, based on the decision to grant the patent. For European patents, OSIM shall certify the validity of the patents in Romania, according to the law.

The date of the issue of the patent shall be the date on which the mention of the issue is published in the Official Industrial Property Bulletin.

Patents shall be recorded in the National register of Patents.

Where the conditions laid down by the law are met, the European patent shall be recorded in the National Register of Patents.

Art. 31 - Patent duration shall be 20 years as from the date of filing the application.

For European patents, the duration under paragraph 1 shall run from the date on which the regular national filing of the patent application was effected, pursuant to the European Patent Convention.

For patented medicaments or plant protection products, supplementary protection certificate may be granted under the Council Regulation (EEC) no. 1768/92 of 18 June 1992 concerning the creation of a supplementary protection certificate for medicaments and the Regulation (EC) no. 1610/96 of the European Parliament and of the Council of 23 July 1996 concerning the creation of a supplementary protection certificate for plant protection products.

CHAPTER IV - RIGHTS AND OBLIGATIONS

Art. 32 - The patent shall confer on its owner an exclusive right of exploitation throughout its entire duration.

It is prohibited to perform the following acts without the owner's consent:

- a) manufacturing, using, offering for sale, selling or importing for the purpose of using, offering for sale or selling, where the subject-matter of the patent is a product;
- b) using the process and using, offering for sale, selling or importing for those purposes the product directly obtained by the patented process, where the subject-matter of the patent is a process.

The extent of the protection conferred by the patent or the patent application shall be determined by the content of the claims. At the same time, the invention description and drawings shall be used to interpret the claims.

Throughout the period of time up to grant, the extent of the protection conferred by the patent application shall be determined by the claims published under Art. 23.

The patent, as granted or as amended during the revocation or cancellation in part, shall retroactively determine the protection conferred by the patent application, in so far as such protection is not thereby extended.

To determine the extent of the protection conferred by the patent, due account shall be taken of any element equivalent to an element specified in the claims. Where the subject-matter of the patent is a process, the protection conferred by the patent shall be extended to the product obtained directly by the patented process.

The protection conferred by a patent relating to a biological material having specific characteristics shall be extended to any material derived by reproduction or multiplication from the patented material, in an identical form or differentiated, and having the same characteristics.

The protection conferred by a patent to a product containing genetic information or consisting of genetic information shall be extended to any other material incorporating the product and wherein the genetic information is contained and exercises its function, except for the human body in the various stages of its formation or development.

The protection referred to in paragraphs 7 - 9 shall not extend to the biologic material derived by reproduction or multiplication from a biologic material sold or offered for sale on the territory of Romania by the patent owner or with his consent, where the reproduction or multiplication necessarily results from the utilization for which the biological material was put on the market, provided that the obtained material has not been used subsequently for other reproductions and multiplications.

Art. 33 - Starting from the date of its publication under Art. 23, paragraphs 1-3,

the patent application shall provisionally confer on the applicant the protection laid down in Art. 32.

Art. 34 - The following acts shall not constitute infringements of the rights provided in Art. 32 and Art. 33:

a) exploitation of inventions in the construction and the operation of land vehicles or aircrafts and aboard vessels or in devices used in the operation thereof that belong to States party to international treaties and conventions concerning inventions to which Romania is also a party, when the vehicles, crafts or vessels enter the territory of Romania, either temporarily or accidentally, provided that such exploitation is exclusively for the needs of the vehicles, crafts or vessels;

b) performing any of the acts referred to in Art. 32, paragraph 2 by a person who has applied the subject-matter of the patent or that of the patent application, as published, or has taken real and effective steps towards producing or exploiting said subject-matter in good faith on the territory of Romania, independently of the owner of the patent and before the regular national filing concerning the invention has been effected or before the recognized priority date; in that case the invention may continue to be exploited by that person to the same extent as on the date of the regular national filing or recognized priority, but the right of use may not be transferred otherwise than with the assets of that person or the part of the said assets assigned to the exploitation of the invention.

c) performing any of the acts referred to in Art. 32, paragraph 2 exclusively privately and for non-commercial purposes; production or, as the case may be, use the invention exclusively privately and for non-commercial purposes;

d) marketing or offering for sale within the territory of the European Union of specimens of the product constituting the subject-matter of the invention that have been previously sold by the patent owner or with his express consent;

e) use of the subject-matter of the patented invention for exclusively non-commercial experimental purposes;

f) exploitation in good faith or taking real and effective steps towards exploiting the invention by third parties in the interval between the patent owner's loss of rights and the reinstatement of the patent; in that case, the invention may continue to be exploited by that person to the same extent as on the date of publication of the mention of reestablishment of rights, but the right of use may not be transferred otherwise than with the assets of the person exploiting the invention or the part of said assets assigned to the exploitation of the invention;

g) exploitation by third parties of the invention or part of the invention in respect of which protection has been renounced.

Any person who, in good faith, exploits the invention or has taken real and effective steps to exploit the invention, in so far as the rights conferred by a patent application or a European patent in its original translation are not thereby infringed upon, may continue to exploit the invention, after the correct translation becomes effective, within his enterprise or for its necessities, without payment and not exceeding the extent existing on the date on which the original translation became effective.

Art. 35 - The inventor shall have the right to the mention of his full name and

status in the patent granted, in his employment record and in any other documents or publications concerning his invention.

Where the patent owner is not the same person as the inventor, a duplicate patent shall be issued to the latter.

Upon his express request, the inventor's full name shall not be published; such request shall be subject to payment of the prescribed fee.

Art. 36 - For inventions created and achieved pursuant to Art. 5, paragraph 1 with contrary clause and Art. 5, paragraph 2, respectively, the inventor shall enjoy economic rights determined by contract concluded with the applicant or the patent owner, as the case may be.

The economic rights shall be determined according to the economic and/or social effects resulting from the patent exploitation or the economic contribution of the invention.

Art. 37 - In the event of loss of rights under Art. 43, paragraph 3, the patent owner may apply, for justified grounds, with OSIM, for reinstatement of the patent within six months of the date of publication of said loss. Within 60 days from the registration, OSIM shall decide upon the request for reinstatement, subject to payment of the prescribed fee. Mention of the reinstatement of the patent shall be published in the Official Industrial Property Bulletin within 30 days from the date on which the decision becomes final and irrevocable.

Art. 38 - The patent owner may renounce the patent either wholly or in part by virtue of a written statement filed with OSIM.

In the case of inventions provided for in Art. 5, paragraphs 1 a) and 2 and inventions that have been assigned as provided in Art. 5, paragraph 1 b), the patent owner shall notify the inventor of his intention to renounce the patent; the patent owner shall transfer the patent rights to the inventor at the latter's request.

Where the patent is the subject of a license agreement, renunciation shall be possible only with the agreement of the licensee.

The invention or part of the invention in respect of which protection has been renounced may be freely exploited by third parties.

The patent owner may renounce a patent granted for inventions containing classified information under Art. 40, paragraph 2, only after such secrecy has been lifted and the mention of the decision to grant the patent and the description, claims and drawings of the patented invention have been published pursuant to Art. 28, paragraph 6.

Renunciation shall be registered with OSIM in the National Register of Patents and shall come into effect on the date of its publication in the Official Industrial Property Bulletin.

Art. 39 - In proceedings before OSIM, the applicant, assignor or owner or any other interested person may be represented by a representative, on the basis of a power of attorney filed with OSIM, under the conditions and within the time limits prescribed by the Implementing Regulations to this Law.

For the persons mentioned above, not having their domicile or registered office on the territory of Romania, representation by representative shall be compulsory, with the following exceptions, in which one may act in his own name:

- a) filing of a patent application for the purpose of being accorded a filing date;
- b) payment of a fee;
- c) submitting a copy of a previous application;
- d) issuance of a notification by OSIM concerning any procedure under a), b) and c) above.

Maintenance fees may be paid by any person.

In case of revocation of power of attorney, the representative's signature does not have the effect of the signature of the applicant, owner or interested persons who designated the representative.

Art. 40 - An invention for which a patent application has been filed with OSIM shall not be disclosed without the applicant's consent, until the publication thereof, and have, until publication, the character established by the special law.

Information in the field of national defense and State security included in an invention created on the territory of Romania and being the object of a patent application may be classified as secret of State by the competent authorities; in such case, the applicant shall be informed accordingly by the authority that has classified the information and may, on a contract basis, benefit by a compensation granted by said authority under the conditions prescribed by the Implementing Regulations to this Law.

The secrecy of information classified as secret of State may be lifted at the discretion of the authority that has classified them.

Art. 41 - Inventions made by Romanian natural persons on the territory of Romania may not be patented abroad until a patent application has been filed with OSIM.

In the case of inventions containing information classified as secret of State, the grant of foreign patents shall be possible only after such secrecy has been lifted, according to Art. 40, paragraph 3.

For the patenting abroad of the inventions referred to in paragraph 1 above, Romanian applicant or patent owners may avail themselves of financial support, pursuant to the law.

With regard to the inventions referred to in paragraph 1, the Romanian natural persons who have created them or their successors in title shall inform OSIM of their intention to apply for a patent abroad.

For the registration of international applications with a view to patenting inventions in other States, OSIM shall act as a receiving Office, pursuant to the Patent Cooperation Treaty.

Art. 42 - In the case of an invention for which an employer is entitled to the grant of a patent, that employer shall be obliged to inform the inventor of the examination stage of the patent application at OSIM, as well as of the status and any results of exploitation of the invention.

Upon request by the patent owner, the inventor shall be obliged to afford

technical assistance under contract for the exploitation of the invention.

Art. 43 - The proceedings carried out by OSIM regarding the patent applications and patents referred to in this Law and its Implementing Regulations shall be subject to the payment of fees, in the amounts and within the time limits laid down by the law.

Throughout the term of validity of the patent, the patent owner shall annually pay patent maintenance fees.

Failure to pay such fees shall cause the patent owner's loss of his rights under the patent. The loss of said rights by the owner shall be registered in the National Register of Patents and published in the Official Industrial Property Bulletin.

Maintenance fees may also be paid in advance, under the conditions laid down by the Implementing Regulations to this Law, for a period not exceeding 4 years.

Fees due to be paid by foreign natural or legal persons shall be paid in convertible currency, into the account of OSIM.

Appeals exclusively relating to the correction of errors or omissions shall not be subject to payment of fees.

Art. 44 - The applicant or the patent owner who, for legitimate grounds, was unable to observe a time limit in proceedings before OSIM, shall have his rights reestablished, provided that he submits a substantiated request within two months from the removal of the cause that prevented him from acting, but no later than one year since the expiry of the non-observed time-limit.

The provisions of paragraph 1 shall not apply where the non-compliance with the time limit occurred in the following cases:

- a) claiming of priority, in accordance with Art. 20, paragraphs 5 or 6 and Art. 22, paragraph 1;
- b) filing of the translation of the description, claims or drawings, according to Art. 16, paragraph 2;
- c) payment of the filing fees and the documentary search report fees, according to Art. 43, paragraph 1;
- d) filing of an application for revocation, in accordance with Art. 52;
- e) expiry of the time limit for dividing a patent application, laid down in Art. 19, paragraph 2;
- f) expiry of the time limit for filing a new patent application, according to Art. 66, paragraph 2 b);
- g) payment of patent maintenance fees.

The provisions of paragraph 1 shall neither apply in the cases provided for in Art. 28, paragraph 2 e) and f), paragraph 4 d) and e) and Art. 51.

The request for the re-establishment of rights shall be subject to the payment of a fee, in the amount laid down by the law for lodging an appeal, except for the case provided in Art. 28, paragraph 4 b), for which no fees are payable.

CHAPTER V - TRANSFER OF RIGHTS

Art. 45 - The right to the patent, the right to the grant of a patent and the rights deriving from a patent shall be transferable, either wholly or in part.

Transfers may be effected by assignment, by the grant of exclusive or non-exclusive licenses or by legal or testamentary succession.

Transfers shall produce effects in respect of third parties only as from the date of publication in the Official Industrial Property Bulletin of the mention of the transfer registered with OSIM.

Art. 46 - Upon request by any interested person, the Court of Bucharest may grant a compulsory license after 4 years have elapsed from the patent application filing date or after 3 years have elapsed from the grant of the patent, whichever period expires later.

The provisions of paragraph 1 shall only apply where the invention has not been exploited or has been insufficiently exploited on the territory of Romania, and the patent owner cannot justify his inaction and where no agreement has been reached with him regarding the conditions and commercial methods for applying the invention.

The Court of Bucharest shall authorize the compulsory license, provided that it considers, based on given circumstances, that, in spite of all efforts made by the interested person, no agreement could be reached within a reasonable time period.

Besides the cases referred to in paragraph 2, a compulsory license may be authorized by the Court of Bucharest:

- a) in national emergency cases;
- b) in other cases of extreme emergency;
- c) in cases of public use for non-commercial purposes.

The grant of the compulsory license, for one of the reasons provided under paragraph 4, shall not require the fulfilment of the conditions mentioned under paragraph 2. Nevertheless, the licensee shall inform the applicant or patent owner about the authorization given by the Court, within the shortest delay.

In cases of public use for non-commercial purposes, the Government or third parties authorized by the Government, if they know or have demonstrable reasons to know that a valid patent is or will be used by the Government or the third parties, shall inform the patent owner accordingly, within a reasonable time.

In cases where a patent cannot be exploited without infringing the rights conferred by other patent granted for an application having a prior regular national filing date, a compulsory license for exploiting the second patent may only be authorized if the following additional conditions are cumulatively fulfilled:

- a) the invention claimed in the second patent involves an important technical advance of considerable economic significance as compared with the invention in the first patent;
- b) the owner of the first patent is entitled to a cross-license on reasonable terms for using the invention claimed in the second patent;
- c) the use authorized in respect of the first patent shall be non-transferable, except for the transfer of the second patent.

Art. 47 - Compulsory licenses shall be non-exclusive and shall be granted by the Court of Bucharest, under specific conditions regarding their extent and duration, as well as the amount of royalties to which the right holder is entitled, established in accordance to the commercial value of the granted licenses.

Beneficiaries of the compulsory license can also be the Government or third parties authorized by the Government.

Compulsory licenses shall be authorized mainly for supplying the market.

The extent and duration of compulsory licenses shall be limited to the purposes for which they have been authorized. In case of the inventions in the semiconductor technology field, the license shall be granted only for public non-commercial purposes or to remedy a practice declared as anti-competitive, as a result of a judiciary or administrative procedure.

When the owner of a plant variety patent cannot exploit the patent without infringing a prior patent, he may request a compulsory license for the invention protected by said patent.

When the owner of a patent relating to a biotechnological invention cannot exploit the patent without infringing a prior plant variety patent, he may request a compulsory license for the exploitation of the plant variety protected by said patent.

Where a compulsory license is authorized for remedying an anti-competitive practice, the provisions of Art. 46, paragraphs 3 and 4 and Art. 47, paragraph 3 shall not be applicable.

Art. 48 - The compulsory license shall not be transferred otherwise than with the part of the enterprise or the stock of goods benefitting by said use.

Art. 49 - Upon the justified request presented by the interested person, the Court of Bucharest may withdraw the compulsory license, when the circumstances leading to the grant of the license ceased to exist, provided that the legitimate interests of the licensee should be protected adequately. The license shall not be withdrawn if the circumstances which determined the grant of the license are likely to occur again.

The decisions of the Court of Bucharest concerning the authorization for using a compulsory license, as well as those concerning the remuneration prescribed as against the use of the license, may be appealed against with the Court of Appeal of Bucharest within 15 days from communication.

Art. 50 - The final and irrevocable Court decisions concerning the grant or the withdrawal of the compulsory license, as the case may be, shall be communicated by the interested person to OSIM, which shall register said decisions in the National Register of Patent Applications or in the National Register of Patents, as the case may be, and publishes the mention of such decisions in the Official Industrial Property Bulletin within one month from communication.

CHAPTER VI - DEFENSE OF RIGHTS IN INVENTIONS

Art. 51 - Any decision made by the Examination Board may be appealed against with OSIM within 3 months from communication.

The object of the appeal may be a limitation of the patent, under the conditions laid down by the Implementing Regulations to this Law.

Art. 52 - Any interested person is entitled to apply with OSIM, in writing, on valid grounds, for the revocation of the patent, within 6 months of the publication of the mention of granting the patent, provided that:

- a) the subject-matter of the patent is not patentable, under Art. 7 - 10, 12 and 13;
- b) the subject-matter of 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 exceeds the content of the patent application, as filed.

Where the grounds for revocation only relate to a part of the patent, the patent shall be revoked in part.

Art. 53 - The appeal or the application for revocation, as the case may be, shall be settled within 3 months of registration thereof with OSIM, by a Board of Appeal within the Appeal Department of OSIM.

The attributions of the Board of Appeal, as well as the procedure for settling the appeals and applications for revocation shall be laid down in the Implementing Regulations to this Law.

Art. 54 - Patents granted by OSIM, as well as European patents with effects in Romania, may be cancelled upon request, provided that it is ascertained that:

- a) the subject-matter of the patent is not patentable, under Art. 7 - 10, 12 and 13;
- b) the subject-matter of 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 exceeds the content of the patent application, as filed;
- d) the protection conferred by the patent has been extended;
- e) the patent owner is not the person entitled to the grant of the patent.

Where the grounds for cancellation only relate to a part of the patent, the patent shall be cancelled in part.

The cancellation of the patent shall have retroactive effects, starting from the filing date.

Art. 55 - The cancellation of the patent may be requested after the time limit provided under Art. 52 for the application for revocation have elapsed, except for the cases provided under Art. 54, paragraph 1, d) and e) and throughout the entire duration of the patent, and the requests shall be ruled upon by the Court of Bucharest. The decisions of the Court of Bucharest may be appealed against before the Court of Appeal of Bucharest within 30 days from communication.

The final and irrevocable decisions to cancel the patent shall be registered with OSIM by the interested person.

Mention of the decision to cancel the patent shall be published in the Official Industrial Property Bulletin within 60 days of the registration of the decision with OSIM.

Art. 56 - Failure to meet one or more of the formal requirements concerning the patent application shall only constitute grounds for revocation or cancellation of the patent, either wholly or in part, where said failure resulted from fraudulent intentions.

A patent shall not be revoked or cancelled, either wholly or in part, without giving the owner the possibility to present observations concerning the revocation or cancellation and to make, in a reasonable period of time, amendments or corrections allowed by the Law and the corresponding Implementing Regulations.

Art. 57 - The substantiated decision of the Board of Appeal shall be communicated to the parties within 15 days from pronouncement and may be appealed against before the Court of Bucharest within 30 days from communication.

Within 15 days from communication, the decisions of the Court of Bucharest may be appealed against before the Court of Appeal of Bucharest.

The enacting terms of the decision to grant the patent made by the Board of Appeal, as well as those of the final and irrevocable decision made by a judicial authority, shall be entered into the National Registers and shall be published in the Official Industrial Property Bulletin within 60 days from the date of registration with OSIM by the interested person.

OSIM shall enter the modifications pursuant to final and irrevocable Court decisions into the National Registres and shall publish them in the Official Industrial Property Bulletin within 60 days from the date of registration with OSIM by the interested person.

Art. 58 - The unlawfull assumption, in any way, of the status of inventor shall constitute offence and shall be punished with imprisonment from 6 months to 2 years or with fine from 5000 to 10000 lei.

Art. 59 - The acts performed as a violation of Art. 32, paragraph 2 shall constitute infringement and shall be punished with imprisonment from 6 months to 2 years or with fine from 10000 to 30000 lei.

Criminal proceedings shall be initiated ex officio.

For prejudice caused to him, the patent owner or licensee shall be entitled to damages, as provided for by civil law, and may request to the competent law court to order the infringing products to be confiscated or destroyed, as the case may be. The same provisions shall be applied to materials and equipments that directly served to the perpetration of the infringement offence.

Infringement of the rights referred to in Art. 32, paragraph 1 by third parties, after the publication of the patent application shall make the infringers liable for damages under civil law, and the entitlement to the payment of damages shall be enforceable after the grant of the patent.

Notwithstanding the provisions of Art. 32, paragraph 1, the acts referred to in Art 32, paragraph 2 performed by third parties before the date of publication of the patent application or before the date of the summons made by the applicant and accompanied by a certified copy of the patent application shall not be deemed to infringe the rights conferred by the patent.

Art. 60 - Where the acts referred to in Art. 32, paragraph 2 continue to be done after summoning, the law court may, upon request, order such acts be discontinued until OSIM makes a decision on the patent application. Said measure may be ordered

subject to payment by the applicant of a security fixed by the law court.

Art. 61 - In case of infringement on the right of a process patent owner, referred to in Art. 32, paragraph 2, b), the burden of proof in establishing the fact that the process used to obtain an identical product is different from the patented process shall be incumbent upon to the alleged infringer of said right.

In applying the provisions of paragraph 1, any identical product made without the consent of the patent owner shall, in the absence of the proof to the contrary, be deemed to have been obtained by the patented process in at least one of the following circumstances:

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

Upon presentation of the proof to the contrary by the patent owner, the legitimate interests related to the manufacturing and trade secrets of the alleged infringer shall be taken into account.

Art. 62 - Disclosure, by the staff of OSIM, as well as by persons doing work in connection with inventions, of the information contained in patent applications, prior to the publication thereof, shall constitute an offence and shall be punished with imprisonment from 3 months to 2 years.

OSIM shall be answerable to the inventor for prejudice caused as a result of the offence referred to in paragraph 1 above.

Art. 63 - Litigations concerning the status of inventor, patent owner or other rights arising from the patent, including the economic rights of the inventor under assignment or license contracts, or concerning failure to comply with the provisions of Art. 5, paragraph 6, Art.36 and Art. 42 shall be within the jurisdiction of the law courts.

The interested person shall communicate the court decision to OSIM within 30 days from the date on which the decision became final and irrevocable, in order to be entered in the National Register of Patent Applications or in the National Register of Patents and published in the Official Industrial Property Bulletin. In the absence of the publication in the Official Industrial Property Bulletin, the decision shall not be opposable to third parties.

Art. 64 - The patent owner, as well as the licensee authorized to use the rights arising from the patent may request the law court:

- a) to order withholding measures when there exists the risk of infringing on the rights arising from a patent and if said infringement risks to cause irreparable prejudice or if there exists the risk of destroying the probative elements;

- b) to order, after the grant of the customs clearance, certain measures for stopping the acts of infringement on the rights arising from a patent, performed by a third party on the occasion of putting certain imported goods into the commercial circuit, causing thus damages to such rights.

The law court may decide that the infringer of the rights arising from the patent should inform the patent owner on the identity of the third parties who took part in producing and distributing the goods concerned, as well as on the distribution circuits.

The withholding measures may be ordered subject to payment by the plaintiff of a security established by the law court.

To order the withholding measures, the provisions of the civil law shall be applicable.

The law court may demand the plaintiff to provide any probative elements available to him in order to prove himself to be the owner of the infringed patent or of a patent the infringement of which is unavoidable.

Art. 65 – Customs authority may order, either ex officio or upon request by the patent owner that customs clearance operations be suspended for the import or export of goods provided under Art. 59, paragraph 1, or to place such goods under a suspensive customs status.

Customs competence concerning the enforcement of patent rights at the borders shall belong to the National Customs Authority, according to Law no. 344/2005 concerning certain measures for ensuring the enforcement of intellectual property rights within customs operations.

Art. 66 – Where a court decision has established that a person other than the one mentioned in the patent is entitled to the grant of the patent, OSIM shall issue the patent to the entitled person and shall publish the change of ownership.

If, before the grant of the patent by OSIM, a court decision has established that the right to the patent belongs to a person other than the applicant, within a time limit of 3 months from the date on which the court decision became final and irrevocable and under the conditions laid down by Implementing Regulations to this law, the person entitled to said right may:

- a) continue, instead of the applicant, the procedure concerning the filed patent application as if it were his own application;
- b) file a new patent application for the same invention. For the elements which do not extend the content of the original filed application by virtue of Art. 19, the original application shall be declared by OSIM as deemed to be withdrawn starting on the date of filing the new application;
- c) request the application to be refused.

Art. 67 – Upon request by the law court, OSIM shall submit the acts, documents and information necessary for judging the cause entrusted to the law court, those documents being finally retrieved. Summoning to the court shall only be made for this purpose.

Petitions to the law court in the industrial property field shall be exempt from judicial fees.

CHAPTER VII – DUTIES OF THE STATE OFFICE FOR INVENTIONS AND TRADEMARKS

Art. 68 – OSIM is a specialized body of the central public administration subordinated to the Government of Romania, with sole authority on the territory of Romania in the field of industrial property protection, according to the law and the provisions of international conventions and treaties to which the Romanian State is party.

Art. 69 – In the field of inventions, OSIM shall have the following duties:

- a) to coordinate the industrial property policy in Romania;
- b) to register, publish and examine patent applications with a view to granting and issuing patents for invention;
- c) to be the depository of the National Register of Filed Patent Applications and the National Register of Patents in which all particulars of patent applications and patents are recorded;
- d) to act as a receiving office for patent applications internationally filed by Romanian applicant, according to the provisions of the Patent Cooperation Treaty;
- e) to administer, maintain and develop by international exchange the national collection of descriptions of inventions and to create the computerized data base in the field of inventions, on any kind of information support;
- f) to provide, upon request, mediation and technical information service on the basis of descriptions of Romanian and foreign inventions and official industrial property publications, as well as services of storing, under non-public status, documents containing non-patentable solutions like those referred to under Art. 8, paragraph 1;
- g) to attest and authorize industrial property attorneys, keeping records thereof in the National Register it maintains and periodically publishing data from said register;
- h) to conduct relations with similar governmental and intergovernmental organizations and with specialized international organizations to which the Romanian State is party;
- i) to organize training and improvement courses for specialists in the field;
- j) to edit and periodically publish in the Official Industrial Property Bulletin data concerning patent applications and patents.

CHAPTER VIII – TRANSITIONAL AND FINAL PROVISIONS

Art. 70 - Patent applications filed with OSIM under Law no. 62/1974 in respect of which no decision to grant the patent or to refuse the patent application has been taken shall be ruled according to the provisions of this Law.

Art. 71 – Patents and patents for improvement as well, granted prior to the entry into force of this Law and valid on the territory of Romania, shall have the duration provided for in Art. 31.

Throughout the entire duration of the patents for improvement, exploitation of the invention shall be made in accordance with the provisions of Art. 46, paragraph 7.

Economic rights accruing to inventors for patented inventions that have been

exploited and which rights have been partially settled or not settled prior to the entry into force of this Law shall be negotiated between the inventor and the entity that has exploited said invention. In such cases the negotiation shall begin at the highest amount of compensation that the inventor could claim under the law applicable on the date of filing the patent application. In the absence of agreement between the parties, the economic rights shall be determined according to the provisions of Art. 63.

The right to the patent shall be transferred to the inventor by operation of the law where, on the date of entry into force of this law, the enterprise that has become the owner of the invention by legal assignment, as provided in Art. 14 of the Law no. 62/1974, has not exploited the invention or has not taken the necessary steps for its exploitation.

Art. 72 – Patents in force represent intangible assets and shall be registered in the patent owner's patrimony, where the owner is a legal person.

Art. 73 – The economic rights of the creator of a technical achievement that is new and useful to an enterprise shall be determined by contract between the creator and the enterprise.

The enterprise which exploits the technical achievement shall attest the status of the creator.

Failure to comply with the provisions of paragraphs 1 and 2 shall result in the enterprise obligation of paying damages to the creator of the technical achievement, according to the civil law. Damages shall be determined depending on the economic performances achieved by the enterprise.

Art. 74 – The profit or the income made through actual exploitation of an invention patented in Romania by the owner or by his licencees, as the case may be, exploitation which may include manufacturing of the product or carrying out the process, as the case may be, shall be exempt from tax during the first 5 years from the first exploitation, counted from the date on which exploitation begins and included in the patent term of validity.

Legal or natural persons exploiting the invention, the owner of the exploited patent, respectively, shall benefit by the provisions of paragraph 1.

The income made by the patent owner through assignment thereof shall be exempt from tax.

NOTE

Articles II and III of Law no. 28/2007, not incorporated in the republished text of the Patent Law no. 64/1991 and which continue to apply as provisions of Law no. 20/2007, are reproduced below.

It should be mentioned that references within these articles relate to the texts of the Patent Law no.64/1991, as published in the Official Gazette of Romania, Part I, no.752 of 15 October 2002.

„Art. II. – (1) This law shall come into force 3 months after the date of publication

in the Official Gazette of Romania, Part I, except for the provisions of Art. 31, paragraph 3 and Art. 35, paragraph 1, d) which shall come into force 3 days after the date of publication in the Official Gazette of Romania, Part I.

(2) Within 3 months from the publication of this Law, the Implementing Regulations to the Patent Law no. 64/1991 as republished, with the subsequent amendments and completions and with the ones brought by this Law shall be submitted for approval by Government decision.

Art.III. – On the date of coming into force of this Law, current numbers 4, phrase 1, and 37 in the Annexe no. 1 „Amount and time limits concerning the payment of fees in respect of patent applications and patents” of the Government Ordinance no. 41/1998 concerning the fees in the industrial property field and the conditions for using the same, as republished in the Official Gazette of Romania, Part.I, no.959 of 29 November 2006, shall have the following contents:

OFFICIAL GAZETTE OF ROMANIA, PART I, NO. 638/18.IX.2007

RECTIFICATIONS

Art. 74 in the republished form of the Patent Law no. 64/1991, published in the Official Gazette of Romania, Part.I, No. 541 of 8 August 2007, shall be deleted.¹

¹Art. 74, the former Art. 73 before republishing of the Patent Law, was expressly abrogated by Art. 298, paragraph (1), point 1 of Law no. 571/2003 on the Fiscal Code.