
**Council for Trade-Related Aspects of
Intellectual Property Rights**

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**MAIN DEDICATED INTELLECTUAL PROPERTY
LAWS AND REGULATIONS NOTIFIED UNDER
ARTICLE 63.2 OF THE AGREEMENT**

MOLDOVA

The present document reproduces the text¹ of the Law on Patents for Inventions N° 461-XIII, as last amended in 2000, as notified by Moldova under Article 63.2 of the Agreement (see document IP/N/1/MDA/1).

**Conseil des aspects des droits de propriété
intellectuelle qui touchent au commerce**

**PRINCIPALES LOIS ET REGLEMENTATIONS CONSACREES A LA
PROPRIETE INTELLECTUELLE NOTIFIEES AU TITRE
DE L'ARTICLE 63:2 DE L'ACCORD**

MOLDOVA

Le présent document contient le texte¹ de la Loi n° 461-XIII sur les brevets d'invention, modifiée pour la dernière fois en 2000, qui a été notifié par la Moldova au titre de l'article 63:2 de l'Accord (voir le document IP/N/1/MDA/1).

**Consejo de los Aspectos de los Derechos de Propiedad
Intellectual relacionados con el Comercio**

**PRINCIPALES LEYES Y REGLAMENTOS DEDICADOS A LA
PROPIEDAD INTELECTUAL NOTIFICADOS EN VIRTUD
DEL PÁRRAFO 2 DEL ARTÍCULO 63 DEL ACUERDO**

MOLDOVA

En el presente documento se reproduce el texto¹ de la Ley N° 461-XIII sobre Patentes de Invenciones, modificada en 2000, notificado por Moldova de conformidad con lo dispuesto en el párrafo 2 del artículo 63 del Acuerdo (véase el documento IP/N/1/MDA/1).

¹ In English only./En anglais seulement./En inglés solamente.

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No. 461 / 1995

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**Chapter I
GENERAL PROVISIONS**

Article 1. Legal Rule

The economic relationships and the personal non-economic relationships deriving therefrom that arise in connection with the making of inventions, their legal protection and exploitation or their use shall be governed by the Constitution, by this Law and by other legislative instruments.

Article 2. Legal Protection of Inventions

(1) Legal protection of inventions shall include matters affecting the availability, acquisition, scope, maintenance and enforcement of rights as well as those matters affecting the use of rights.

(2) The rights in inventions shall be recognized and protected on the territory of the Republic of Moldova by this Law and shall be attested to by a patent for invention (hereinafter “patent”).

(3) Patents shall attest to the priority date of an invention, the authorship of the invention and the exclusive right of the owner of the patent in the invention.

(4) The term of a patent shall be 20 years as from the date of filing with the State Agency on Industrial Property Protection (hereinafter “the Agency”) of a regular national application for the grant of a patent.

(5) Inventions comprising information whose disclosure could prejudice the national security of the Republic of Moldova shall be withdrawn from the Agency, within 30 days following their filling, on the basis of the board empowered by the Government, and the inventor or his successor shall be notified accordingly.

Article 3. Representation

(1) Natural and legal persons having their domicile or headquarters in the Republic of Moldova (national) entitled to the protection of an invention may take action either in person or through a representative in industrial property authorized by a power of attorney.

(2) Foreign natural and legal persons having their domicile or headquarters abroad shall be required to take action through professional representatives in industrial property in the Republic of Moldova, except where international treaties to which the Republic of Moldova is party provide otherwise.

(3) The activity of professional representatives in industrial property shall be subject to the regulations approved by the Government.

Chapter II PATENTABILITY OF INVENTIONS

Article 4. Patentability Requirements

(1) An invention in any field of technology may be patented if it is new, if it involves an inventive step and if it is susceptible of industrial application. An invention may concern a product or a process, including micro-organisms, or the use of a known product or process for new purposes. Patents shall be available and patent rights enjoyable without discrimination as to the place of invention, the field of technology and whether products are imported or locally produced.

(2) The following shall not be deemed patentable inventions under this Law:

- a) scientific theories and mathematical methods;
- b) conventional signs, timetables and rules;
- c) methods for performing mental acts;
- d) organizational methods for doing business;
- e) projects and plans for buildings and constructions and for territorial planning;
- f) projects of an aesthetic nature (design);
- g) topographies of integrated circuits;
- h) plant varieties, other than microorganisms.

(3) Patent shall not be issued for inventions, the prevention of commercial exploitation of which is necessary to protect *ordre public* or morality, including to protect human, animal or plant life health or to avoid serious prejudice to the environment, provided that such exclusion is not made merely because the exploitation is prohibited by national law.”

Article 5. 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 deemed to comprise everything made available to the public in any part of the world before the priority date (day, month, year) of the invention concerned.

Article 6. Inventive step (non-obviousness)

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.

Article 7. Industrial Application (utility)

An invention shall be considered as susceptible of industrial application if it can be used in industry, agriculture or any other field of activity.

Article 8. Non-Prejudicial Disclosure

(1) Disclosure of information concerning the subject matter of an invention shall not affect the patentability of the invention if it occurred in respect of the creation of the invention, but no earlier than 12 months preceding the priority date of the invention and was made by the inventor, the applicant or other person having obtained such information directly or indirectly from the inventor or the applicant.

(2) The provisions of paragraph (1) shall apply at all times. The burden of proving the circumstances of the disclosure shall rest upon the person concerned.

Chapter III OBTAINING PATENT

Article 9. Inventor and Employer. Rights and Obligations

(1) The natural person whose creative work has led to the invention shall be deemed the inventor.

(2) The right to authorship of an invention shall constitute an inalienable personal right and shall enjoy protection without limitation in time.

(3) Where an invention results from the work of more than one inventor, each such inventor shall be deemed a joint inventor and the right to authorship of the invention shall belong to all of them. The conditions for exercising the rights belonging to the joint inventors shall be determined by agreement between such inventors.

(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 notices published by the Agency 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.

(7) The right to a patent shall belong to the inventor or to his successor in title.

(8) If an invention is made independently by more than one inventor, the right to a patent shall belong to the inventor whose application has the earliest priority date, unless that application has been withdrawn.

(9) The right to a patent for an invention made by an employee in the accomplishment of his duties or specific tasks entrusted to him in writing by his employer (service invention) shall belong to the employer, unless otherwise provided by contract.

(10) In the case of a service invention, the inventor shall be entitled to remuneration proportional to the profits obtained from the invention by the employer if the latter correctly exploits the invention or to the profits he could obtain if a patent is granted. The amount of the remuneration and the conditions of payment shall be set out by contract between the inventor and the employer.

(11) If an invention is made under a scientific research contract or a research and development contract, the right to a patent shall be determined by such contract. The inventor shall be entitled to remuneration, the amount of which and the conditions of payment shall be laid down in the contract between the inventor and the employer.

(12) Within one month of the date on which a service invention has been made, the inventor shall be required to inform his employer in writing thereof.

(13) If, within a period of 60 days as from the date on which the inventor has informed his employer of the service invention that has been made, the employer has failed to file an application for a patent or to transfer to another party his right to file such application or to require the inventor in writing to maintain the secrecy of the invention, the inventor shall have the right to file an application in his own name and to be granted a patent. In such case, the employer shall enjoy a preferential right to a

nonexclusive license to exploit the invention.

(14) If the parties fail to reach agreement on the amount of the remuneration due to the inventor or on the price of the license, the amounts 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.

(15) Where the employer has obtained a patent for a service invention, the inventor shall enjoy a preferential right to a free nonexclusive license to exploit the invention.

(16) The employer and the inventor shall be required to inform each other in writing of the progress of implementation of a service 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.

Article 10. Patent Application

(1) Patent applications shall be filed with the Agency, directly or through a representative in industrial property, by the person to whom the right in the patent belongs in accordance with Article 9 (hereinafter “the applicant”).

(2) An application shall contain the following documents:

a) a request for the grant of a patent, including identification of the inventor or inventors, of the applicant or applicants or of the person or persons on whose behalf the patent is sought;

b) a description of the invention disclosing it in a manner sufficiently clear and complete for the invention to be carried out by a person skilled in the art. The applicant shall indicate the best mode for carrying out the invention known to the inventor at the filing date or, where priority is claimed, at the priority date of the application;

c) one or more claims defining the subject matter of the invention and entirely supported by the description;

d) drawings and other elements, where necessary to understand the subject matter of the invention.

(3) Applications shall be accompanied by:

a) an abstract;

b) proof of payment of the prescribed fee or of circumstances justifying exemption from the fee or a reduction in the fee;

c) an authorization, if the application is filed by a representative in industrial

property;

d) any document necessary to prove the priority of the invention.

(4) If the invention concerns reproducible biological material which cannot be disclosed in such a manner as to enable a man skilled in the art to reproduce it or if such material is not freely accessible, an attestation shall be attached to the application concerning the deposit of the material with the depository institute designated by the Government or with a body having the status of international depository authority. The deposit must have been made prior to the filing date of the patent application.

(5) The elements listed in paragraph (2) shall constitute a regular national application.

(6) The filing date of the application shall be the date on which the Agency receives the elements of a regular national application in accordance with paragraph (2).

(7) The documents referred to in paragraph (3)(a), (b) and (c) and in paragraph (4) may be filed with the Agency at the same time as the application or within two months following the filing date of the latter. If, on expiry of that time limit, the applicant has not submitted those documents or has not filed a request for extension of the prescribed time limit, the prosecution of the application shall be terminated.

(8) The application documents shall be filed in the national language certified accordingly. With the exception of the request, the application documents may be filed in one of the following international languages of communication: English, French, German or Russian. In such case, a translation into the national language shall be submitted to the Agency within two months following the filing date of the application, and that date shall be maintained. If in the course of that period the applicant does not file a translation of the documents in the national language, the consideration of the application shall end.

(9) The information about the application shall be considered confidential until it is published by the Agency. Disclosure of such information before it is published by the Agency shall be considered as violation and accordingly sanctioned under legislation in force.

(10) The Agency may require an applicant for a patent to provide information concerning applicant's corresponding foreign applications and patents.

Article 11. Unity of Invention

(1) A patent application shall relate to one invention or to a group of inventions so linked as to form a single general inventive concept (requirement of unity of invention).

(2) If the application as filed does not meet the requirement of unity of invention, the applicant may divide it up into two or more divisional applications in such a way that each of them remains within the limits of the subject matter of the invention as set out in the initial application.

Article 12. Priority of Invention

(1) The priority of an invention shall be determined by the filing date of the application.

(2) Priority may be determined by the filing date of a first application made in a State party to the Paris Convention for the Protection of Industrial Property (convention priority) on condition that an application be filed with the Agency within 12 months following such date. These periods shall start from the date of filing the first application; the date of filing shall not be included in the period.

(3) If for reasons beyond the control of the applicant, it has not been possible to file the application claiming convention priority within the prescribed time limit, the latter may be extended for a maximum of two months.

(4) The priority of an invention that has been shown in an exhibition held on the territory of a State party to the Paris Convention may be claimed with respect to the date as from which the invention was presented to the public as such exhibition, on condition that the application be filed within six months following such date (exhibition priority). This time limit shall not be cumulative with the convention priority time limit.

(5) The priority referred to in paragraphs (2) and (4) may be claimed when filing the patent application or within two months following the date of such filing. The applicant shall be required to submit the documents justifying his claim to priority accompanied by a certificate of priority and by a translation in the national language within three months following the date on which the application is filed. Failure to comply with these time limits shall lead to loss of the right to the claimed priority.

(6) The priority of an invention that is the subject matter of a divisional application may be determined in accordance with the filing date of the initial application that has disclosed it, on condition that the Agency receives the divisional application before a final decision to grant or refuse a patent has been taken on the initial application.

(7) The priority of an invention may be determined in accordance with the date of filing with the Agency of an earlier application by the same applicant in respect of the

same invention on condition that the application for which such priority is claimed is filed within 12 months following the filing date of the earlier application. In such case, the earlier application shall be deemed withdrawn.

(8) Priority may be determined on the basis of more than one application filed at an earlier date if the time limit referred to in paragraph (7) is complied with for each of them.

(9) Priority may not be determined on the basis of the filing date of an application in which an earlier priority has already been claimed.

(10) Priority may not be refused on the ground that certain elements of the invention for which priority is claimed do not appear among the claims formulated in the application in the country of origin, provided that the application documents as a whole specifically disclose such elements.

Article 13. Correction of Application Documents at the Initiative of the Applicant

(1) During the two months following the filing date of the patent application, the applicant shall be entitled to correct or supplement application documents on condition that the subject matter of the invention is not modified.

(2) Subject to payment of a fee, the applicant may make corrections or additions to the application even after expiry of the time limit referred to in paragraph (1), but not after a decision has been taken to grant or refuse a patent.

(3) In the event of more than one applicant, corrections or additions to the application may only be made with the agreement of each applicant.

Article 14. Withdrawal of Application

(1) An applicant may withdraw a patent application at any time before a decision has been taken to grant or refuse a patent.

(2) In the event of more than one applicant, the application may only be withdrawn with the agreement of each applicant.

Article 15. Conversion of application

An application for a patent, including the application for Eurasian patent, may be converted at the request of the applicant, to an application for an utility model and vice-versa, before the decision to grant a patent has been taken or within three months following the date on which a decision to refuse a patent has been taken.

Article 16. Examination of Application

(1) When prosecuting an application for a patent, the Agency shall undertake a formal examination, a preliminary examination and, where appropriate, a substantive

examination.

(2) In the formal examination, the Agency shall check, within one month, that all application documents have been submitted in compliance with Article 10. Where such is the case, the Agency shall enter the application in the National Patent Application Register.

(3) In the preliminary examination, and within a period of two months, the Agency shall:

a) check that the content of the application documents satisfies the required conditions;

b) check that the subject matter of the invention meets the patentability requirements set out in Article 4 paragraphs (2) and (3);

c) check that the invention that is the subject matter of the application meets the conditions set out in Article 11;

d) determine, where appropriate, the priority date of the invention.

(4) If the application documents do not satisfy the required conditions, the Agency shall notify such fact to the applicant and invite him to remedy the defects notified within a period of two months as from receipt of the notification. If the applicant does not comply with the invitation within the prescribed time limit or does not submit a request for extension of such time limit, the Agency shall suspend prosecution of the application and notify the fact to the applicant.

(5) If the invention for which protection is sought relates to subject matter that is not patentable under this Law, the Agency shall decide to refuse the grant of a patent and shall notify the applicant thereof. The applicant may appeal from such decision to the Appeals Board of the Agency within three months of the date of receiving the notification.

(6) Where an application does not satisfy, on filing, the requirement of unity of invention and the applicant does not, within a period of two months as from the date on which the fact was notified to him, divide up the application in accordance with Article 11(2), account shall be taken solely of the subject matter set out in the first claim.

(7) If the application meets the prescribed conditions, the Agency shall notify the applicant that his application will be prosecuted.

(8) In accordance with the applicant's written request, which can be presented to the Agency on filing of the application or within 30 months thereafter, the processing of the application may or may not comprise a substantive examination. Where the request has not been presented within the said time limit, the application shall be considered withdrawn.

(9) Where the Agency receives from the applicant, within the time limit set out in paragraph (8) a written request that the grant of the patent under his responsibility, the Agency shall check if the invention complies with the patentability criteria, indicated in Art 4-8 of the present law and, based on the examination report, it shall take a decision to grant a patent or to reject withdraw the application.

(10) The applicant, or any other interested party, may file a request for a state-of-the-art search, of which the results will enable the patentability of the invention to be assessed. The conditions governing the search and communication of information obtained shall be determined by the Agency.

(11) The substantive examination of the application shall be carried out in the 18 months following the filing date of the corresponding request. The conditions for the examination shall be determined in accordance with the rules set up by the Agency on the basis of this Law.

(12) A request for substantive examination may also be filed with the Agency by another person within 30 months following the filing date of the application. The Agency shall notify the applicant of any request received from another person.

(13) In the substantive examination, the Agency shall check that the invention for which protection is sought meets the patentability requirements set out in Articles 4 to 8 of the present law and grounded on the examination report, it shall decide whether to a grant patent or to reject the application.

(14) The Agency may invite the applicant to supply additional elements with respect to the invention that are essential for it to examine the application. Any additional elements shall be submitted by the applicant within two months following the date on which he receives the invitation from the examiner and they may not modify the subject matter of the invention.

Article 17. Publication of Application

(1) On expiry of a period of 18 months as from the filing date of the application or, where priority is claimed, from the priority date, the Agency shall publish a notice concerning the application in the Official Bulletin of Industrial Property (hereinafter “the Official Bulletin”). The particulars to be published in the notice shall be determined by the Agency.

(2) At the request of the applicant and on payment of the prescribed fee, the notice concerning the application may be published before expiry of the time limit.

(3) When publishing the notice concerning the application in the Official Bulletin, the Agency shall make the application documents available to the public in its library.

(4) An application shall not be published if:

- a) a decision to grant a patent has been taken;
- b) a decision to refuse grant of a patent has been taken and all possible remedies have been exhausted;
- c) the application has been withdrawn.

Article 18. Publication of Decision to Grant a Patent

Within three months following the date on which the applicant has been informed of the decision to grant a patent taken by the Agency, the latter shall enter the patent in the National Patent Register and shall publish a notice thereof in the Official Bulletin. The particulars to be published in the notice shall be determined by the Agency.

Article 19. Opposition Against Decision to Grant a Patent

(1) Any person concerned may file with the Agency a reasoned declaration of opposition to any decision to grant a patent within six months following the date of publication of the notice concerning the grant of a patent in the Official Bulletin if any one of the conditions set out in Articles 4 to 8 has not been met.

(2) Opposition to a decision to grant a patent shall not be deemed to have been filed unless the prescribed fee has been paid.

(3) The Appeals Board of the Agency shall examine the opposition to the decision to grant a patent in accordance with the conditions and within the time limits set out in Article 36.

(4) The outcome of the examination of any opposition that has been filed will be published in a notice in the Official Bulletin.

Article 20. Grant of Patent

(1) If no opposition has been filed against the decision to grant a patent or if any opposition filed has been rejected, the Agency shall grant a patent to the entitled person, subject to payment of the prescribed fee. The grant of a patent shall not be refused and a patent shall not be invalidated 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.

(2) The description, the claims, the drawings and the abstract shall be published simultaneously with the grant of the patent.

(3) Where there is more than one owner, the original of the patent shall be issued to the owner designated by common accord for that purpose; the remaining joint owners shall be entitled to receive a copy of the patent.

(4) Where the applicant is not the inventor, the inventor shall be entitled to receive a copy of the patent.

Article 20¹. Supplementary protection for pharmaceutical products

(1) The owner of the patent for a pharmaceutical product, who has been granted authorization for marketing the product, shall avail himself of a supplementary protection of the invention equal in time with the period from the filing date till the date on which marketing was allowed, but not longer than 5 years.

(2) Supplementary protection for the pharmaceutical products shall be granted at the request of the patent owner and shall be conformed by a certificate issued by the Agency. The certificate grants rights equal to those residing in the main patent and gives birth to the same rights and obligations. Throughout the entire term of validity, the owner shall pay annual maintenance fees.

(3) The application giving the particulars of the inventor, the patent number, the date of issue and the number of the authorization for marketing of pharmaceutical product, shall be filed with the Agency within 6 months following the grant of authorization for marketing the pharmaceutical product in question. If the authorization for marketing has been granted before the grant of the main patent, the application shall be filed within 6 months the grant of the patent.

(4) The application shall be accompanied by:

- a) a copy of the authorization for marketing the products;
- b) proof of payment of the prescribed fee:

(5) The decision to issue of certificate shall be published in the Official Bulletin and shall be introduced in the National Registry of Patents for invention. The list of particulars shall be drawn by the Agency.

Article 21. Restoration of Rights

(1) Any time limit laid down in the application examination procedure that has not been complied with by the applicant may be extended, with the exception of the time limits laid down in Article 10 (8) and Article 16(8), on payment of the prescribed fee.

(2) The request for restoration of rights shall be submitted by the applicant no later than six months after the expiry date of the time limit concerned.

Chapter IV RIGHTS AND OBLIGATIONS

Article 22. Rights of Patent Owner

(1) The owner of a patent shall enjoy an exclusive right in the invention protected by the patent, including the right to exploit the invention insofar as such exploitation does not prejudice the rights of other patent owners, the right to dispose of the patent and the right to prohibit others who act without his consent or carry out the following activities: manufacture, use, offering for sale, selling or importing for these purposes the protected product or the product obtained directly by the protected process.

(2) 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 fully 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, conclude a licensing contract nor perform any act involving assignment of rights in the patent; further, he may not renounce the patent without notifying the other joint owners thereof.

Article 23. Infringement of Patent Owner's Exclusive Right

(1) The following acts shall constitute an infringement of the patent owner's exclusive right if performed without his consent:

a) the manufacture, use, import, offering for sale, sale and any other form of placing on the market, or holding for such purpose, of a product obtained by means of the invention protected by the patent;

b) where the subject matter of a patent is a process, to prevent third parties not having owner's consent from the act of using the process, and from the acts of: using, offering for sale, selling, or importing for these purposes the product obtained by that process;

c) inciting other persons to perform the acts listed above.

(2) A product shall be deemed to have been manufactured by means of an

invention protected by a patent and a process protected by a patent shall be deemed to have been used if all of the essential features of an invention contained in an independent claim have been used.

(3) The effects of a process patent shall extend to the product obtained by such process.

(4) When assessing the owner's rights infringement, if the subject matter of the patent is a process for obtaining a product, the judicial authorities shall have the authority to order the defendant to prove that the process to obtain an identical product is different from patented process; any identical product when produced 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 if the product obtained by the patented process is new or if there is a substantial likelihood that the identical product was made by the process and the owner of the patent has been unable through reasonable efforts to determine the process actually used.

(5) In the adduction of proof to the contrary, the legitimate interests of defendants in protecting their manufacturing and business secrets shall be taken into account.

Article 24. Acts Not Infringing Patent Owner's Exclusive Right

(1) The use of an invention protected by a patent shall not constitute an infringement of the patent owner's exclusive right:

a) in the construction or operation of a 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 when such means of a transport temporarily or accidentally enters the territory of the Republic of Moldova and the invention is used exclusively for the needs of the means of transport;

b) for the performance of research work or scientific experimentation for assessing the application of the subject matter of the invention or for non-commercial purposes;

c) in relation to exceptional circumstances, such as natural disasters, catastrophes and epidemics, and the like;

d) for the occasional preparation of medicines on a medical prescription;

e) for private purposes without gain.

(2) The use referred to in paragraph (1) shall be allowed, provided that such exceptions do not unreasonably conflict with the normal exploitation of the protected invention and do not unreasonably prejudice the legitimate interests of the owner of the protected invention, taking account of the legitimate interests of third parties. In such cases, the owner of the protected patent is entitled to claim a compensation adequate to the damages suffered as a result of unauthorized exploitation of the invention.

(3) Actions of the public authorities related to the usage of invention protected by a patent shall not be regarded as infringement of the owner's rights, provided that public authorities in question acted in good faith under this law.

Article 25. Extent of Legal Protection

The extent of the legal protection conferred by a patent shall be determined by the terms of the claims. The description and drawings shall serve solely to interpret the claims.

Article 26. Provisional Legal Protection

(1) An invention that is the subject matter of a patent application shall enjoy, as of the publication date of the notice concerning the application and up to the date of publication of the notice concerning the patent, provisional legal protection whose extent shall be determined by the claims.

(2) Provisional legal protection shall be deemed to have existed only if a patent is granted.

(3) Any natural or legal person who exploits the invention during the period referred to in paragraph (1) shall be required, after grant of a patent, to pay monetary compensation to the owner. The amount of such compensation shall be determined by agreement between the parties.

(4) The provisions of paragraph (3) shall apply to the invention as from the date on which the applicant has notified the filing of the application to the person who exploits the invention, if such date is earlier than the publication date of the notice concerning the application.

Article 27. Right of Prior User

(1) Any natural or legal person who, before the priority date of the invention, has exploited an identical invention made independently of the inventor or who has carried out the necessary preparation for such purpose shall maintain his right to exploit the invention in the future, on condition that he does not extend its scope, without having to pay a royalty or to obtain the consent of the patent owner (right of prior user).

(2) The right of prior user may only be transferred to another natural or legal person together with the production unit in which has taken place the exploitation of the identical invention or the necessary preparation for that purpose.

Article 28. Opposition to Patent

Throughout its term of validity, a patent may be opposed and invalidated in whole or in part in the following cases:

a) the protected invention does not meet the patentability requirements set out in this Law;

b) the claims contain features which were not shown in the application documents as originally filed;

c) the subject matter of the invention is not disclosed in a sufficiently clear and complete manner in the description;

d) the inventor or the patent owner is not correctly identified in the patent.

Article 29. Renunciation of Patent

(1) A patent owner shall be entitled to renounce his patent in whole or in part.

(2) Renunciation of a patent by a joint owner shall not terminate the validity of the patent, which shall remain the property of the remaining joint owners.

(3) Renunciation shall take effect on the date on which the Agency receives from the patent owner a written declaration informing it of his intention to renounce the patent.

(4) The Agency shall record the renunciation of a patent and publish a notice thereof in the Official Bulletin within three months following the date of receipt of the written declaration from the patent owner.

(5) The patent owner shall be required to inform the inventor, at the same time as he submits his declaration to the Agency, of his intention to renounce the patent. In such case, the inventor shall have a preferential right to the grant of a patent in his own name during a period of three months as from the date on which the patent owner has informed him of his intention to renounce the patent.

(6) If a patent is the subject of a licensing contract, it may only be renounced with the agreement of the licensee.

Article 30. Premature Termination of Patent

- (1) The patent shall terminate prematurely:
 - a) in the event of invalidation of the patent in accordance with Article 28;
 - b) on a declaration by the patent owner submitted to the Agency in accordance with Article 29;
 - c) in the event of failure to pay the renewal fee for the patent within the prescribed time limit.
- (2) The Agency shall publish in the Official Bulletin a notice of premature termination of a patent.
- (3) The validity of a patent that has been terminated for failure to pay a fee may be restored within a period of six months as from the date of publication of the decision prematurely terminating the patent, on payment of the prescribed fee.

Article 31. Right of Subsequent User

- (1) Any natural or legal person who, between the date on which the validity of the patent has been terminated and the date on which the validity has been restored, has exploited an invention protected by a patent or has carried out the necessary preparation for such purpose shall maintain his right to exploit the invention in future without the agreement of the patent owner on condition that he does not extend its scope (right of subsequent user).
- (2) The right of subsequent user may only be transferred to another natural or legal person together with the production unit in which the exploitation of the invention or the necessary preparation for such purpose has taken place.

Article 32. Transfer of Rights

- (1) The right to ownership of a patent, the rights deriving from registration of a patent application and the rights conferred by a patent may be transferred to other persons in whole or in part.
- (2) Rights may be transferred under an assignment contract, contract on exclusive and nonexclusive license, by succession or by testamentary provision or *ab intestat*.
- (3) Rights transferred by contract under paragraphs (2) shall also have effect for third parties and shall determine the alteration of the legal status of the patent immediately as the contract is registered with the Agency.

(4) Under a licensing contract, the patent owner (licensor) shall afford to another natural or legal person (licensee) the right to exploit an invention protected by a patent within the limits laid down in the contract. The licensee shall undertake to make payments to the licensor and to carry out such other acts as are laid down in the contract.

(5) Under an exclusive licensing contract, the licensor shall afford to the licensee the exclusive right to exploit an invention within the limits laid down in the contract and beyond which the licensor shall maintain his right of exploitation.

(6) A nonexclusive license (ordinary license) shall enable the licensor, whilst affording to the licensee the right to exploit the invention, to maintain all his rights under the patent, including the right to afford licenses to other parties.

(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 change in the legal situation of a patent shall give rise to publication of a notice in the Official Bulletin. The particulars to be included in such notice shall be determined by the Agency.

Article 33. Other use without authorization of the right holder

(1) The judicial authority may authorize, without the consent of the patent owner, the right on exploitation of protected invention, under the following conditions:

a) authorization of such use shall be considered on its individual merits;

b) such use may only be permitted if, prior to such use, the proposed user has made efforts to obtain authorization from the right holder 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 case of national emergency or other circumstances of extreme urgency or in cases of public non-commercial use. In such cases, the right holder shall be, nevertheless, notified as soon as reasonable practicable.

c) the scope and duration of such use shall be limited to the purpose for which it was authorized, and in the case of semi-conductor technology, shall only be for public non-commercial use or to remedy a practice, determined after judicial or administrative process to be anti-competitive;

d) such use shall be non-exclusive and non-assignable, except with the part of the enterprise or goodwill which enjoy such use;

e) any such use shall be authorized predominantly for the supply of the domestic market;

f) 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 review, upon motivated request, the continued existence of these circumstances;

g) the right holder shall be paid adequate remuneration in the circumstances of each case, taking into account the economic value of the authorization.

h) the legal validity of any decision relating to the authorization of such use shall be subject to a judicial review or other independent review by a distinct higher authority;

i) provisions of paragraph b) and e) shall not be applied where such use is permitted to remedy a practice, determined after judicial or administrative process to be anti-competitive. The need to correct anti-competitive practices may be taken into account in determining the amount of the remuneration. Competent authorities shall have the authority to refuse termination of authorization if and when the conditions which led to such authorization are likely to recur.

j) when a nonexclusive compulsory license has been granted for exploitation of a patent for invention (hereinafter referred to as “the second patent”) which may not be exploited without infringing another patent (hereinafter referred to as “the first patent”), the following additional conditions apply:

- the invention 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 owner of the first patent shall be entitled to a cross- license on reasonable terms to use the invention claimed in the second patent; and

- the use authorised in respect of the first patent shall be not assignable, except with the assignment of the second patent;

(2) The holder of the license shall notify the Agency within 10 days the decision of the judicial authority to grant a non-exclusive compulsory. The Agency shall enter in the National Patent Register and publish in the Official Bulletin data referring to the granted of non-exclusive compulsory licenses, as well as data in respect of modifications occurred in connection with it within three months following the date of notification.

(3) If the holder of a compulsory license has not undertaken any preparation for exploiting the invention within the 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 two years following the date on which the license was granted to him.

Chapter V

DEFENSE OF RIGHTS OF INVENTORS AND PATENT OWNERS

Article 34. Sanctions for Infringement of Rights of Inventors

(1) Any person who usurps the capacity of inventor, who obtains under constraint the capacity of joint inventor or who discloses the subject matter of an invention prior to the filing of an application without the consent of the inventor shall be deemed to have infringed the latter's rights and shall be liable to imprisonment or a fine in conformity with the legislation in force.

(2) Any official or employee of the Agency who discloses the subject matter of an invention prior to publication of the application shall be liable to disciplinary and administrative sanctions in accordance with the law.

Article 35. Sanctions for Infringement of Rights of Patent Owners

(1) Any natural or legal person who exploits an invention protected by a patent in violation of this Law shall be deemed to have infringed the rights of the patent owner.

(2) At the request at the patent owner, the infringement of his rights shall be terminated and the natural or legal who committed the infringement shall be required to pay damages as compensation for the prejudices incurred, including for loss of earning and the expenses which may involve appropriate attorney's fees.

(3) Products infringing owner's rights shall be, without compensation of any sort, dispose of outside the channels of commerce in such a manner as to avoid further infringements or destroyed.

(4) The infringed side may request that all materials and implements the predominant use of which has been in the creation of the infringing goods listed in paragraph 3 above be, without compensation of any sort, be disposed of outside the channels of commerce in such a manner as to minimize the risk of new infringement. In considering such requests, the need for proportionality between the seriousness of the infringement and the remedies required as well as the interests of third parties shall be taken into account.

(5) In the event of a repeat offense, the amount of the fine to which the person committing the infringement of the rights of the patent owner is liable shall be doubled.

(6) Proceedings for infringement of the rights of a patent owner may also be

instituted by the holder of an exclusive license, unless otherwise provided in the licensing contract.

Article 36. Conditions for Hearing Litigation

(1) Litigation between natural or legal persons deriving from the application of this Law shall be heard either by the Appeals Board of the Agency or by the courts or Specialized Arbitration Center.

(2) The Appeals Board shall hear appeals and opposition with respect to:

- a) suspension of the prosecution of an application;
- b) the grant or refusal of a patent;
- c) establishment of a priority or rejection of a priority claim;
- d) restoration of the validity of a patent;
- e) invalidation of a patent.

(3) The Appeals Board shall hear appeals and oppositions within three months of the date of their receipt.

(4) The Appeals Board shall notify to the applicant or the patent owner any opposition filed by another person.

(5) The Appeals Board shall inform the persons concerned of its decision within a period of one month.

(6) Any person who disagrees with the decision taken by the Appeals Board may appeal to a court or arbitration tribunal within three months following the date of receiving the notice concerning the decision that has been taken.

(7) The courts or arbitration tribunals shall hear litigation with respect to:

- a) authorship of an invention;
- b) determination of the identity of the patent owner;
- c) infringements of the exclusive right in an invention and other economic rights conferred by a patent on its owner;

- d) the conclusion and execution of licensing contracts related to the exploitation of an invention;
- e) the right of prior user and the right of subsequent user;
- f) remuneration to be paid by the employer to an inventor;
- g) payment of the allowances laid down by this Law;
- h) any decision to revoke or forfeit the patent may subject to judicial review;
- i) other matters related to the protection of the rights attested to by a patent.

Chapter VI

FINAL PROVISIONS

Article 37. State Agency on Industrial Property Protection

- (1) The State Agency on Industrial Property Protection is a state body that is responsible for the legal protection of industrial property on the territory of the Republic and is answerable to the Government.
- (2) The Agency shall take its decisions with respect to the legal protection of invention in a fully independent manner. Such decisions may be contested only before the courts.
- (3) In accordance with this Law, the Agency shall prosecute patent applications, shall effect their registration and examination, shall grant patents, shall publish official notices, shall publish the Official Bulletin and shall draw up legislative and regulatory instruments concerning the protection of industrial property.
- (4) The Agency shall administer the national patent collection, which it shall maintain and expand by means of acquisitions and by means of exchanges with international bodies and foreign patent offices, shall disseminate patent information, provide on request information on the state of the art and shall also provide training in the protection of industrial property.
- (5) The Agency shall be the depository of the National Patent Applications Register and of the National Patent Register.
- (6) The activities of the Agency shall be funded by fees, revenue from services provided and the budget of the State.
- (7) The Agency shall allocate the resources corresponding to the fees paid into its accounts, including those in foreign currency, to technical equipment, to the

constitution and use of a computer system and a patent database as well as to staff training and incentives.

(8) The Agency shall represent the Republic of Moldova in relations with the international and intergovernmental organizations active in the field of industrial property and shall cooperate with them in that field.

Article 38. Obtaining a Patent Abroad

(1) An invention made in the Republic of Moldova may only be patented abroad three months at the earliest after the date of filing an application with the Agency.

(2) A patent may be obtained abroad on the basis either of an international application filed under the Patent Cooperation Treaty (PCT) or a filing procedure in accordance with an international or regional convention to which the Republic of Moldova is party.

(3) The Agency shall act as receiving Office for applications filed in accordance with paragraph (2).

Article 39. Patent Fees

(1) The filing of a patent application, the publication of such application, its examination, the grant of a patent, the maintenance of a patent and the accomplishment of other legal acts related to patent applications and patents shall be subject to the levying of patent fees. The fees for the actions relating to protection of inventions, their amount and payment terms shall be governed by Government regulations.

(2) Fees shall be paid by the applicant, the patent owner or by any other natural or legal person concerned.

Article 40. State Incentives for Inventive Activity and Exploitation of Inventions

The State shall encourage inventive activity and the exploitation of inventions. The methods and means used to that end shall be determined by the appropriate decisions and legislative instruments.

Article 41. Rights of Foreign Natural and Legal Persons

Foreign natural and legal persons who are nationals of States party to the international treaties to which the Republic of Moldova is also party shall enjoy the rights afforded by this Law in the same way as natural and legal persons of the Republic of Moldova. The provisions of this Law shall also apply within the framework of bilateral agreements or according to the principle of reciprocity.

Article 42. International Treaties

If an international treaty to which the Republic of Moldova is party lays down rules that differ from those set out in this Law, the provisions of such international treaty shall prevail.

Chapter VII

TRANSITIONAL PROVISIONS

Article 43

This Law shall enter into force three months after the date of its publication.

Article 44

Until the legislation has been made to comply with this Law, the hitherto applicable provisions shall continue to apply except where they conflict with those of this Law.

Article 45

It is hereby provided that:

– USSR inventors' certificates shall have effect in the Republic of Moldova in accordance with the legislation that was applicable on the date of their issue;

– inventors and applicants shall have the option of jointly filing a request for the grant of a patent of the Republic of Moldova for inventions protected by a USSR inventor's certificate prior to the expiry of 20 years as from the filing date of the application that had led to the issue of such certificate. If a patent is granted on that basis, the corresponding USSR inventor's certificate shall cease to have effect in the Republic of Moldova. The term of patents granted under this procedure shall be 20 years as of the filing date of the application for an inventor's certificate. Litigation deriving from the grant of patents of the Republic of Moldova for inventions protected by USSR inventors' certificates shall be heard by the courts;

– any person who, prior to the filing date of a request for the grant of a patent of the Republic of Moldova for an invention protected by a USSR inventor's certificate, has exploited the invention concerned on his own behalf or on behalf of his enterprise in the Republic of Moldova or who has carried out the necessary preparation for such purpose, shall be entitled to continue to exploit the invention or to exploit it in accordance with the preparation that has been made without having to conclude a contract with the patent owner. In such case, the inventor shall be entitled to remuneration of which the amount and conditions of payment shall be established by the Government;

– a USSR inventor's certificate may be invalidated under the procedure set up by this Law if the invention for which it has been granted does not satisfy the patentability requirements that were set out in the legislation applicable on the filing date of the application that led to the grant of a certificate;

– applications for patents of the Republic of Moldova pending on the date of entry into force of this Law shall be prosecuted in accordance with the procedure set up by this Law. However, the invention must meet the patentability requirements defined by the legislation applicable on the filing date of the application;

– patents of the Republic of Moldova granted prior to the entry into force of this Law shall be assimilated from a legal point of view to patents granted in application of this Law.

Article 46

Prior to the expiry of three months, the Government:

- shall submit to Parliament proposals to adapt the current legislation to this Law;
- shall adapt its regulatory texts to this Law;
- shall have its ministries and departments revise or cancel any of their regulatory texts that conflict with this Law.

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