

The Main Rights and Obligations Related to Patents in Romania

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ABSTRACT: In the context of globalization of trade industrial property has become a key factor of the world economy and an indispensable attribute of the market economy, it being a key topic in both developed and developing countries. In the field of industrial property, as a branch of intellectual property, Romanian legislation establishes a number of rights and obligations regarding patents. In this paper we propose to present aspects related to the rights and obligations that the holder of a patent must fulfill as provided by Romanian legislation, mainly the Law 64/1991, but also the situations that constitute as exceptions to the violation of these rights. We have also highlighted the updated and interpreted content of the text of the law and have exemplified various situations in national case law to highlight the special importance to be given to regulations concerning industrial property rights, which are a topic of great importance and actuality in Romania in areas such as scientific research, innovation, industrial policies, technological transfer, biotechnology, public health, education, biodiversity, food security and more.

KEYWORDS: intellectual property, industrial property, patent, invention, copyright, legal protection of inventions

Introduction

Industrial property as a branch of intellectual property is of particular importance recognized since the Paris Convention of 1883. The content of this, together with that of the Berne Convention for the Protection of Artistic and Literary Works of 1886, constitutes the components of a number of international treaties of major importance and are subjects of debate on actual topics such as scientific research, innovation, industrial policies, technology transfer, public health biotechnology, education, biodiversity, food security and many others.

In the context of globalization of trade, industrial property has become a key factor of the world economy and an indispensable attribute of the market economy, it being a key topic in both developed and developing countries, being a factor of economic growth, competitiveness and development.

In Romania, the protection of inventions is ensured by a patent. It may be defined as “a title issued by a public authority, or by an authority recognized by the State, conferring on the holder a temporary monopoly on the exploitation of the invention of which the object is” (Azéma and Galloux 2006, 89).

In order to encourage economic growth and stimulate investment and development, the legal protection of new creations in Romania is ensured through a structured legislative framework and is managed by the State Office for Inventions and Trademarks.

“For the issue of the patent, three conditions are verified: novelty, inventive activity and industrial applicability. The invention must also be placed outside the scope of inventions excluded from patenting” (Roş 2017, 179).

An example of the fulfilment of the conditions of validity of the patent is given in Decision no. 3825/2007 handed down by the High Court of Cassation and Justice, which rejected the application for the annulment of a patent, bearing in mind the novelty element that the invention had.

There is also the possibility of patenting inventions abroad, but only after registering the patent application at the State Office for Inventions and Trademarks for inventions created by Romanian individuals on the territory of Romania.

The main rights and obligations related to the patent

”Heritage rights are protected only after obtaining a patent, the property right is transmissible by acts between the living and for the cause of death” (Roş 2001, 31).

Throughout the period of protection, the patent shall provide the holder with an exclusive right of exploitation. For this reason, the legislator has provided that, where the object of the patent is a product, it is prohibited to manufacture, sell, use, offer for sale, or import it.

Where the object of the patent is a process, the patent shall ensure protection from its use, offering for sale, sale or import for this purpose of the product made by the patented process.

The content of the claims determines the extent of the patent protection. For the interpretation of claims, account shall be taken of the description and drawings of the invention and the scope of the protection shall be derived by any element equivalent to an element provided for in the claims.

The law protects against disclosure inventions subject to the patent application, which can be disclosed until publication only with the consent of the applicant.

There are also situations in which the content of patent applications made on the territory of Romania by the institutions in law for the defense and preservation of national security is declared secret, as provided for in Article 38(1) of Law no 64/1991.

In this case the patent applicant is notified and will receive material compensation from the institution which has assigned the character of state secret. Patenting abroad inventions containing information declared secret by the State can only be done if the information has been declassified.

A special situation is that of biological material with specific characteristics. In this case the protection of the patent extends to the derivative material, obtained by multiplication or reproduction and based on the patented material. In the same way, the protection of the patent on any biological material derived in identical or differentiated form obtained by the patent-protected process shall be extended.

The patent shall also extend its protection to any material in which the product is incorporated and where it performs its functions for products containing genetic information, with the exception of the human body.

The law provides that such protection shall not be exercised in the case of biological material where the patent holder has given his consent or has offered the material for marketing when the multiplication or reproduction results from use, unless that material will not be used subsequently for other uses.

Patent protection shall begin from the date of publication of the application, except where the application has been rejected, withdrawn or deemed withdrawn.

An example of this is given by Decision 79 of 18 January 2019 of the High Court of Cassation and Justice, Civil Division I, which in determining the decision takes into account the registration data of patents.

Among the rights that the inventor has are those mentioned the quality and name in the patent and the work permit, as well as in any other acts or publications and to be issued a duplicate of the patent if the holder is another person. The name of the inventor shall not be published if expressly requested by the inventor and the legal fee is paid.

In the case of inventions made by the employee and unless otherwise provided, he shall enjoy the property rights established together with the patent holder or his applicant on the basis of the contract concluded. The value of these rights is given by the economic or social effects of the patent exploitation, or by the contribution of value that the invention brings.

Another right of the patent holder is to apply to the State Office for Inventions and Trademarks, for justified reasons, the revalidation of the patent in the event of the decay, provided that the legal fee is paid. The period within which the decision to revalidate is taken

shall be 60 days, this reference being published in the Official Industrial Property Bulletin within 30 days of the final stay of that judgment.

The patent holder also has the right to give up, in whole or in part, the patent. This is done on the basis of the registration of a written declaration with the State Office for Inventions and Trademarks.

The waiver of the patent shall be accompanied, in the case of service inventions, by the obligation of the patent holder to notify the inventor of the waiver and to transmit to the latter on request the right and documents relating to the patent. This is conditional on the granting of a non-exclusive license the terms being determined by provisions of the employer's internal regulations.

There are some special situations, such as in the case of renunciation of the patent that has been the subject of a license agreement in which the waiver is made only with the consent of the beneficiary.

Another situation is in the case of inventions containing classified information and where the holder can waive the patent only after the declassification of the information and the publication of the description of the invention, drawings, claims and the mention of the decision granting the patent. The invention or part of it for which it has been waived may be freely exploited by third parties.

In all these cases, the waiver shall be registered in the National Patent Register of the State Office for Inventions and Trademarks, the date on which they take effect being the date of publication in the Official Industrial Property Bulletin.

The patent confers on the holder the right to material compensation in the event of infringement of the exclusive right of exploitation. The protection provided by the patent does not apply to certain activities expressly specified. Thus, the rights provided for in the patent in the case of the use of the object of the invention for experimental purposes of a non-commercial nature are not infringed.

Another situation that constitutes an exception to the infringement of patent rights is that in which the invention is used or occurs exclusively in a private and non-commercial setting. Also, in the case of the use of patent-protected inventions on board ships, air and land vehicles or on devices ensuring their operation in the event of entry into the territory of Romania, temporarily or accidentally, provided that they belong to Member States of the conventions and treaties to which Romania is a party, and their use is made exclusively the needs of those vehicles or ships.

A special case is where the invention is used or actual preparations have been made for its use and after the corrections of the translation of a patent have taken effect, it is infringed. In this situation, the legislature provided for the right to use the invention without payment and without exceeding the volume existing at the time when the original translation took effect.

For proceedings carried out by the State Office for Inventions and Trademarks in respect of patents, the holder is obliged to pay taxes, subject to the penalty of forfeiture of rights in the event of non-payment, the amount and payment deadlines being set by law.

In the event of non-compliance with the time limits in the proceedings for good reasons, the holder or the patent applicant shall have the right to be reinstated in the previous situation on the basis of a reasoned application to be submitted within two months of the termination of the cases which prevented the action, not exceeding one year after the expiry of the time limit, as provided for in Article 41(1) of Law no. 64/1991.

The application for reinstatement in the previous situation shall be subject to taxation, unless the applicant has not acted within the time limit of the notices of bringing the form of the description and drawings in accordance with the accepted claims.

According to the law, "the rights of inventors and patent holders are defended by means of administrative law, civil law and criminal law. Depending on the nature of the body competent to resolve the dispute, the defenses shall be administrative and judicial. Administrative means are

challenge and revocation, and judicial ones take the form of legal action that may be civil or criminal” (Macovei 2010, 144).

Rights arising from patented inventions shall cease upon expiry of the term of protection, the waiver or forfeiture of the title of rights, or the ex officio revocation of the decisions of the State Office for Inventions and Trademarks. In the above situations, ”only property rights, the exclusive right of exploitation, not personal, non-heritage rights” are extinguished (Savu 2017, 69).

Conclusion

As a conclusion, the patent issued in Romania for inventions made by Romanian citizens in this country ensures protection and takes effect only on the territory of this country, patenting abroad being made only after registration of the patent application at the State Office for Inventions and Trademarks.

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