

# REGULATIONS FOR IMPLEMENTING THE PATENT LAW

(No. 64/1991)

## CHAPTER I Filing Procedure of the Patent Applications

### SECTION 1 General Provisions

#### Rule 1 – Granting the Patents for Invention

The patents for invention are granted according to the provisions of Law no. 64/1991 of October 11, 1991 by meeting the conventions, treaties and agreements to which Romania is a party.

These implementing regulations set out the manner of applying the Law concerning the patents for invention.

#### Rule 2 – Definitions

The terms used within these implementing regulations have the following meaning:

- *law* means the Patent Law (No. 64/1991);
- *OSIM* means The State Office for Inventions and Trademarks;
- *inventor* means the person who created the invention;
- *successor in title* means any natural or legal person to whom either the right to be granted a patent for invention or the rights deriving from an issued patent have been transferred;
- *applicant* means the natural or legal person applying for the grant of a patent for invention;
- *patent owner* means the person to whom the right conferred by the patent belongs;
- *employer* means the legal person having a legal status;
- *publication* means to be rendered available to the public;
- *patent attorney* is a person skilled in giving assistance in the field of industrial property (inventions, marks, designs, models, a.s.o.), who legally carries out this activity;
- *authorized representative* means the patent attorney who may also have the quality of representation in the procedures before The State Office for Inventions and Trademarks;
- *patent application* means a written application containing the explicit demand for the grant of a patent for invention;
- *description* means the written presentation of the invention in the conditions of Art. 18 from the Law;
- *claims* mean the presentation of the subject-matter of the demanded protection and of the elements of novelty of the invention;
- *regular filing* means the patent application attended by the description of the invention, claims and, if required, by the explanatory drawings;
- *priority* means the date of the first filing of the patent application, irrespective of the competent national authority where the application filing was performed under the Paris Convention.

## **SECTION 2**

### **Filing the Patent Application**

#### **Rule 3 – Filing the Patent Applications with The State Office For Inventions and Trademarks**

(1) All the patent applications filed with the General Registry of the State Office for Inventions and Trademarks shall be analyzed on the date of filing.

(2) Filing of a patent application with The State Office for Inventions and Trademarks may be performed as follows:

(a) directly to the General Registry of The State Office for Inventions and Trademarks that is open to the public on any working day;

(b) by mail, posted by registered letter with acknowledgment of receipt.

In both situations, The State Office for Inventions and Trademarks acknowledges to the applicant the receipt of the patent application and the conditions in which it was received.

(3) Filing of the patent applications belonging to the field of the national defense and security that were created in the territory of Romania is performed according to the legislation in force.

(4) The other applications and documents filed with the General Registry regarding the procedures to which the patent applications are submitted, shall be analyzed subsequent to the date of filing thereof, the answer of the State Office for Inventions and Trademarks being notified to the petitioner within 60 days.

(5) Any letters or documents filed with the registry referring to a patent application or a patent for invention shall indicate the petitioner's name and address for mailing, as well as the filing number of the application or of the patent of invention to which they refer; otherwise, The State Office for Inventions and Trademarks does not comply with the request, these being definitely filed and disposed of, or returned, if the petitioner is identifiable.

(6) If there are registered amendments or completions to the description, claims and/or to the drawings of the patent application filed with The State Office for Inventions and Trademarks, this fact shall be mentioned by the manifest indication “completion to the patent application no.... /dated.....” and the typed pages from the description, claims and/or drawings containing the required amendments or completions will be filed; otherwise, they shall be returned to the applicant.

(7) When the law or the implementing regulations make provisions that an application or a document should be filed in a certain form, this application or document shall be filed as prescribed.

If the patent application or any other document does not comply with the prescribed conditions, The State Office for Inventions and Trademarks notifies the applicant about the defects, providing a period of time for the rectification, except for the case provided for in Rule 8(4) when the patent application shall be returned to the applicant.

All the notifications of the State Office for Inventions and Trademarks shall be justified and shall contain the legal ground.

(8) The State Office for Inventions and Trademarks shall inscribe on the application the receiving date, the number from the General Registry and the documents received under signature. A copy of the application thus filled in shall be immediately returned to the applicant as acknowledgment of the receipt. The receiving date and the number from the General Registry of The State Office for Inventions and Trademarks shall be legibly written.

(9) The returned application copy shall indicate the shortcomings found out by The State Office for Inventions and Trademarks upon filing the patent application and the period of time within which they are to be remedied.

(10) Upon filing a patent application with the State Office for Inventions and Trademarks, the applicant will state precisely that he is entitled to be granted a patent for invention, will indicate the legal ground which gives him this title, or, will file the necessary documents which can prove this fact.

(11) When during the time elapsed from the filing of the patent application till the issue of the patent a court decision established that another person than the applicant or his successor in title is entitled to the issuance of the patent, The State Office for Inventions and Trademarks will execute that decision.

(12) The filing fee is to be paid by the applicant at the time the patent application is filed with The State Office for Inventions and Trademarks. When the applicant has paid the filing fee prior to filing the patent application, he shall state this precisely in the application and a copy of the payment document shall be attached therewith.

(13) If, upon filing the patent application, the applicant has not paid the filing fee, this fee shall be paid within three months from the date of the national regular filing, with a legally established increase; otherwise, the patent application is deemed abandoned and it is rejected.

(14) Any payment document failing to contain the identification data of the patent application or of the patent for invention (at least the application or the patent number) is disposed of as witness document and the amount of money will be returned only if the payer may be identified by name or address. In case of returning the amount of money this will be diminished by the cost of the post services.

#### **Rule 4 – Time Limits**

(1) Periods expressed as days contain the calendar days and do not include either the day when the period started or the one when the period ended. The periods expressed as years, months or weeks will end on the day of the year, month or week corresponding to the starting day.

(2) The period which beginning on the 29<sup>th</sup>, 30<sup>th</sup>, 31<sup>st</sup> of the month ends in a month not having such a day, will be deemed to end on the first day of the following month. The period ending on a legal holiday or when the service is suspended will be extended up to the end of the following working day.

(3) The periods start to elapse from the date when the documents of the procedures are communicated, by communication being meant the date when the notification of The State Office for Inventions and Trademarks was registered at the post office.

(4) The documents of the procedures sent by mail to The State Office for Inventions and Trademarks are deemed to be fulfilled within the prescribed time limit if they were registered at the post office prior to the end thereof.

(5) An application demanding for an extension of the time limit for answering to the notification of The State Office for Inventions and Trademarks shall have the date of the post office or of the General Registry of The State Office for Inventions and Trademarks within the prescribed time limit and will depend upon the reasons for which this extension is required.

The State Office for Inventions and Trademarks shall notify the applicant in writing about the acceptance or the rejection of the demand for extending the time limit.

(6) Failure to fulfil the documents of the procedures within the legal time limits does not entail the sanctions provided for by the law and the present implementing regulations if the applicant can prove that he was hindered by some circumstances beyond his will and if he fulfils the procedure within two months from the termination of the cause.

#### **Rule 5 – Representation by Authorized Representative**

(1) Filing of the patent application with The State Office for Inventions and Trademarks or the applicant's representation in the procedures before The State Office for Inventions and Trademarks can be made by an authorized mandatary with the residence or premises in Romania.

(2) Where the applicant of the patent of invention is represented by an authorized mandatary, this can affix his signature upon the patent application on the basis of a written power of attorney.

(3) In the procedures before The State Office for Inventions and Trademarks, the foreign applicant or owner may be represented only by an authorized patent attorney.

(4) According to Article 43 of the Law, the patent attorney may assure assistance, upon request, to Romanian or foreign natural or legal persons and may represent them before The State Office for Inventions and Trademarks, according to the provisions of the contract concluded with the customer.

The representation is assured by the empowerment and within the limits of the mandate established by contract with the persons concerned, in view of obtaining, defending and claiming the rights regarding the inventions, industrial designs, trade and service marks or other industrial property rights. Representation of the natural or legal persons before The State Office for Inventions and Trademarks is made by written power of attorney.

(5) The juridical assistance of the applicant or of the owner before law courts is conditioned by the qualification of attorney or legal adviser.

(6) The patent attorney shall observe only the provisions of the law and shall be obliged to act in good faith and with professional integrity.

He shall not disclose the data and information received from the customer. The information given by the customer to the patent attorney in view of exercising his function of representation shall not be considered as disclosure.

(7) A national of Romania with the residence in Romania may be a patent attorney provided that he should meet cumulatively the following requirements:

- has a graduate diploma of an institution of technical and juridical higher education;
- has at least 5 years of service in the technical and juridical professions;
- has no criminal records;
- enjoys a good reputation;
- was declared to have passed the examination organized for this profession by The State Office for Inventions and Trademarks.

(8) The profession of patent attorney may be practised only after the persons having passed the examination are registered, upon their request, in the National Register of Patent Attorneys and after they registered themselves at the Town hall of Bucharest, the Finance Department based on the registration voucher issued by The State Office for Inventions and Trademarks.

The patent attorneys' list is published in the Official Bulletin of Industrial Property.

(9) The examination for the profession of patent attorney is taken before a board consisting of 5–7 members whose president is the director of The State Office for Inventions and Trademarks. The members of the board are appointed by the board of directors of The State Office for Inventions and Trademarks.

The members of the board may be specialists having at least 5 years of activity within The State Office for Inventions and Trademarks, university teaching staff, experts.

(10) Practising the profession of patent attorney is not compatible with the quality of employee of The State Office for Inventions and Trademarks.

(11) Striking off from the National Register of Patent Attorneys is carried out upon request by the person involved and by The State Office for Inventions and Trademarks, when that person does not meet one of the requirements stipulated in para.(7).

(12) Infringement with guilt by the patent attorney of the professional obligations and of the norms of conduct is an infraction of discipline and is sanctioned, where appropriate with: warning, temporary striking off for a period of up to 5 years or definitive erase from the National Register of Patent Attorneys.

The disciplinary sanction is established and applied by a board appointed to this end by the management of The State Office for Inventions and Trademarks. The striking off sanction may be appealed against in the court within 30 days from the communication of the court decision.

Striking off is performed only after the court decision remains irrevocable.

### **Rule 6 – Official Language**

All the patent applications and the correspondence referring thereto will be drawn up and submitted to The State Office for Inventions and Trademarks in Romanian.

### **Rule 7 – Confidential Character of the Patent Application Secrecy**

(1) The data contained in the patent application are confidential up to the publication thereof by The State Office for Inventions and Trademarks, the disclosure thereof without the consent of the inventor or of his successor in title being forbidden irrespective of the way in which the persons got knowledge of them and whatever their quality may be (representatives, patent attorneys, any person in the situations provided for in Articles 5 and 18, para.2 of the Law).

Disclosure prior to the publication of the patent application is punished according to the Penal Code.

(2) The State Office for Inventions and Trademarks ensures the confidentiality of the patent applications from the date of filing thereof with the General Registry of The State Office for Inventions and

Trademarks up to the publication thereof in compliance with Article 23, Article 44, paras 1 and 3 and are sanctioned according to Article 60 of the Law.

(3) In compliance with Article 44, para 2 of the Law, the secret character of the descriptions of the inventions belonging to the national defense and national security fields is assigned by the Ministry of the National Defense, Ministry of Internal Affairs, Romanian Intelligence Service, by their representatives officially appointed.

(4) The representatives of the Ministry of National Defense, Ministry of Internal Affairs and of the Romanian Intelligence Service have the obligation to observe the legal provisions and the commitments signed with The State Office for Inventions and Trademarks with regard to handling, confidentiality and keeping secret the patent for invention.

The secret character is assigned only for the patent applications from the national defense and national security fields, within 15 days from the date of the regular filing, by stamping the word "secret" onto the patent application documentation and the clearly legible signature (family name and first name) of the representative who assigned this character; otherwise, The State Office for Inventions and Trademarks follows the procedures provided for in these implementing regulations.

(5) The institution which assigned a secret character to a patent application, within 60 days from the date of assignation, shall pay an annuity for the maintenance under secrecy status and shall inform the applicant.

(6) The Ministry of National Defense, Ministry of Internal Affairs or The Romanian Intelligence Service will be able to maintain a description under secrecy only for the time limit for which the annuity corresponding to the maintenance under this status was paid. The secret status ceases by non-payment of the fee or by a written decision of the Ministry of National Defense, Ministry of Internal Affairs or the Romanian Intelligence Service, from the date of receiving thereof by The State Office for Inventions and Trademarks.

(7) In compliance with Article 44 para 2 of the law, The Ministry of National Defense, Ministry of Internal Affairs or Romanian Intelligence Service will pay an equitable compensation to the patent applicant established by contract during the whole period of maintenance of the invention under secrecy.

(8) The Ministry of National Defense, The Ministry of Internal Affairs or Romanian Intelligence Service will assign a secret character to the patent applications resulting from their enterprises, in accordance with the provisions of the legislation in force concerning the protection of the state secret.

(9) The State Office for Inventions and Trademarks will assure the required conditions for keeping, access, handling or any other activity concerning the patent applications which were assigned the secret character, in compliance with the provisions of the legislation in force concerning the protection of the state secret.

(10) Foreign patents may be applied for in respect of the inventions which are the subject-matter of the patent applications only after the expiration of a time limit of 30 days from the date of the regular filing.

#### **Rule 8 – Minimum Requirements for Registering the Patent Applications in the National Register**

(1) The patent applications meeting the provisions of Article 15 of the law and of these Implementing Regulations will be registered in the National Register of Patent Applications.

The date of filing with The State Office for Inventions and Trademarks of the patent applications is the date they were received at the General Registry.

(2) In compliance with Article 15 of the law, The State Office for Inventions and Trademarks registers a patent application in the National Register of Patent Applications, if at least the following documents are submitted:

- (a) a request written in Romanian which should contain an explicit demand for the grant of a patent for an invention whose title is mentioned, and also the identification data of the applicant;
- (b) a text which at first sight should seem to be the description of the invention.

The registration of the patent applications in the National Register of Filed Patent Applications is made in the sequence of the filing numbers and dates with the General Registry of The State Office for Inventions and Trademarks.

(3) The number in the National Register of Filed Patent Applications and the date of filing are written on the application and on the first page of each copy of the description as well as on the envelope, when the application was sent by mail.

This number is the number of the patent application and will be used in the whole correspondence.

(4) In case the provisions of para 2(a) and (b) are not fulfilled cumulatively, the applications are received, they are not filed in the National Register of the Patent Applications and the documentation is returned, The State Office for Inventions and Trademarks keeping a witness copy. The witness copy is kept in a confidential status and may be consulted by the applicant.

### **Rule 9 – Date of the Regular National Filing**

(1) All the documents provided for by Article 14 para 1 of the Law, filed with the State Office for Inventions and Trademarks form the regular national filing.

(2) The date of the regular national filing is the date when The State Office for Inventions and Trademarks received all the documents provided for by Article 14 para 1 of the Law, or the date provided for by the conventions to which Romania is a party.

(3) Where foreign applicants file the descriptions, claims and drawings in a foreign language, the regular national filing date will be the date of receiving thereof by The State Office for Inventions and Trademarks, provided that within two months they shall file the translation into Romanian of the respective documents in three copies, signed by the authorized representative. Otherwise, the application is considered abandoned and will be rejected.

(4) Where the claims are missing from the patent application, they can be filed within two months from the patent application filing date. In this case, the regular filing date is the date when the claims are filed.

If within two months from the filing date the applicant does not file the claims, the patent application is considered abandoned and it is rejected.

(5) If the description of the invention makes reference to the illustrative drawings, but these are not received with the State Office for Inventions and Trademarks together with the patent application, at the applicant's option:

(a) any reference in the description regarding the drawings will be considered left out;

(b) The State Office for Inventions and Trademarks will examine only those parts from the description not requiring the drawings;

(c) the regular filing date will be the date when the drawings were received by The State Office for Inventions and Trademarks, if the drawings are filed within two months from the patent application filing date.

In the case of the letters a) and b), the regular filing date will be the date when the patent application was filed with The State Office for Inventions and Trademarks.

(6) In all cases when The State Office for Inventions and Trademarks finds out that the provisions of Article 14, para 1 of the Law are met, accords a regular national filing date, registers this date in the National Register of Patent Applications filed with The State Office for Inventions and Trademarks and notifies the applicant about that within 30 days.

(7) The date of filing for divisionary or improvement inventions is given in the same conditions as those provided for at paragraphs (1) – (5) above.

## **SECTION 3 Patentable Inventions**

### **Rule 10 – Conditions for Patentability**

An invention is patentable if it meets cumulatively the requirements stipulated by Article 7, para 1 of the Law.

The inventions having as a subject-matter a new plant variety, a hybrid or a new breed of animal shall meet cumulatively only the provisions of Article 7, para 3 of the Law, completed with the rules in Chapter III of these regulations.

## **Rule 11 – Subject-Matter of Invention**

(1) The subject-matter of a patentable invention provided for in Article 7, para 2 of the law may be from any field of activity.

(2) The inventions whose subject-matter is a product may be:

(a) machines, apparatuses, tools, devices, mechanisms, machine parts, equipment, assemblies, installations, electronic circuits and units or electro-technical units, control or protection systems, construction elements, including construction materials, furniture, household articles, toys, medical instruments, writing instruments, musical instruments a.s.o. These products shall be defined technically by component elements, functional part played by each element, the connection between them, the constructive, functional and position relation between the component elements, a.s.o.

(b) chemical and biological substances, with the exception of those existing in nature for which no creative effort was made. These products shall be defined by the chemical formula and physical-chemical, curative, prophylactic, insecticide, fungicide or other properties. As the case may be, the chemical or biological substances are defined also by substituent radicals, molecular structure, geometry, molecular weight or by other characteristics individualizing or identifying thereof;

(c) mixtures (physical or physical-chemical) which are defined by their components, quantitative ratio thereof, structures, physical or chemical properties as the case may be, by other properties which individualize them and make them applicable for solving a problem;

(d) micro-organisms, newly created or isolated by selection with mutant effects; they shall be defined by morphological, taxonomic, biochemical or physiological characteristics and culture effects or other effects specific to the use thereof.

(3) The inventions whose subject-matter are procedures or methods shall be defined as logical succession of operations characterized by steps, their sequence, initial conditions (raw materials, parameters), technical conditions, technical means employed (equipment, installations, devices, instruments, catalysts) products or final results.

Activities resulting in a product or in modifying a product are deemed processes.

Activities having qualitative results are deemed methods. (measurement, analysis, regulation, checking, diagnosing or medical treatment).

The biological or genetical processes have specific characteristics and namely for the biological processes: individuals from which it is started and the way of acting upon them (individual selection, hybridation, polyploidy, genetic transfer, treatment with chemical or physical agents) the environment in which they develop, and for the genetic processes: separation of RNA and DNA, DNA sequences, modification of DNA sequences, cloning, RNA and DNA syntheses, these being possibly accompanied by chemical or biological processes.

The methods of treatment are defined by the specific interventions upon living organisms: nature, means employed (instruments, medicines, physical, balneological and disinfecting agents, a.s.o.), technical parameters (doses, time intervals, duration, temperature, concentrations, parameters of the physical or balneological agents), action or administration.

The mere posology of a medicine is not patentable.

(4) Computer programs per se are not inventions. The computer program protection is achieved by other forms of intellectual property.

However, the inventions meeting the provisions of Article 7, paras 1 and 2 of the Law cannot be precluded from being granted a patent for invention only because they contain elements or programs for the computer.

## **SECTION 4 The Patent Application**

### **Rule 12 – The Patent Application Form**

(1) The application for the grant of a patent for invention shall be drawn up in three copies, on a standardized, printed or typed form drawn up in Romanian, whose outline is prescribed by The State Office for Inventions and Trademarks.

(2) The applicant or the authorized representative will fill in the standardized application form clearly and legibly, either by typing or by hand writing, and will sign the application.

Where the applicant is a legal person, the application will be signed by the manager of the enterprise and will be stamped.

(3) The applicant shall write in the application his full name and address. If there are two or more applicants, the same mentions are made for each of them.

Natural persons shall be named by their family names, followed by the first names, nationalities and the indication of the countries whose nationals they are.

Legal persons shall be named by their complete denominations, places and countries where their premises are.

The applicant shall indicate the phone, telex, fax in view of a correct and rapid communication.

(4) The applicant shall explicitly request to be granted a patent for invention, indicating the title of the invention and shall prove that he is entitled to be granted a patent for invention.

If the patent applicant is another person than the inventor, the application shall indicate the legal ground on which he may apply for the patent for invention, or he will submit the document by which the inventor assigned him the right to be granted a patent for invention.

(5) In compliance with Article 14, para 2 of the Law, the applicant shall declare the inventor or the inventors if these are not the same with the applicant. The declaration of the inventor is performed by indicating his name and address, work place and if there are two or more inventors, the applicant shall write on the application the necessary data for each of them.

(6) If the applicant files the application through an authorized representative he will write on the application the identification data thereof (name, address, phone, telex, fax, bank account, code). If the representative is also a patent attorney, the applicant may allow him to sign the patent application in his name and to represent him in all the procedures before The State Office for Inventions and Trademarks on the basis of a written power of attorney.

(7) If there are two or more applicants and these are not represented before The State Office for Inventions and Trademarks by an authorized representative, the application shall indicate one of the applicants who is appointed for the correspondence with The State Office for Inventions and Trademarks; otherwise, The State Office for Inventions and Trademarks will have correspondence with the first applicant written on the application.

(8) If the applicant wants to make use of the priority right of an application previously filed in another country, with a national, regional or international administration, he will indicate in the application the name of the country or administration, filing date and number.

Where more priorities are claimed, the above-mentioned data are written in the application for any individual filing.

In case of an error, when the applicant failed to claim priority of a previous first filing, he can do it within maximum two months from the patent application filing date. If within this time limit the applicant does not claim a priority, the patent application will benefit of the priority from the date of submitting the patent application with The State Office for Inventions and Trademarks, in compliance with Article 17 of the Law.

(9) The following procedures may be explicitly requested in the patent application:

(a) publication of the patent application in a shorter time than 18 months, according to Article 24 of the Law;

(b) carrying out a search report in accordance with Article 25 of the Law;

(c) substantive examination in compliance with Article 26 of the Law.

If the applicant does not mention any procedure in the application, The State Office for Inventions and Trademarks will consider as a first procedure for the patent application, the publication thereof within the time limit specified in Article 23 of the Law.

(10) If the application is not signed, a copy of the application (other copy than the one provided for in Rule 3(8)) will be returned by The State Office for Inventions and Trademarks to the applicant, to sign it and send it back within two months; otherwise, the patent application is considered abandoned and it is rejected. If within this time limit the patent application is sent to The State Office for Inventions and Trademarks

signed, the filing date will be the date when the patent application was filed with The State Office for Inventions and Trademarks, provided that the stipulations of Article 14 para 1 of the Law are met.

### **Rule 13 – Description of Invention**

(1) The description of the invention shall contain successively, in the order below, the following:

(a) the title of the invention as indicated in the patent application with a clear and concise formulation of the subject-matter of the invention, but without disclosing the invention;

(b) precise specification of the technical field where the invention may be exploited, but without disclosing the solution;

(c) presentation of the prior art as far as the applicant has knowledge of it and it can be regarded as useful for understanding the invention, citing the documents reflecting such art; at least one solution regarded as the closest to the subject-matter of the invention will be shown; where the invention contains a group of inventions which fulfil the unity criterion, a solution from the prior art shall be presented for each subject-matter of the group;

(d) disclosure of the invention so that the technical problem it solves (even if the technical problem is not explicitly stated as such) as well as the technical solution as claimed can be understood; the description shall be attended by any advantageous effects of the invention with reference to the background art; where there is a group of inventions which meet the unity criterion, each invention in the group will be separately exposed;

(e) brief description of the figures in the drawings, if any;

(f) detailed description of the subject-matter of the invention for which protection is claimed, of the way of carrying out and use/operation thereof with references to the drawings of the invention, if any, so that a person skilled in the art could carry it out; the presentation shall be supported by the concrete embodiments; in case of a group of inventions which meet the unity criterion, at least one embodiment for each invention in the group shall be given;

(g) explicit indication, if this does not obviously result from the detailed description according to letter (f) or from the nature of the invention, of the way in which the invention is capable of industrial applicability.

(2) In the description mathematical models and formulae, algorithms may be presented without having the presentation of the subject-matter of the invention in the embodiment rely exclusively thereon.

### **Rule 14 – Description of an Invention Relative to Biotechnologies**

(1) An exception from the manner and sequence of presentation provided for by Rule 13 are the descriptions of the inventions having as a subject-matter a new plant variety, a hybrid or a new animal breed and these will be described in Chapter III of these Regulations.

(2) If an invention concerns a micro-organism protection is claimed, besides the provisions of Rule 13, the description will have to contain, in compliance with Article 18 of the Law, the morphological, taxonomic and biochemical characteristics thereof and at least one process for obtaining thereof, starting from a known micro-organism. To meet the requirements of Article 18, paragraph 2 of the Law, the denomination of the micro-organism, the number of the culture as well as the depositary institution or authority of the new micro-organism must be specified.

(3) If the subject-matter of the invention for which protection is claimed is a new process for obtaining a micro-organism having at least one new morphological, taxonomic or biochemical characteristic, the description shall contain besides the provisions of Rule 13 the following:

(a) in the chapter “the prior art”, the denomination of the micro-organism from which it has been started in applying the new process, the morphological, taxonomic and biochemical characteristics and the depositary institution or authority, with the file number of the culture deposit;

(b) in the chapter “embodiment of the invention”, after the process description, the micro-organism obtained will be described by its morphological, taxonomic and biochemical characteristics, stating precisely those characteristics which are the subject-matter of the invention and/or the new technical effects obtained.

(4) If the subject-matter of the invention is a nucleotide or an amino acid sequence, the description is regarded as disclosed in compliance with Article 18 of the law only if the description will indicate the amino acid sequence in the nucleotide or in amino acid sequence.

### **Rule 15 – Claims**

(1) The claims set out the extension of protection conferred by the patent for invention and they shall meet the following requirements:

(a) shall define in technical terms the subject-matter for which protection is sought and indicate the technical features of the invention:

(b) shall rely entirely on the description of the invention.

(2) The claims shall contain:

(a) a preamble indicating the title of the invention, the technical elements thereof which are necessary for defining the subject-matter of the invention and which are part of the prior art.

(b) a characterizing part, preceded by the expression “characterized in that”, stating concisely the new technical features necessary for the definition of the subject-matter of the invention in combination with the technical features stated in the “preamble”.

(3) The new features are presented in the characterizing part of the claims, stating their interdependence (constructive, functional, synergical a.s.o.) connections, maintaining the same designation of the features and the same positioning from the text of the descriptions and drawings.

(4) Depending on the complexity of the invention there may be several claims, independent and dependent.

(5) The independent claim shall ensure the protection of the invention within those limits in which the invention can be implemented while having the same technical effects and also containing general elements sufficiently outlined so that the reproduction of the subject-matter of the invention be possible.

(6) If the patent application refers to two or more inventions and the unity of the invention is observed, an individual claim for each individual invention shall be drawn up.

(7) Any independent claim may be followed by a reasonable number of dependent claims which should refer thereto and should develop or explain the technical features already stated in the independent claim or in the embodiment of the subject-matter of the invention, provided that the unity of the invention be observed.

(8) If the patent application contains drawings, all the technical features mentioned in a claim shall be attended by the given reference signs put between parentheses.

(9) The claims shall not contain drawings or graphs, program lines, sub-routines or computer programs. The claims may contain tables, chemical or mathematical formulae which are essential for the definition of the novelty of the invention.

### **Rule 16 – Drawings of the Invention**

(1) The drawings are necessary in so far as they contribute to the understanding of the invention and of the elements of novelty thereof. The drawings shall contain reference signs (numbers and/or letters) which should indicate the component elements, corresponding to their presentation in the embodiment of the invention.

(2) The sheet containing the drawings shall not exceed A4 form, or A3 exceptionally, and it may be made of tracing paper, white cardboard or any other support, provided that the drawing should have the required contrast to allow the reproduction by the electro-statical methods.

The sheets shall not have frames or any other lines for marking the limits of the drawings.

The minimum margins of the sheets shall be of 2.5 cm on all sides.

(3) The sketches and diagrams are considered drawings. The tables are not considered drawings.

(4) The drawings shall not contain texts, except for one word or more isolated words – when this is absolutely necessary – such as “water”, “steam”, “open”, “closed a.s.o.- and for the sketches and diagrams illustrating the steps of a process, some key words, absolutely necessary for the understanding thereof. Any word used shall be placed in the drawing so that to permit its replacement without covering any line of the drawings.

(5) The reference signs which are mentioned in the description shall appear on the drawings and reversely.

(6) The reference signs of the same elements should be identical in the description, claims and drawings.

### **Rule 17 – Requirements Concerning the Form of the Patent Application**

(1) The application, description, claims and drawings are drawn up on separate sheets, A4 format, and they are filed with The State Office for Inventions and Trademarks in three copies.

(2) All the sheets of the patent application shall be drawn up only on one side so that they could be separated with a view to reproducing them.

(3) All the sheets are numbered with Arabic numbers in the increasing order.

(4) The description and claims shall be typed at a spacing of 1 and ½ –2 lines.

(5) Erasures, corrections, words written above or inserted lines are not allowed. If there are any, the applicant shall sign on the original at the place/places where the modifications were made.

(6) Each page of the description form of the original copy shall be signed by the applicant.

(7) It is indicated to use terms, signs and technical symbols which are generally accepted in that special field.

(8) The units of measurement for weights, temperatures, densities a.s.o shall be expressed in the international system of units, even if in the description measurement system may appear.

(9) For the indications concerning the heat, energy, light, sound and magnetism, as well as for the mathematical formulas and electrical units, the international norms shall be observed; for the chemical formulas, the symbols, atomic weights and molecular formulas of general use shall be employed.

(10) The terms and the signs from the patent application shall be uniformly used throughout thereof.

(11) The following cannot form part of the patent application filing and will be returned to the applicant: the product made according to the invention, models, manufacturing projects concerning the invention a.s.o.

(12) The patent application shall not contain:

(a) expressions or drawings contrary to the public morality and order;

(b) statements disparaging the products, methods or processes, merits or validity of the applications or patents for invention belonging to any other person than the applicant; the mere comparison with the prior art shall not be considered as disparaging per se.

If the description still contains prohibited matter within the meaning of the aforementioned, The State Office for Inventions and Trademarks shall omit it when publishing the text.

### **Rule 18 – Other Documents Attached to the Patent Application not Conditioning the Date of Filing**

#### **A. Abstract of the Invention**

(1) The abstract shall indicate the technical field to which the invention pertains and shall be drafted in a way which allows the clear understanding of the technical problem, the gist of the solution of that problem solved by the invention, as well as the main field of use of the invention.

(2) The abstract is exclusively intended to constitute an efficient instrument for the selection of the technical information for the specialists, in order to make it possible to assess whether there is a need for consulting the description of the invention and drawings published in extenso.

(3) The abstract of the invention attached to the patent application shall not be taken into consideration for any other purpose, such as for assessing the scope of the protection.

(4) Finally, the drawings, or the chemical formulas which are desired to be published together with the abstract shall be specified; the abstract shall also contain the reference signs corresponding to the elements of novelty existing in the drawings, placed between parentheses.

(5) The abstract shall not contain more than one hundred and fifty words.

## **B. Power of Attorney**

For a patent application filed by an authorized representative, it is necessary that a power of attorney under private signature be filed together with the application or within three months from the filing date; otherwise, the applicant will be notified that, in default of the power of attorney, the application is considered abandoned and it is rejected.

## **C. Priority Document**

(1) Where one or more conventional priorities are claimed in the patent application according to Article 20 or Article 21 of the Law, one or more priority documents shall be filed up to three months from the regular filing date, according to Article 22 of the Law.

If the priority documents are not submitted within the aforementioned time limit, this leads to disregarding the claimed priority.

(2) The State Office for Inventions and Trademarks may ask the applicant to submit a corresponding translation into Romanian of the priority certificate if this is necessary in view of recognizing the claimed priority.

(3) The priority document according to Article 20 of the Law shall contain a certificate issued by the authority which made the first filing, stating the country where the filing was performed, date and number of the filing, the identification data of the applicant and the title of the invention. The certificate will be accompanied by a copy of the first filing.

The priority document may contain the filing of a patent application, of a utility model or of a demand for granting the breeder's right in the case of a plant variety or animal breed.

(4) Claiming the priority according to Article 21 of the Law shall be justified by the guarantee certificate which shall contain:

- name and address of the authority which organized the exhibition where the invention was displayed;
- name of the exhibition, address and closing date;
- surname, first name and address of a natural person or the premises of a legal person who deposited the object in the exhibition;
- date when the public exhibiting was performed;
- number and date of the guarantee certificate;
- a copy of the description of the exhibited object, certified by the administration of the exhibition indicating that the object displayed is identical with the one described, and a translation in Romanian of this description.

(5) According to Article 47 of the Law, the priority claiming is subject to a fee which shall be paid within three months from the filing date.

If more priorities are claimed in the application, the legally established fee shall be paid for each priority.

Failure to pay the fees within the provided time limit will lead to disregarding the claimed priorities.

(6) Where one or more priorities are claimed for a patent application, the priority may be recognized only for those elements contained in the application for the earliest filing or in the subsequent applications claimed, provided that the unity of the invention should be observed.

(7) If some elements of the invention for which priority was claimed are not to be found in any claims formulated in the earliest application, the priority may be recognized if these elements obviously result from the whole prior application.

(8) The priority claiming will be published by The State Office for Inventions and Trademarks according to the provisions of Article 23 of the Law.

(9) Several priorities of some earlier applications filed in various countries may be claimed for a patent application.

(10) If for a patent application several priorities are claimed, the time limits from which the priority date starts are calculated taking into account the earliest date of priority.

(11) It is not allowed to claim several priorities in cascade.

(12) Where one or more priorities are claimed and The State Office for Inventions and Trademarks asked for the translation of the priority certificate, the applicant or his successor in title shall indicate the texts in the description, claims and, if appropriate, the drawing or drawings corresponding to each priority document.

#### **D. Authorization Concerning the Right to Priority Claiming**

(1) Where the applicant of a patent application claims a priority right belonging to another person, in order to have the priority recognized, it is necessary to file with The State Office for Inventions and Trademarks an authorization from the assigner, proving that the applicant was assigned the right to claim priority of the earliest filing.

(2) The authorization shall be filed within maximum 3 months from the date of priority claiming; otherwise, The State Office for Inventions and Trademarks does not recognize the claimed priority.

#### **E. Document Certifying the Deposit of a Micro-organism**

(1) If the patent application relates to a micro-organism, in compliance with the provisions of Article 18, para 2 of the Law, it is necessary to file with The State Office for Inventions and Trademarks a document certifying the deposit of the micro-organism with a national depository institution designated by the government or with an international depository authority.

The document stating that the micro-organism deposit was formed in an officially recognized national or international collection, where the grant of a patent is requested for a new micro-organism, shall compulsorily contain the following:

- denomination and address of the officially recognized national and international collection where the micro-organism was deposited;
- date (year, month, day) of the micro-organism filing with the officially recognized national and international collection;
- micro-organism denomination;
- number of the micro-organism deposit;
- morphological, taxonomic and biochemical characteristics of the deposited micro-organism.

(2) The document mentioned in the aforementioned paragraph shall state that the micro-organism was deposited with a depository institution on an earlier date than the patent application filing date with The State Office for Inventions and Trademarks.

(3) The document provided for in paragraph 1 shall be filed with The State Office for Inventions and Trademarks up to the moment of taking a decision; otherwise, the application is considered abandoned and it is rejected.

#### **F. Declaration of the Inventors**

(1) If the inventors were not declared in the application, the applicant has the obligation to declare them by the 15<sup>th</sup> month from the regular filing date or from the claimed priority date; for the patent applications provided for in Article 44, paras 2 and 3 of the Law, the declaration of the inventors shall be carried out up to the publication or to taking a decision by The State Office for Inventions and Trademarks.

(2) Where the applicant does not answer to the notification made by The State Office for Inventions and Trademarks concerning the declaration of the inventors within the time limits mentioned above, the patent application is considered abandoned and it is rejected.

(3) The declaration of inventors is done on the applicant's responsibility.

The litigations occurring between the applicant and the inventors with regard to the declaration thereof, come within the jurisdiction of the court, according to Article 61 of the Law.

The final decisions of the court are filed with The State Office for Inventions and Trademarks by the party concerned, with a view to bringing them into force.

(4) The inventor or inventors declared by the applicants may ask in writing with The State Office for Inventions and Trademarks that they should not be mentioned in the published patent application, or in the patent for invention.

(5) Where the applicant requires the modification of the group of inventors, he shall file with The State Office for Inventions and Trademarks a legalized declaration stating that the persons initially mentioned as inventors in the application agree with:

(a) exclusion of one or more of them;

(b) including other persons, the order in which they will be written in the patent for invention, the proof of the agreement of the included inventors, as well as their accord for the assignment of the rights to the applicant.

The declaration shall be filed with The State Office for Inventions and Trademarks up to taking a decision for the grant of a patent for invention; otherwise, The State Office for Inventions and Trademarks will not take into account the applicant's request to change the group of inventors.

#### **G. Document for Transfer of the Right to be Granted a Patent of Invention**

(1) If the inventor or the inventors assigned the right to be granted a patent for invention to a natural or legal person prior to filing the patent application, the applicant shall file with The State Office for Inventions and Trademarks the document stating this transfer.

(2) Where from the documentation of the patent application it does not follow that the applicant is entitled to be granted a patent for invention, The State Office for Inventions and Trademarks may request him to produce the document stating his right to be granted a patent.

(3) The document shall be filed in the original or in legalized copy, within 6 months from the date when the substantive examination was requested; otherwise, the patent application is considered abandoned and it is rejected.

(4) If the right to have a patent for invention issued was transferred after the regular filing, the transfer document shall be filed as provided in paragraph 2 until a decision is taken by The State Office for Inventions and Trademarks; otherwise, the patent for invention is issued in the patent applicant's name.

### **SECTION 5**

#### **International Applications Filed by the Procedure of the Patent Cooperation Treaty (PCT)**

##### **Rule 19 – The State Office for Inventions and Trademarks – Receiving Office**

(1) With a view to patenting inventions in other states by the procedure provided for by the PCT, The State Office for Inventions and Trademarks acts as a receiving office for the international applications whose applicants are nationals of Romania, nationals of other states having their permanent domicile in Romania or Romanian and foreign legal persons having their registered office in Romania, in compliance with the provisions of the PCT and of the PCT Regulations.

(2) The international application is drawn up by the applicant in 3 copies, and shall meet the provisions of the PCT and PCT Regulations. The standardized form of the application is elaborated by the International Bureau of World Intellectual Property Organization (WIPO) and shall be filled in by the applicant by typing or by computer print-out in one of the languages: French, English, German or Russian. The description, claims and abstract shall be drafted in one of these languages, namely that chosen by the applicant.

(3) The Office ascertains if the international application documents meet the provisions of the PCT or PCT Regulations.

(4) In the international application, the applicant shall declare the inventors, shall indicate the designated states where he wants the protection of his invention and shall claim the priority dates of the earliest filing if appropriate.

(5) The international application shall be signed by the applicant or the authorized representative thereof; if the applicant will be represented by an authorized representative, the international application shall compulsorily contain the identification data of the representative.

(6) When the priority of one or more filings is claimed in the international application, the respective priority document or documents shall be filed with The State Office for Inventions and Trademarks at the

same time with the application, or subsequently sent by the applicant to the International Bureau of WIPO, within 16 months from the priority date of the patent application.

(7) The State Office for Inventions and Trademarks checks if the international application is correctly drawn up, in compliance with the provisions of the PCT or PCT Regulations and notifies the applicant to make the required corrections within one month. If the applicant does not answer to the notification, The State Office for Inventions and Trademarks considers the application abandoned and proceeds to the rejection thereof. The decision of estimating the corrections, as an ascertainment of the lack thereof, shall be taken as against the carrying out a reasonable international publication.

(8) Where the international application meets all the provisions of the PCT or PCT Regulations, it will be recorded in The Register of Filed International Applications and The State Office for Inventions and Trademarks will accord the international filing date.

(9) The applicant of an international application is obliged to pay the fees in the currency established by the PCT Applicant's Guide.

(10) The document stating the payment of the fees regarding the international application shall be filed with The State Office for Inventions and Trademarks either at the time of the international application filing or, at the latest, on a date on which The State Office for Inventions and Trademarks could observe the time limits provided for by the PCT and PCT Regulations for receiving the fees indicated in the PCT Applicant's Guide with the International Bureau of WIPO, International Searching Authority or International Preliminary Examining Authority.

If The State Office for Inventions and Trademarks does not receive the documents stating the payment of the fees provided for by the PCT procedure, it considers the international application as abandoned and suspends the procedure of handling thereof as an international application.

(11) The applicant together with The State Office for Inventions and Trademarks decide on which international authority to carry out the procedures provided for in the PCT and PCT Regulations for the international application.

(12) The State Office for Inventions and Trademarks as a receiving office transmits the international application to the International Bureau of WIPO and to the International Search Authority at the latest in the 12<sup>th</sup> month from the international application date, or the 13<sup>th</sup> if a priority is claimed.

### **Rule 20 – The State Office for Inventions and Trademarks – Designated Office**

(1) Where in the international application of a foreign applicant, Romania is designated as the state where the protection of the applicant's invention is claimed, the applicant, through a representative authorized in Romania, will open in Romania the national stage of dealing with the international application, within 20 months from the international application priority date.

(2) Opening of the national stage is performed by filing with The State Office for Inventions and Trademarks the form in which it is requested to open the national stage, accompanied by a copy of the international application, the translation into Romanian of the international application, meaning by this the description, claims, drawings, abstract of the invention and the document stating the payment of the national fees. The form for opening the national stage is published in the PCT Applicant's Guide.

(3) The patent application filing date will be the date of the international application and this date will be recorded in the National Register of Filed Patent Applications, according to Article 11.3 of the PCT.

(4) The national stage being opened, the international application will be subject to the procedures provided for by the national law with regard to the patent for inventions and by these Regulations.

(5) Where The State Office for Inventions and Trademarks ascertains the lack of the documents or notifications provided by the PCT and PCT Regulations (a copy of the international application, a notification stating Romania as a designated state, a notification concerning the filing of the priority documents with the International Bureau of WIPO, the notification concerning the Searching or the Preliminary Examining Authorities, the search report, the preliminary examination report if the applicant has chosen this procedure, etc), The State Office for Inventions and Trademarks will inform the International Bureau about this and will request that the international application documentation should be completed.

(6) For opening the national stage, The State Office for Inventions and Trademarks as a designated office shall not demand other requirements of form or content for an international application than the ones provided by the PCT or PCT Regulations.

(7) For the international application which started the national stage, the applicant shall furnish to The State Office for Inventions and Trademarks the translation, the claims as amended after the performance of the international search report, as well as the translation of the invention title, if the title was modified by the International Searching Authority.

In this situation, the amendments of the claims shall not go beyond the limits of the invention disclosed in the international application as filed with the receiving office.

(8) When the applicant does not furnish the translation of the claims as filed and as amended, pursuant to the provisions of PCT, The State Office for Inventions and Trademarks invites the applicant to send the translation within 90 days, according to Rule 49.5 c – bis of the PCT Regulations corroborated with Article 29 of the Law. If within the time limit fixed in the invitation the missing translation is not furnished, The State Office for Inventions and Trademarks considers the application abandoned and rejects it.

(9) The description and the claims of the international application for which the national stage was opened in Romania, translated into Romanian shall be published within 6 months from the date when the national stage was opened, if a priority was claimed, or within 18 months from the date when the national stage opened, pursuant to the provisions of Article 23 of the Law and of Rule 25 of these Regulations.

(10) The temporary protection provided by Article 35 of the Law starts, for the international applications, after the publication provided for in paragraph (9) above.

#### **Rule 21 – The State Office for Inventions and Trademarks – Elected Office**

(1) With a view to starting the national treatment of an international application, pursuant to Article 39 of the PCT, the applicant shall furnish, within 30 months from the international application priority date, when he also avails himself of an international preliminary examination report, the translation into Romanian of the international application, national fees and a copy of the international application, if the communication according to Article 20 of the PCT was not performed, as well as the printed form according to paragraph (2) of Rule 20 of these Regulations.

(2) Where an international preliminary examination report was established, the translation of amendments carried out by virtue of Article 19 of the PCT is required only if these amendments are attached to the report.

(3) If the applicant, in the conditions stipulated by the PCT, withdraws the demand for the international preliminary examination, or the election of The State Office for Inventions and Trademarks, this is not considered an withdrawal of the international application if Romania still remains a designated state.

#### **Rule 22 – Treating the International Applications Revised by The State Office for Inventions and Trademarks as a Designated Office**

Where a receiving office refused to accord an international filing date, or declared that the international application was considered withdrawn or where the International Bureau of WIPO considers it withdrawn since the original copy was not received, The State Office for Inventions and Trademarks will treat that international application as a national application, if the applicant meets the provisions of Articles 14 and 16 of the Law, for filing thereof with The State Office for Inventions and Trademarks.

## **CHAPTER II**

### **Examination of the Patent Applications**

#### **SECTION 1**

##### **Preliminary Examination**

###### **Rule 23 – Analysing the Regular National Filing**

(1) After constituting the regular national filing pursuant to Article 14, paragraph 1 of the Law, the patent applications are subject to a preliminary analysis which shall state:

- a) if the applicant is entitled to be granted the patent where he is another person than the inventor or the inventors;
- b) the right of the authorized representative to represent the applicant before The State Office for Inventions and Trademarks;
- c) if the inventors are declared;
- d) if the conventional priority is correctly claimed and supported by the priority documents filed with The State Office for Inventions and Trademarks;
- e) if the payment of the fees corresponds with the procedures requested in the patent application;
- f) the fulfillment of the conditions of form of the patent application;
- g) the fulfillment of the conditions prescribed for drawing up the description, claims and drawings;
- h) the fulfillment of the conditions prescribed for other documents or acts which are attached to the patent application;
- i) if the patent application containing a group of inventions meets at first sight the unity of the invention.

(2) If, following the analysis of the patent application filing and of the documents attached, The State Office for Inventions and Trademarks ascertains irregularities concerning the fulfillment of the provisions of the Law and of these Regulations, they shall be notified to the applicant who will be given a time limit to prepare the answer.

(3) No procedure concerning the patent application filed with The State Office for Inventions and Trademarks will start if the requested documents and the proof of payment of fees were not furnished within the time limits provided by the Law and these Regulations.

###### **Rule 24 – Classification of the Patent Applications**

The State Office for Inventions and Trademarks classifies the patent application according to the claims and the subject-matter of the invention, within 30 days from the regular filing date, by using the international patent classification (the edition in force) and the classification indices of the invention are written on each patent application.

#### **SECTION 2**

##### **Publication of the Patent Application**

###### **Rule 25 – Publication Conditions**

(1) The patent application for which the regular national filing was constituted, fees were paid and The State Office for Inventions and Trademarks took no decision is published within the time limit provided for in Article 23 or 24 of the Law, as the case may be.

(2) The time limit for furnishing the document stating the payment of the publication fee is of three months from the filing, for the applications claiming a priority, or of 6 months for the other patent applications.

The patent application publication fee is not paid in the case of the patent applications for which the substantive examination was demanded at the time of the filing, or for those demanding the urgent examination up to the sixth month from the regular filing date; for these procedures, the other corresponding legal fees shall be paid.

(3) Where the patent application publication procedure was not explicitly demanded, the payment of the publication fee represents the applicant's consent for this procedure to be carried out.

(4) If within the time limit provided for at paragraph (2) the publication fee is not paid and the applicant did not request the substantive examination of the patent application, the application is considered abandoned and it is rejected.

(5) If the applicant paid the examination fee between the 4<sup>th</sup> through the 6<sup>th</sup> months from the regular filing date, without paying the publication fee, this shall be notified to the applicant, stating precisely that The State Office for Inventions and Trademarks does not proceed to the substantive examination, the applicant being given a new time limit of 30 days, within which he could choose one of the following versions:

a) to pay the publication fee;

b) to communicate his accord concerning the amount of the publication fee taken by The State Office for Inventions and Trademarks from the examination fee paid, having the obligation to complete the examination fee with a view to carrying out the substantive examination;

c) to pay the fee for maintaining the patent application in the confidential regime.

(6) If within the time limit given by The State Office for Inventions and Trademarks according to paragraph (5), the applicant does not act as per any of the versions a), b) or c), the patent application is considered abandoned and it is rejected and the examination fees are refunded to the applicant.

(7) The following patent applications will not be published:

a) the patent application rejected or withdrawn within the time limit from the regular filing date up to the 15<sup>th</sup> month;

b) the patent application for which the applicant requested the examination at the time of the patent application filing or within 3 months from the regular filing date, paid the examination fees and The State Office for Inventions and Trademarks took the decision to grant a patent of invention;

c) the patent application for which the urgent examination was requested up to the 6<sup>th</sup> month from the regular filing date;

d) the patent application complying with the provisions of Article 44, paragraphs 2 and 3 of the Law, and for which the legal fee for maintaining the secret status was paid for the first year from the filing date.

(8) If, after the preliminary examination, The State Office for Inventions and Trademarks ascertains that the patent application is obviously lacking unity, it notifies this to the applicant giving him a time limit of up to 60 days for dividing thereof prior to the publication.

If the applicant fails to make the division up to this date, the patent application is published in the form lacking the unity.

(9) If up to the 15<sup>th</sup> month from the regular filing date, after the preliminary examination, the applicant files amendments and completions to the description, claims or drawings with the view to the publication, the applicant shall either send to The State Office for Inventions and Trademarks the retyped pages including the amendments or completions or reformulate the whole documentation which is to be published.

### **Rule 26 – Date of Publication**

(1) The patent application publication is made by depositing thereof in the reading room of The State Office for Inventions and Trademarks, or by printing the description, claims and drawings of the invention.

(2) The patent application as published contains a part edited by The State Office for Inventions and Trademarks, containing the reference data of the patent for invention and the abstract accepted by the applicant, and a part containing the description, claims and, as the case may be, the illustrative drawings drawn up by the applicant according to the provisions of these Regulations.

(3) If the applicant brought amendments or completions to the description up to the 16–th month from the regular filing date, and the substantive examinations was not demanded, the amendments and the completions are published at the same time with the patent application.

(4) The publication fees for the applications provided for in Article 44, paragraphs 2 and 3 of the Law shall be paid by the applicant or his successor in title within three months of the date on which their secret status was discontinued; The State Office for Inventions and Trademarks publishes the patent application within two months after the fee is paid.

(5) The patent applications published in the conditions pursuant to Article 23 of the Law shall temporarily benefit from the protection provided by Article 35 of the Law from the date when the regular filing was constituted.

The scope of the temporary protection given under the provisions of Article 35 of the Law is determined only by the contents of the claims as they were published in the patent application.

(6) If by the decision of the court it is ascertained that the inventor is another person than the one written in the patent application published, The State Office for Inventions and Trademarks executes the decision and publishes the modification.

### **Rule 27 – Search Report**

(1) Upon request by the applicant, The State Office for Inventions and Trademarks draws up a search report of the patent application based on the claims, description and drawings, if the following requirements are met cumulatively:

- a) a regular filing date was given;
- b) the fees for the publication and drawing up the search report have been paid;
- c) the patent application has not been withdrawn or rejected.

(2) The patent application search report is published.

(3) The search report contains documentary materials selected from the prior art, materials available with The State Office for Inventions and Trademarks at that date.

To assist in the elaboration of the search report, the applicant may file with The State Office for Inventions and Trademarks public documentary material available for search report. In order to carry out the search report, The State Office for Inventions and Trademarks does not confine itself to the materials transmitted by the applicant.

(4) The search report fee may be paid up to the 9–th month from the regular filing date, in which case the report shall be published together with the application; for the patent applications whose fees are paid between the 9–th and the 18–th months, the search report shall be published subsequently to the publication of the application.

(5) The State Office for Inventions and Trademarks refunds the search report fee to the applicant and does not accomplish the report in respect of the inventions provided for by Articles 12, 13 or 18 of the Law.

(6) Where the patent application is not published pursuant to Article 23 or Article 44 paragraphs 2 and 3 of the Law and the fee was paid for the search report, this fee shall be refunded to the applicant, or, with his consent, the due fee shall be transferred for other procedures.

(7) The search report quotes the public documents from the prior art which may be taken into account to assess the novelty of the invention in connection with the claims they refer to, indicating, if necessary, the pertinent parts of the document referred to.

(8) The search report shall contain the international patent classification indices for the searched field or fields.

(9) If, during the process of performing the search report, the patent application is ascertained to contain two or more inventions, therefore it does not meet the unity of the invention requirement, according to Article 19, paragraph 1 of the Law and The State Office for Inventions and Trademarks failed to notify the applicant about this after the national regular filing was constituted, the lack of unity of the invention shall be notified when found out, requiring from the applicant:

- a) the additional payment for carrying out the search report for the other inventions too;
- b) to indicate that invention or group of inventions in the filing for which the search report may be carried out according to the paid fee.

If, within the time limit given by The State Office for Inventions and Trademarks, the applicant failed to pay the due fee and to indicate the selected invention, the search report will be performed for the first invention or claimed unitary group of inventions.

10) The search report is transmitted to the applicant together with copies of the cited documents containing up to 20 pages. Upon request, the applicant is transmitted, against payment, other copies of the documents quoted in the report.

11) The publication date of the report is the publication date in the Official Bulletin of Industrial Property where there are presented the patent applications for which The State Office for Inventions and Trademarks carried out a search report.

12) After the publication of the patent application and of the search report, the applicant may ask to amend the claims. These amendments are filed with The State Office for Inventions and Trademarks and shall be analysed during the substantive examination if such examination was demanded according to Article 26 of the Law.

## **SECTION 3**

### **Substantive Examination of the Patent Applications**

#### **Rule 28 – Conditions for Starting the Substantive Examination**

1) The Procedure for the substantive examination of a patent application starts when one of the following conditions are met:

a) the examination was demanded in writing within 30 months from the regular filing date and the examination fee was paid within 3 months from the demand for the examination;

b) the document stating the payment of the examination fee was filed with The State Office for Inventions and Trademarks within 30 months from the regular filing date.

2) The time limit of 18 months for performing the substantive examination of the patent application according to Article 29 paragraph 1 of the Law starts from the date of fulfilling one of the requirements provided for in paragraph 1, a) or b) of this Rule.

3) Depending on the moment when the substantive examination of the patent was demanded, The State Office for Inventions and Trademarks will proceed as follows:

a) if the demand for the examination was made at the time of filing the patent application or within three months from the regular filing date and the fee was paid within this time limit, the patent application is not published and The State Office for Inventions and Trademarks will take a decision within 18 months from the regular filing date; when the examination fee is not paid within three months from the regular filing date, the application will follow the publication procedure, pursuant to Article 23 of the Law;

b) if the demand for the examination was made between the 4–th and the 30–th months from the regular filing date and the examination and publication fees have been paid, the patent application will be examined within 18 months of the date on which the examination was demanded, and the application follows the publication procedure provided for in Article 23 of the Law;

c) if the urgent examination is demanded and the corresponding fee has been paid, The State Office for Inventions and Trademarks shall examine the patent application within 6 months from the filing date of the document stating the payment of the urgent examination fee; the patent application publication will be conditioned by the date on which the urgent examination was demanded, namely if this is performed up to the 15–th month from the regular filing date, the patent application shall not be published and after this month it shall follow the publication procedure according to Article 23 of the Law.

4) If, after the publication, another person demands the substantive examination, this fact shall be notified to the applicant.

5) If the patent application is withdrawn after the examination procedure started, the examination fees shall not be refunded.

6) The State Office for Inventions and Trademarks carries out the substantive examination of the patent applications from each field, in the order of the regular filing date and of the fulfillment of the provisions of these Regulations.

### **Rule 29 – Disclosure of the Invention**

1) The disclosure of the invention in the description, claims and drawings shall meet the requirements of Article 18 of the Law.

2) If The State Office for Inventions and Trademarks finds out that the invention is not sufficiently disclosed, this shall be notified to the applicant.

3) Where the applicant, on his own initiative, or at the request of The State Office for Inventions and Trademarks, brings amendments to the description, drawings or claims, these amendments shall observe the provisions of Article 28, paragraph 3 of the Law.

4) The amendments or completions brought by the applicant will be accepted by The State Office for Inventions and Trademarks if:

a) they refer to elements existing in the description and drawings in the original filing and contain specifications and explanations concerning thereof;

b) they refer to the content of the claims, but are based on the elements existing in the description and drawings of the original filing;

c) they refer to the drawings, but are based on the elements existing in the description;

d) they are not contained in the original filing, but are not the object of the new claims, or they do not introduce new elements in the original claims, their purpose being to permit a good understanding of the invention or to extend the applicability of the invention.

5) If the amendments or completions brought by the applicant are not accepted, The State Office for Inventions and Trademarks shall notify the applicant and shall proceed to the patent application examination taking into account the provisions of Article 10 of the Law and Rule 32 C of these Regulations.

6) If the amendments or the completions brought by the applicant are accepted, The State Office for Inventions and Trademarks shall notify the applicant and shall ask him to remake the pages of the description or drawings containing the amendments or completions.

### **Rule 30 – Prior Art**

1) The prior art used for comparison with the invention in order to establish the novelty thereof contains the knowledge available to the public anywhere in the world prior to the date of the regular filing or recognized priority, provided that the date of making it available to the public be identifiable.

2) The patent applications published in compliance with Articles 23 and 24 of the Law belong to the prior art.

3) If an application is withdrawn, abandoned or rejected prior to its publication, it is not considered to belong to the prior art.

4) The State Office for Inventions and Trademarks does not take into consideration the disclosure made within 12 months preceding the date of the patent application filing, or the recognized priority date if this disclosure:

a) is made by the inventor or his successor in title;

b) is made by a third party and the inventor or his successor in title send a written confirmation to The State Office for Inventions and Trademarks, stating that said information was obtained directly or indirectly from him.

5) The State Office for Inventions and Trademarks does not take into account the disclosure by the publication of the patent application in compliance with Articles 23 and 24 of the Law, if the inventor or his successor in title, within 12 months from the publication, claims in a new patent application parts which were not claimed in his first published patent application.

### **Rule 31 – Unity of Invention**

1) The patent application shall relate to one invention only or to a group of inventions so linked as to form a single general inventive concept.

2) The unity of the invention allows that in a single patent application there could be included:

- a) independent claims of various categories;
- b) independent claims of the same category;
- c) dependent claims.

3) If a patent application relates to a group of inventions, the unity of invention is observed if at least one of the following requirements are met:

- a) the group of inventions contributes to solving the same technical problem;
- b) determines the same technical effects;
- c) there is a technical interdependence between them;
- d) at least one of the inventions in the group cannot be carried out or applied individually;
- e) the lack of at least one invention in the group makes any other invention of the group inapplicable.

4) In a patent application relating to a group of inventions and which meet the requirements of paragraph 3 of this Rule, independent claims of various categories are accepted, grouped in one of the following possibilities:

- a) an independent claim for a given product, an independent claim for a process specially designed for obtaining the product and an independent claim for the product utilization;
- b) an independent claim for a given process and an independent claim for means specially designed for achieving the process;
- c) an independent claim for a given product, an independent claim for a process specially designed for obtaining the product and an independent claim for means specially designed for achieving the process.

5) In a patent application relating to a group of inventions meeting the requirements of paragraph 3 of this Rule, two or more independent claims of the same category are accepted (example: product, process, means of utilization) only if they cannot be covered entirely by a single generic claim.

6) If a patent application relates to two or more inventions not complying with the requirement of unity of the invention, pursuant to paragraph 2 of this Rule, the patent application lacks the unity and in order to protect all the inventions it is necessary to divide the patent application.

7) When it is ascertained that the patent application lacks the unity, The State Office for Inventions and Trademarks notifies the applicant or his successor in title about this.

The applicant has the possibility to divide the application and to file with The State Office for Inventions and Trademarks a divisional patent application for each invention or group of inventions which meet the requirement of unity of the invention and has the obligation that within 6 months from the date when the examination is demanded to file a written option and a description, claims and drawings for the invention which shall be examined in the original filing.

If there is no such option, The State Office for Inventions and Trademarks shall examine the first invention claimed, or the first group of inventions meeting the unity of invention requirement.

8) The divisional patent applications may be filed with The State Office for Inventions and Trademarks up to the moment of taking a decision concerning the original filing; under these circumstances the divisional applications filed will benefit from the filing date of the application from which they were divided, and from the right of priority thereof as well, provided that the applicant should observe the limits of the disclosure thereof in the first filing for each divisional invention.

Where multiple priorities were claimed in the original patent application, the applicant shall indicate the corresponding priority for each divisional application.

9) Where, up to taking a decision about the first filing, the applicant has not filed divisional patent applications, the inventions not observing the unity requirement will remain in the description but without being the object of the claims.

10) The lack of unity of the invention may not be set forth within the actions for revocation or cancellation of a patent of invention.

## **Rule 32 – Examination of the Fulfillment of the Requirements for the Patentable Invention**

### **A. Novelty**

1) The novelty of a patentable invention is established in compliance with the provisions of Article 8 of the Law as against the contents of the claims and the field of application specified in the description.

2) For establishing the novelty of an invention, the documents from the prior art can be taken into account only individually for each invention (the materials from the prior art are not opposable in the mosaic system).

3) In a group of inventions observing the requirement of unity of the invention, the materials from the prior art shall be taken into account individually for each invention.

4) The contents of the patent applications as filed with The State Office for Inventions and Trademarks which have a regular filing date or an earlier priority date and which became public prior to or after the date of a subsequent application, are a part of the prior art used for establishing the novelty.

5) Pertinent materials are considered those materials from the prior art whose contents cover partially or totally the protection demanded by the applicant in the claims.

6) The State Office for Inventions and Trademarks notifies the pertinent documentary material from the prior art considered to cover partially or totally the new elements claimed in the patent application to the applicant or his successor in title.

The notification shall be attended by a copy of the documentary material and shall contain a commentary concerning the elements from the claims which are found in the material.

The State Office for Inventions and Trademarks shall accord the applicant a period of time for preparing an answer. If the applicant answers within the time limit showing his concern to support his patent application, The State Office for Inventions and Trademarks will continue the correspondence with the applicant until all the objections are cleared with a view to taking the right decision. The State Office for Inventions and Trademarks cannot take any decision if the documentary material was not transmitted to the applicant.

### **B. Inventive Step**

(1) The inventive step is assessed as against the claims and the technical problem which is solved by the invention, in compliance with the provisions of Article 9 of the Law.

(2) For assessing the inventive step, the prior art is established from which a mosaic of technical solutions is formed which is compared as a whole with the claims. The patent applications filed with the State Office for Inventions and Trademarks which became public after the filing date of the application submitted to the examination are not taken into account when assessing the inventive step even if their filing date is previous.

If after analysing all the solutions contained in the prior art it results that a person skilled in the art, without resorting to an inventing activity, may come to the solution which is the subject matter of the patent application, then this subject matter does not involve an inventive step.

(3) An invention is considered to involve an inventive step if at least one of the following requirements are met:

a) it is not an obvious result of the prior art in the application field of the invention or in a field related to it;

b) a person skilled in the art, using the knowledge from the prior art cannot solve the problem in the way the invention does;

c) the necessity of solving the problem has existed for a long time and the known solutions are not at the level of the solution proposed by the invention;

d) the invention is used with or without modifications in another field for solving another problem, the technical effect being either the same, or unexpected or superior to the effects obtained by other inventions in the field where the invention is used, provided that the two fields should not be close to each other;

e) it consists in combining the known elements in the prior art, so that a functional organic connection, a reciprocal influence, an interaction or interconditioning result, this leading to obtaining a positive global effect;

f) the subject-matter of the invention is an analogous process which achieves a new technical effect or by this process a new substance with new, unexpected or superior qualities is obtained or if the raw materials are new even if the technical effects obtained are the same.

(4) An invention does not involve an inventive step if:

a) it consists of a mere enunciation of a technical problem without solving it, even if the problem is new;

b) it solves only a problem concerning the economy of materials or energy, optimization of sizes or reduction of costs, without obtaining new or superior technical effects;

c) it solves the problem only by a mere substitution of the materials with known characteristics which leads to predictable effects;

d) the problem refers only to a modification of shape or aspect for aesthetic purposes;

e) it solves the problem by a simplification, without maintaining at least the performances known from the prior art;

f) the problem is solved by equivalent means existing in the prior art and leads to obtaining the same effects;

g) the problem is solved by jointly employing two or more known solutions and if the predictable technical effect results by merely summing up the effects of each solution (juxtaposition of known solutions);

h) it solves a problem in the field of chemistry or biology consisting in a selection of an individual case from a multitude of components, previously protected, without this selected case leading to special qualities or effects in comparison with those of the multitude of components from which it was selected;

i) the solving of the problem relates to choosing a corresponding known material and/or to the carrying out of some constructive alterations according to rules known in themselves;

j) the invention relates to a natural product upon which no technological modifications are performed.

(5) Where after the substantive examination it is assessed that the subject matter of the invention does not meet the requirement of the existence of an inventive step, this shall be notified to the applicant who shall be transmitted the materials from the prior art that are taken into account when assessing the inventive step and a time limit for preparing an answer is given.

### **C. Industrial Applicability**

(1) An invention is susceptible of industrial application pursuant to Article 10 of the Law if from the description of the invention the following result cumulatively:

a) the subject-matter of the invention may be used at least in one field;

b) the technical problem and the solving thereof;

c) the disclosure of the invention in the embodiments so that a person skilled in the art could achieve the invention without resorting to an inventive activity according to Article 18 of the Law;

d) the invention may be reproduced with the same characteristics and effects whenever necessary.

(2) If after the substantive examination it is ascertained that the description of the invention presented by the applicant does not meet one of the requirements provided for in para (1) above this shall be notified to the applicant giving him a time limit for preparing an answer.

### **Rule 33 – Improvement Patent**

(1) The applicant of an improvement patent may be the owner of a patent in force or a third party.

(2) The applicant shall explicitly specify in the patent application that the invention improves on another invention, indicating the data necessary for the identification thereof.

(3) The State Office for Inventions and Trademarks shall notify the provisions of Article 36 of the Law to the applicant where the applicant is not the same person as the owner of the patent in force.

(4) The description of an improvement invention shall as a rule contain in the chapter “prior art” the same materials as the ones taken into account in the description of the invention on which it improves, if between their regular filing dates no other pertinent material appeared.

(5) When drawing up the claims of the improvement invention, the applicant shall specify, in the characterizing part, the new elements of the invention in technical interdependence only with those elements of the invention on which it improves and to which it applies, so that their organic connection should result.

(6) The State Office for Inventions and Trademarks decides to grant an improvement patent in the same conditions as for the other patentable inventions, namely those provided by Articles 7, 8, 10, 18 and 19 of the Law.

(7) For examining the novelty of an improvement invention, the prior art cited in the description of the invention on which it improves, as well as the materials from the prior art that appeared between the filing dates of the two inventions shall be taken into account.

(8) During the examination of an application for an improvement patent, the State Office for Inventions and Trademarks analyses, on the basis of the claims, if the invention may be applied independently from the invention to which the improvement refers.

(9) The State Office for Inventions and Trademarks decides to grant an improvement patent only when the requirement of para (8) above is met and when the invention to which the improvement relates is protected by a patent in force.

#### **Rule 34 – State Office for Inventions and Trademarks Notifications**

(1) The State Office for Inventions and Trademarks shall indicate the time limit for giving an answer in the notifications transmitted to the applicant. The applicant, for justified reasons, may request the extension of the time limit accorded for him to give an answer.

(2) The State Office for Inventions and Trademarks cannot take decisions prior to the expiration of the time limit accorded for the applicant to give an answer.

(3) If within the fixed time limit the applicant fails to answer, the application is considered abandoned and shall be rejected.

### **SECTION 4**

#### **State Office for Inventions and Trademarks Decisions**

##### **Rule 35 – Board of Examination**

(1) After the examination of the patent application in compliance with the provisions of the Law and of these Regulations, the specialist examiner draws up the examination report on the basis of which the Examination Board of the State Office for Inventions and Trademarks takes the decision to grant a patent or to reject a patent application.

(2) Where appropriate, the board shall take notice of the withdrawal of the patent application.

(3) The Examination Boards of the State Office for Inventions and Trademarks are established according to the field of activity.

(4) The Examination Board consists of a Chairman appointed by the Director General and two members appointed by the Head of the specialist Examining Division.

(5) The specialist examiner who draws up the examination report is not a member of the Examination Board.

(6) All the decisions taken by the Board shall be communicated to the applicant or to his successor in title within 30 days after the date of taking thereof and they shall be registered in the National Register of Patent Applications.

(7) The decisions to grant a patent are published in the Official Bulletin of Industrial Property within 30 days.

(8) Starting with the date of publication of each Official Bulletin of Industrial Property, the patented inventions which are given notice of in the respective Bulletin, shall be published by making the description,

claims and drawings available to interested parties, at the State Office for Inventions and Trademarks headquarters, for a six-month period after this date.

(9) The description and the drawings of the invention to be published after taking the decision to grant a patent shall have the approval of the applicant or of his successor in title with regard to the contents.

## **SECTION 5**

### **Attacking the State Office for Inventions and Trademarks Decisions by Administrative Procedure**

#### **Rule 36 – Appeal and Request for Revocation**

(1) Any interested party may formulate appeals against or requests for revocation of, the decisions of the State Office for Inventions and Trademarks regarding patent applications within the time limits provided for by the Law and by these regulations.

(2) The State Office for Inventions and Trademarks decisions may be appealed against by the applicant within three months from the communication, pursuant to Article 55 of the Law.

(3) According to Article 56 of the Law, any interested party may request the revocation, either full or partial, of the decisions to grant a patent within six months of the publication of the description, claims and drawings, for failure to comply with any of the requirements provided for in Articles 7 to 11 of the Law.

The request for revocation shall expose in detail the substantiating grounds and public documents, without being possible to claim the non-observance of formal or procedural conditions.

A copy of the request for revocation shall be notified by the State Office for Inventions and Trademarks to the applicant so that he may present his arguments; the notification shall indicate the time period of solving the request for revocation during which the applicant shall communicate his point of view.

#### **Rule 37 – The Board of Reexamination of the State Office for Inventions and Trademarks**

(1) The appeals and requests for revocation are solved by the Board of Reexamination consisting in a Chairman and 2 – 4 members appointed by the Director General of the State Office for Inventions and Trademarks.

(2) The Chairman of the Board of Reexamination is the Director General of the State Office for Inventions and Trademarks or his authorized representative.

(3) The Board of Reexamination shall be composed of persons other than those of the Board of Examination who made the decision appealed against. Members of this Board may be the Heads of the Divisions or deputies thereof or senior specialist examiners. One of the members of the Board shall be a legal adviser.

(4) The Board shall give the interested party the opportunity to express its view either represented or personally or assisted.

(5) The patent application file shall be submitted to the Board of Reexamination by the Chairman of the Board of Examination and by the examiner who, pending the decision, shall present a written point of view regarding the formulated appeal or request for revocation.

(6) The Board of Reexamination may decide:

a) to accept the appeal or the request for revocation deciding to grant the patent or to reject the patent application, or to submit the case to reexamination by the qualified department of the State Office for Inventions and Trademarks;

b) to reject the appeal or the request for revocation.

(7) The decisions of the Board of Reexamination shall be made with a majority of votes and shall be communicated within 15 days.

(8) The decision of rejection made by the Board of Reexamination may be appealed against before the Municipal Court of Bucharest within three months of communication.

(9) The Board of Reexamination shall be able to take notice of the irregularities of any procedure a patent application is being made subject to and of the decisions made and shall proceed accordingly pursuant to Article 30 of the Law.

(10) The appeals formulated under the incidence of Law 62/1974 shall be solved by the Board of Reexamination.

## **SECTION 6** **Issue of a Patent**

### **Rule 38 – Requirements for the Issue of a Patent**

(1) The State Office for Inventions and Trademarks shall issue the patent under the terms of Article 31 of the Law unless the decision to grant a patent was revoked under the terms of Article 56 of the Law and if the legal fee for printing and issuing the patent was paid by the owner.

(2) The patent owner shall pay the patent printing and issuing fee within six months of the publication of the decision.

(3) Within three months after the decision to grant a patent became final, the State Office for Inventions and Trademarks shall print the description, claims and drawings in fascicle and shall issue the patent to the patent owner.

(4) After the issue of the patent, the patent owner shall owe the patent maintenance fees as from the regular filing date to the issue of the patent according to the Law. These fees shall be paid at one time for the whole period, within three months of the patent issue date.

(5) Where the patent owner fails to pay the patent maintenance fees pursuant to para (4) above, the State Office for Inventions and Trademarks shall publish the lapse of the patent in the Official Bulletin of Industrial Property immediately after the expiration of the time limit. The patent owner may apply to the State Office for Inventions and Trademarks for reinstatement of the patent under the provisions of Article 40 of the Law.

## **CHAPTER III** **Protection by a Patent for New Varieties of Plants and New Animal Breeds**

### **Rule 39 – Definitions**

*Variety* means a plant grouping within a single botanical taxon of the lowest known rank, which grouping meet the conditions for the grant of a patent with the recognition of the breeder's right:

- defined by the expression of the characteristics resulting from a given genotype or combination of genotypes;
- distinguished from any other plant grouping by the expression of at least one of the said characteristics;
- considered as an entity with regard to its suitability for being propagated unchanged.

*Breed* means an animal grouping within a known species or variety of animals of the lowest rank, which grouping meet the conditions for the grant of a patent with a recognition of the breeder's right.

*Propagating material for the plant varieties* means seeds, nursery transplants, material to be planted, various parts of a plant used for the propagation.

*Reproduction material for breeds* means embryos, sperm, living animals, eggs used for reproduction.

*Breeder* means a person who bred or discovered and developed a variety or a breed. When more persons contributed thereto all are considered breeders.

*Breeder's right* means the exclusive right of a patent owner to exploit the invention whose subject matter is a plant variety or an animal breed.

*Maintainer* is the natural or legal person responsible for maintaining a variety or a breed; in that case, the owner of a patent may be the breeder, the natural or legal person who was transmitted this right or his successor in title.

#### **Rule 40 – Competences**

(1) According to the Law, the State Office for Inventions and Trademarks grants patents for invention for new varieties of plants and breeds of animals if these meet the provisions of Article 7, para 3 and Article 11 of the Law.

No other condition may be imposed for the grant of a patent for invention if the applicant meets all the formalities provided for by these Regulations.

(2) The State Office for Inventions and Trademarks considers that the provisions of Article 7 para 3 and Article 11 of the Law are met if they were confirmed in writing by the competent authorities who have the responsibility to check and test the new varieties or breeds.

(3) By the grant of a patent for invention, the right of the breed or variety breeder is recognized for a period of minimum 20 years, which right shall be written down in the patent issued.

(4) When the new variety of plant or breed of animal were bred by the breeder who is an employee, in the conditions provided by Article 5 para 1 letter a) or para 2 of the Law, the owner of the patent for invention shall be the enterprise which bred the variety or breed, this having been recognized the breeder's right for the variety or breed, with the legal obligation to pay an equitable additional compensation to the breeder of the variety or breed, the said compensation being established by the additional act to the individual labour contract thereof.

#### **Rule 41 – Conditions for the Existence of a Patentable Invention the Subject-Matter of Which is a Variety or Breed**

##### **A. Novelty**

(1) The variety or breed shall be deemed to be new within the meaning of Article 7, para 3 and Article 11 of the Law if, at the date of filing the application for the grant of a breeder's right, the harvested propagating material has not been sold or otherwise disposed of to third parties by, or with the consent of, the breeder, in the following circumstances:

(i) in the territory of Romania earlier than one year before the patent application filing date;

(ii) in the territory of other states earlier than four years before the patent application filing date or, in the case of trees, fruit-trees and vines earlier than six years before the patent application filing date.

(2) The fact that a variety is known or its existence has been disclosed does not make it lose its novelty within the meaning of para (1) above.

##### **B. Distinctness**

(1) The variety or breed shall be deemed to be distinct if they are clearly distinguishable from any other variety or breed whose existence is a matter of common knowledge at the time of the filing of the application.

(2) In particular, the filing of an application or the entry of a variety in the official register of varieties in any other country shall be deemed to render that other variety a matter of common knowledge from the date of regular filing of the application, provided that the application leads to the granting of a breeder's right or from the date of entering that variety in an official register of varieties, as the case may be.

##### **C. Uniformity**

(1) The variety or breed shall be deemed to be uniform if, subject to the variation that may be expected from the particular features of their reproduction or propagation, they are sufficiently uniform in their relevant characteristics.

##### **D. Stability**

The variety or breed shall be deemed to be stable if their relevant characteristics remain unchanged after repeated propagation or, in the case of a particular cycle of propagation, at the end of each such cycle.

## **Rule 42– Filing and Publication of the Patent Application**

(1) Filing and publication of the patent application are performed by observing the provisions of the Law and of these Regulations, with the following additional requirements:

a) the variety or breed shall be individualized by denomination, as provided for by the regulations, both in the patent application and in the description and claim;

b) to meet the requirement of unity of the invention, separate patent applications shall be drawn up for each variety or breed identified by their denomination;

c) the patent application shall be accompanied by a statement of the applicant showing that the variety or breed have not been offered for sale or marketed in Romania earlier than one year before filing the application with the State Office for Inventions and Trademarks, or earlier than four years before filing the application abroad;

d) the applicant shall attach to the patent application a declaration concerning the carrying out of tests according to the provisions of Article 7, para 3 of the Law. If there are such tests they shall be attached thereto and they shall be issued by a competent authority;

e) the description and claims shall be accompanied, if necessary, by colour or black-and-white photos of the variety or breed with the indication of the colour code;

f) the priority documents, in the case of foreign applicants who have made a first filing in another country member of the Paris Convention, shall contain the results of the tests performed by the competent authority concerning the observance of provisions of Article 7, para 3 of the Law.

(2) The description of the variety or breed shall be drawn up so as to show the characteristics and the conditions imposed by Article 7, para 3 and Article 11 of the Law, in the following chapters exposed successively in the order below:

a) Title (denomination) of the new variety or the new breed

The title shall contain the generic designation of the new variety or the new breed, the scientific designation in Latin (genus, species, subspecies, variety, co-variety), in compliance with the international code for the nomenclature of the cultivated plants and breeds of animals.

b) Field of activity with the indication of the taxonomic position

This chapter shall contain the manner of breeding the new variety of plant or breed of animal (crossing, selection, etc), field of application (agriculture, vegetable growing, fruit growing, flower growing, viticulture, sericulture, zootechny, etc.).

c) Prior art

This chapter contains a brief presentation of the varieties or breeds of the same category, which they resemble and could be confounded with. The morphological, physiological, biochemical and production characteristics of these varieties and breeds shall be presented briefly as the case may be.

d) The problem solved by the invention

This chapter presents the problem solved by the new variety of plant or breed of animal and which may relate to the following main problems:

- high and secure production;
- increased resistance to unfavourable natural factors;
- increased resistance to pathogenic agents (diseases and pests);
- increasing the percentage of useful matter, etc.

e) Presentation of the technical solution

This chapter presents the important morphological, physiological, biochemical characteristics which are distinct, uniform and stable of the new variety or new breed of animal.

f) Presentation of photos (figures)

High quality photos illustrating the aspect of the whole plant and of the representative component parts (branches, leaves, inflorescences, flowers, whole and sectional fruit, seeds), if necessary for the identification, shall be attached to each description.

Other aspects may be added thereto, if the author deems this to be necessary. The same thing is also valid for the new breeds.

When colours or hues are claimed, colour photos shall be compulsorily attached to the description.

g) Detailed description of the new variety or new breed of animal (embodiment)

This chapter shall contain, in the first part, the place and manner of obtaining a new variety of plant or new breed of animal (genitors, working manner, breeding and selecting works and working diagrams).

The description shall be in compliance with the norms established by the competent authorities pursuant to the international standards.

The physiological characters, the resistance to climatic factors, to diseases, to falling, precocity, vegetation period, to shedding, biochemical ones (taste, fragrance, scent) as well as the content in the chemical elements and the production on the surface unit shall be presented.

It is recommended that within the descriptions the hues of colours should be presented as colour indices, according to an official catalogue.

The main advantages obtained by cultivating the new variety or breed according to the invention shall be presented declaratively, without explanations, in this chapter, without indicating the economic and social values.

(3) The claims shall meet the following requirement:

- to be clear, concise, to reflect the distinct morphological and physiological characteristics of the variety or breed which individualizes them and which shall be uniform and stable;

- in the preamble of the first independent claim, the denomination of the variety or breed shall be written with the taxonomic denomination of the species, as well as the elements from the first stage of the description; after the expression: “characterized in that...” the relevant morphological characteristics permitting to individualize the new variety or breed shall be shown;

- in the second claim, dependent upon the first, the physiological characteristics shall be presented;

- in the third claim, dependent on the first and second, the biochemical and technological characteristics shall be presented.

Other dependent claims describing in detail the independent claims to which they relate or which can present a method or procedure of using the said variety or breed or other characteristics may be formulated.

(4) The abstract of the invention shall contain the complete denomination of the new variety or breed, including the taxonomic denomination, field of application, the main morphological, physiological and technological features which individualize them.

### **Rule 43 – Denomination of the Variety or Breed**

(1) The variety of plant or breed of animal shall be designated by a denomination destined to their generic identification and designation.

(2) The denomination shall not contain only numbers, except for the cases in which this practice is recognized for the designation of the said varieties or breeds. This shall not mislead or give birth to confusions regarding the characteristics, value or the identification of the breed, variety or regarding the identification of the producer. The denomination shall be different from other existing ones.

(3) The denomination of the variety or breed is indicated by the producer at the time of filing the patent application. If the State Office for Inventions and Trademarks finds out that the denomination does not meet the requirements of para (2) above, the filing of the denomination is refused and the producer shall propose another denomination, within two months from the filing of the patent application.

The denomination of the variety or breed shall be written in the patent issued.

(4) Prior rights of third parties shall not be affected if, by virtue of a prior right, the utilisation of the denomination of variety or breed is forbidden to a person who, in accordance with para (6) below, is obliged to use it; in that case, the State Office for Inventions and Trademarks shall ask the applicant to give the variety or breed another denomination.

(5) The State Office for Inventions and Trademarks shall register the denomination as requested by the foreign breeder except where this denomination is unsuitable within the territory of Romania and, in the latter case, it shall require the breeder to submit another denomination.

(6) Any other person who offers for sale propagating material of a variety or breed protected in the territory of Romania shall be required to use the denomination registered with the State Office for Inventions and Trademarks even after the expiration of the breeder's right, except where, in accordance with the provisions of para (4) above, prior rights prevent such use.

(7) Where the applicant failed to indicate the denomination of the variety or breed in the patent application and/or description, the State Office for Inventions and Trademarks shall notify the applicant about this, offering him a time period to complete the patent application with the denomination proposed.

(8) When the denomination proposed does not meet the requirements of paras (1) to (7), the State Office for Inventions and Trademarks shall notify the applicant, inviting him to change the denomination within the time limit accorded. If the applicant fails to answer the invitation within the time given, the patent application for the variety or breed shall be rejected.

(9) When a variety or breed are offered for sale, these may be attended by a mark, commercial denomination or other similar indications which permit to be easily recognized.

(10) For marketing a new variety or breed for which the breeder's right is granted, the propagating material shall be visibly labelled so that it should be easily recognized and/or may be attended by a distinctive sign.

(11) The State Office for Inventions and Trademarks shall publish the denominations of varieties or breeds in the Official Bulletin of Industrial Property.

#### **Rule 44 – Tests for Varieties and Breeds**

(1) Where upon filing the patent application the applicant declares that the variety or breed has been checked and tested by the competent authority, the State Office for Inventions and Trademarks shall immediately invite the applicant to transmit the necessary documents to the competent authorities and to inform the State Office for Inventions and Trademarks in writing about the date when these documents were filed. At the same time, the State Office for Inventions and Trademarks shall notify the date of the filed patent application to the competent authority.

(2) The competent authority shall establish the place and date of testing the variety or breed, shall notify this to the applicant and may, at the same time, ask the applicant to do the following within a time limit:

- a) to furnish the materials for the growth tests;
- b) to furnish the information for carrying out the growth tests for the given variety or breed;
- c) to designate the quantity and nature of the propagating material necessary for the tests;
- d) the kind of tests and standard methods to be applied.

(3) The authority responsible for performing the tests shall periodically inform the applicant about the stage and problems occurring during the tests, asking him to give technical assistance, as the case may be.

(4) Upon finishing the tests, the authority responsible with the tests shall draw up a report containing:

- a) test results;
- b) morphological and physiological characteristics of the variety or breed, analysed in comparison with those of their genitors;
- c) conclusions concerning the provisions of Article 7 para (3) and Article 11 of the Law.

This shall be transmitted in copy, under signature, directly to the State Office for Inventions and Trademarks and to the applicant, within two years from the start of the tests.

(5) Within two months from receiving the report, the applicant has the possibility to express his view about the results transmitted by the said authority.

(6) If said authority fails to comply with the time limits for performing the tests, or in case of litigation, the State Office for Inventions and Trademarks shall resort to other qualified authorities in the country or from abroad with a view to carry out these tests.

(7) Where the authority responsible to carry out the tests itself is the applicant of a patent for invention, the report concerning the test results shall be approved by another competent authority in Romania.

(8) In the examination procedure, the State Office for Inventions and Trademarks shall take into account the tests performed by other competent authorities from abroad if these are parties to the treaties or international conventions to which Romania is also a party or based on reciprocity.

**Rule 45 – Examination of the Patent Applications the  
Subject– Matter of which is a Variety of  
Plant or Animal Breed**

(1) The substantive examination of the applications is performed after checking the conditions stipulated by Rule 28.

(2) The substantive examination of the patent applications whose subject matter is a variety of plant or a breed of animal consists in analysing the fulfillment of the conditions provided for by Article 7 para (3) and Article 11 of the Law and in observing the provisions of the rules concerning the growth tests carried out by the competent authorities as well.

(3) Where it is ascertained that the provisions provided for in para (1) above are met, the State Office for Inventions and Trademarks takes the decision to grant a patent; otherwise, the patent application shall be rejected.

(4) For other procedures than those provided in this Chapter, the provisions of the regulations concerning the examination of the patent application shall be applied.

**Rule 46 – Rights and Obligations Resulting from the  
Protection of Varieties and Breeds by a  
Patent for Invention**

(1) In compliance with Articles 34 and 35 of the Law, the following acts in respect of the propagating material shall require the authorization of the breeder or of his successor in title:

- (i) production or reproduction (multiplication);
- (ii) conditioning for the purpose of propagation;
- (iii) offering for sale;
- (iv) selling or other forms of marketing;
- (v) exporting;
- (vi) importing;
- (vii) stocking for the purposes presented above.

(2) The breeder or his successor in title may give his authorization subject to certain conditions and limitations.

(3) In compliance with Articles 34 and 35 of the Law, the acts in respect of the harvested material stipulated at para (1) (i – vii) also require the authorization by the breeder or his successor in title.

(4) The provisions of paras (1) to (3) of this Rule also apply for:

- (i) varieties or breeds deriving from a protected variety or breed, except where the protected variety or breed itself did not result from derived varieties or breeds;
- (ii) the varieties or breeds which are not clearly distinguishable, namely they do not comply with the provisions of Article 7, para (3) of the Law and of Rule 46 of these Regulations;
- (iii) the varieties or breeds whose production requires the repeated use of a protected variety or breed;
- (iv) the derived varieties or breeds which may be obtained by the selection of a natural or induced mutant, or of a somaclonal variant, the selection of a variant individual from plants of the original variety, backcrossing or transformation by genetic engineering.

**Rule 47 – Exceptions to the Breeder's Right**

(1) The breeder's right shall not extend to:

- (i) acts done privately and for non-commercial purposes;
- (ii) acts done for the purpose of breeding other varieties or breeds, according to the previous rule;
- (iii) acts done for experimental purposes

(2) The breeder's right shall neither extend to the acts done by small farmers who buy propagating material from a protected variety or breed for propagating purposes on their own holdings.

#### **Rule 48 – Obligations of the Patent Owner**

The owner of a patent for a variety or breed is obliged to be the maintainer throughout the validity of the protection, namely he shall have propagating material.

If during the protection period the owner cannot furnish the propagating material upon request by the competent authority, this authority shall notify the State Office for Inventions and Trademarks about the lapse of the patent.

The State Office for Inventions and Trademarks shall write the lapse of the patent in the Register of Patents and shall publish it in the Official Bulletin of Industrial Property.

### **CHAPTER IV**

## **Dispositions for Applying Article 5 of the Law – Employees' Inventions**

#### **Rule 49 – Employee's Right to the Patent**

(1) The right to the patent, in the case of the inventions created by an employee, shall belong to the employee, in the following situations:

- a) there is a stipulation in the contract by which the employee has the right to the patent;
- b) the invention was created in the conditions of Article 5 para (1) letter b) of the Law and there is no contrary clause in a contract concerning the employee's inventions;
- c) the invention carried out by the employee during an employment contract has no connection with the activity of the enterprise and was not created in the course of the employee's duties;
- d) the invention is created in one of the situations provided for by Rule 40 and the employee has informed the enterprise in writing according to the provisions of Rule 50 but, within 60 days from the date the information was made, the enterprise has not filed the patent application with the State Office for Inventions and Trademarks and there is no other agreement between the parties;
- e) the enterprise is not interested, according to the provisions of Article 65 paragraph 2 of the Law.

#### **Rule 50 – Right of the Employer to the Patent for Invention**

(1) According to Article 5 of the Law, the right to the patent for invention, in the case of the inventions created by the employees, shall belong to the employer, in the following conditions:

a) the invention has been created in the course of a contract which provides for the performance of an inventive mission. The contract with inventive mission may be an individual labour contract concluded upon employment, or a renewed employment contract if an inventive mission occurs.

The inventive mission will make the object of a special stipulation of the contract, by which there shall be explicitly established the technical field, the technical problem or problems which the employee takes the obligation to solve with a creative contribution corresponding to his position;

b) the invention has been created within a research contract.

The research contract shall stipulate that the right to be granted a patent belongs either to the employer who commissioned the research, or to the research institution, or to both.

If the research contract has no such stipulation, the right to be granted a patent belongs to the employer who commissioned the research.

c) the invention has been created according to the conditions of Article 5 paragraph 1 letter b) of the Law, and in a contract concluded with the employee there is a stipulation by which the right to be granted a patent for invention belongs to the employer.

## **Rule 51 – Relations between the Employees – Inventors and the Employer**

1) The employee, author of an invention, shall immediately inform in writing the manager of the enterprise where he works about the invention created in the conditions provided for by Article 5 of the Law.

2) Where the invention has been created by more inventors, information shall be jointly made by all the inventors or their legal representative.

3) The information shall contain sufficient data to permit the employer to include the invention in one of the categories provided for in Article 5 of the Law and in Rules 40 and 50.

The information shall contain:

- the subject-matter of the invention and the application field;
- the conditions in which the invention has been created;
- inclusion of the invention created by the employee-inventor in the provisions of Article 5 of the Law.

4) The information shall be attended by a description of the invention, where the employer has the right to be granted the patent for invention.

The description shall present the problem taking into account the prior art, the proposed solution and an embodiment of the invention.

5) The information concerning the invention is performed personally to the employer by registered letter, so that it may constitute the proof that the employer has been informed with the observance of the confidential character.

6) The time limit of 60 days provided for in Article 5 paragraph 5 of the Law starts from the date of filing of the information attended by the description.

7) The employer and the employee have not come to an agreement concerning the right to be granted a patent, the litigation falls under the jurisdiction of the court, pursuant to Article 61 of the Law. In this case, with a view to ensuring the protection of the invention, the patent application shall be filed with The State Office for Inventions and Trademarks by the inventor prior to notifying the court, the inventor having the obligation to inform the employer.

8) In all cases, failure to inform mutually, shall bring about the responsibility for prejudices caused according to Article 5, paragraph 4 of the Law.

9) During the procedure up to the publication of the patent application, the employer and the employee shall refrain from any disclosure of the invention.

10) In the case of an invention created according to the provisions of Article 5, paragraph 1, letter b) of the Law, for which the employee has the right to be granted a patent, the employee has the obligation to make the first offer for a licence or for assignment to the employer whose employee he is.

Following the offer, the employer shall show an interest for acquiring the rights within 3 months from the offer, within a contract concluded with its employee.

If within this time period the employer has not shown its interest, the inventor, who is the owner of the patent has the right to exploit his invention according to a contract concluded with a third party.

If the employer has shown its interest, but the parties did not arrive at an agreement concerning the price of the contract, the litigation shall be solved by the court, pursuant to Article 61 of the Law.

11) The Ministry of National Defense, the Ministry of Internal Affairs, the Romanian Intelligence Service shall elaborate the methodology concerning the inventions created within their field of activity, by observing the provisions of Article 5 of the Law and of these Regulations.

## **Rule 52 – Pecuniary Rights of the Employees – Inventors**

1) In the case of the inventions for which the employer has the right to be granted a patent, according to Rule 50, the inventor – who is the employee thereof – has the right to benefit from an additional remuneration stipulated by the contract which provides for the performance of an inventive mission, or by another additional act to the individual labour contract, according to Article 5, letter c) of the Law.

2) The amount of the additional remuneration, the manner and terms of payment are established by negotiation between the parties.

The additional remuneration may consist in a fixed amount, irrespective of the application of the invention and of royalties.

3) When the invention has been created under a research contract, the additional remuneration which an employee-inventor has to receive, shall be negotiated with the employer whose employee he is, by means of an additional act to the individual labour contract, according to Article 5, paragraph 2 of the Law.

## **CHAPTER V**

### **The Remuneration of the Inventors According to Article 66 of the Law**

#### **Rule 53 – Inventions Exploited and Not Rewarded or Partially Rewarded**

1) Within the meaning of Article 66, paragraph 2 of the Law, the remuneration to which the inventor is entitled for the inventions not rewarded or partially rewarded, before the coming into force of the present Law, shall contain all the material rights provided for by the previous laws, including also the equivalent remuneration for the other legal rights resulting from the status of author of an invention, exploited in the national economy.

These pecuniary obligations have not been fulfilled as a result of the failure to observe the legal and contractual duties resulting from the assignment act concluded with regard to the right to be granted a patent, by the state represented by the employers who are the owners of the patents, or by the employers who exploited the invention.

2) When the remuneration provided for in Article 66, paragraph 2 of the Law is negotiated, the following may be used:

a) post-calculation of the economic advantages per year obtained by the use of the invention, drawn up by the employer who exploited the invention.

Where the post-calculation is not drawn up at the date of coming into force of these Regulations, the employer who exploited the invention has the obligation, upon the inventor's request, to elaborate and to approve the post-calculation;

b) the economic or social advantages estimated by the employer where it is not possible to perform a direct post-calculation of the economic advantages (difference between the costs, elimination or reduction of the imports, etc).

3) With a view to starting the negotiation, the inventors, based on the post-calculation drawn up by the employer who exploited the invention, request the employer to give them the remuneration to which they are entitled, by filling in and submitting the calculation note (appendix 1 or appendix 2 of these Regulations), depending on the date of filing the patent application with The State Office for Inventions and Trademarks, namely before or after the 2<sup>nd</sup> of February, 1975.

4) The total written in the calculation note (the first part of appendix no. 1 or 2) represent the minimum from which the negotiation may start.

The results of the negotiation are written in the negotiation note (the second part of appendix 1 or 2), which are signed and constitute a contract concluded according to the legal provisions.

5) If the parties do not come to an agreement after the negotiations, the litigation is of the competence of the court.

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