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Sent: Tuesday, 9. August 2011 08:28
To: Forum, Scp
Subject: Circular 7999

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Madam,

Sir,

Hereby, on behalf of the State Agency on Intellectual Property of the Republic of Moldova (AGEPI), I have the pleasure to respectfully inform you on the confidentiality aspects of communications between clients and patent attorneys.

According to the Rule 45 of the Regulations on the Activity of Patent Attorneys of the Republic of Moldova of 22.07.2011, which will enter into force from 22.07.2012, patent attorneys shall exercise their powers according to the principles of good faith, honesty, trust and confidentiality.

According to Art. 185² of the Penal Code of the Republic of Moldova:

(1) The disclosure of information on invention, useful model, industrial design, plant variety, topography of integrated circuit without the consent of the author (creator) or his/her legal successor, prior to the official publication of data from the registration request, by a person to whom such information was entrusted or that otherwise became aware thereof, as well as the fraudulent misappropriation by a third party of the status of the author of the invention, utility model, industrial design, plant variety, topography of integrated circuit or coercion to co-authorship shall be punished by a fine in the amount of 500 to 1000 conventional units or by community service for 180 to 240 hours.

Acts under Art. 185² of the Penal Code of the Republic of Moldova are formal offenses. Analyzing the provision of this Article, one can notice that for existence of the material element of offence, it is not important who is the person to whom the information was spread, in such case any person who may be subject-matter of offence can discuss some data contained in the application materials to any other person, thus becoming subject of offense to criminal liability, where the dissemination of information is accompanied by relevant, conclusive and useful evidence.

Meantime, in the Penal Code of the Republic of Moldova the qualification in the objective side of the offense has been proposed for inclusion, the damage being caused by dissemination of patent information. The reason the qualification was proposed: the offense must be a material one and should be consumed only after the occurrence of a real material damage caused as a result of dissemination of information on the industrial property subject-matter, in this case the occurred disclosure of information should lead to a large-scale material damage. Besides, the provision of Art.185² (1) of the Penal Code of the Republic of Moldova, in our opinion, requires entry of an aggravated offense where the subject-matter of offence is a public official or person to whom such information was entrusted or became known on account of accomplishment of his duties (legal and/or control bodies).

With best regards and hope for further cooperation,

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