

## DRAFT DOCUMENT

### Relative exception of compulsory licenses in the Romanian patent legislation

In Romania, protection for patents is granted in accordance with the provisions of the Patent Law no. 64/1991, republished, and the Government Decision no. 547/2008 for approval of the Regulation for Implementing the Patent Law no. 64/1991, as republished.

According to the legal provisions mentioned, patent duration is 20 years from the date of filing of the application.

According to art. 43 of the Patent Law no. 64/1991, as republished, the compulsory license is granted, upon request of any interested person, by the Court of Bucharest after 4 years elapsed from the patent application filing date or after 3 years have elapsed from the grant of the patent, whichever expires later.

A compulsory license may be granted by the Court of Bucharest where the invention has not been sufficiently exploited on the territory of Romania and the patent owner cannot justify his inaction and where there is no agreement between the patent owner and the interested party (who has brought the action before court) regarding the economic conditions and commercial methods for applying the invention, and the interested party proves that has made every effort to reach an agreement with the patent owner of the invention.

The Court of Bucharest may also grant, without complying with the obligations laid down for the previous situation, in cases of extreme urgency (other than national emergency) or in situations of public use for non-commercial purposes, without fulfilling the obligations laid down for the previous situation in national emergency situations. In this situation, the licensee is obliged to briefly inform the patent owner on this compulsory license.

In cases where a patent cannot be exploited without infringing the rights conferred by another patent, the compulsory license for the subsequent patent may only be authorized by the Court of Bucharest only if the following requirements are cumulatively fulfilled: the invention subsequently claimed involves an important technical progress, of considerable economic significance as compared with the invention in the first patent; the owner of the first patent is entitled to a cross-license on reasonable terms for using the invention claimed in the second patent; the authorized use in respect of the first patent, shall be non-transferable, except for the transfer of the first patent.

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

Compulsory licenses are mainly authorized for supplying the market and shall not be transferred otherwise than with the part of the enterprise or the stock of goods benefitting of it.

The beneficiary of the compulsory licenses can also be the Government or the third parties authorized by the Government.

The interested person shall notify the State Office for Inventions and Trademarks of the final and irrevocable Court decisions concerning the grant or the withdrawal of the compulsory license, and OSIM shall register them in the National Register of Patent Applications or in the National Register of Patents, or, as the case may be, shall be published in the National Bulletin of Industrial Property within one month from communication.

Upon the motivated request of the interested person who applied for the compulsory license, the Court of Bucharest may withdraw the compulsory license when the conditions for which it was applied for ceases to exist and the legitimate interests of the licensee should be protected accordingly; however, the Court of Bucharest will not have to withdraw the compulsory license if the circumstances which determined the grant of the license are likely to happen again.

Until now, the State Office for Inventions and Trademarks is not aware of the granting or withdrawal of compulsory licenses, and no final and irrevocable Court orders are registered. Regarding this, we are not aware of any difficulties encountered by the Court in applying the national legal provisions on granting or withdrawing compulsory licenses.

**ii) – Regarding the request for information on a new study concerning the inventive step, Romania supports Spain's proposal as is contained in SCP document 24/3 – proposal for a new study of inventive activity focusing on technical solutions in the chemistry field.**

**iii) –** In Romania, the “confidentiality” is not specifically regulated for the IP domain but it is based on the provisions of the Code of Ethics for Lawyers. More precisely, as most of the patent advisors are also lawyers, the principle of professional secrecy and the principle of professionalism and loyalty to the client is applicable (Article 8 (2) (c) and (h) of the Code of Ethics).

**iv) -** "In Romania the technological transfer is a priority for all the actors involved in the education-research-innovation domain.

Thus, within the Ministry of Research and Innovation there is a Innovation and Technology Transfer Bureau that aims to implement the National Research, Development and Innovation Strategy, 2014-2020. OSIM supports this process of accelerating of the technology transfer mainly through awareness-raising actions, seminars within the Universities and Research Institutes, articles published in the OSIM Industrial Property Review (RRPI). "

Regarding the request for reviewing the information contained on the WIPO website concerning certain aspects of the national or regional legislation on patents, Romania has reviewed the information previously provided and confirms that the information contained on WIPO website mentioned on the point i) – iii) is up to date. The National Patent Law in Romania, namely the Patent Law no. 64/1991, as republished and the Government Decision no. 547/2008 for approval of the Regulation for Implementing the Patent Law no. 64/1991, as republished, has not changed since the last time the information requested by WIPO was provided.