Requirements of Inventive Step and Sufficiency of Disclosure:
Republic of Moldova IP legislation

Inventive Step

(i) the definition of a person skilled in the art

According to the Art. 10(1) of the **Law on the protection of inventions** No. 50-XVI of March 7, 2008 of the Republic of Moldova (Law) an invention shall be considered as involving an inventive step if, having regard to the state of the art, it is not obvious to a **person skilled in the art**.

According to the Rule 278 of the Regulations on the procedure of filing and examination of a patent application and of grant of a patent (Regulations) an invention shall not have on its basis an inventive step and shall be considered as obvious, within the meaning of the provisions of Article 10, paragraph (1) of the Law, if from the analysis of the totality of prior art solutions it is obvious by a further synthesis that the **person skilled in the art**, using his general knowledge, may arrive at the solution which forms the subject-matter of the patent application.

According to the Rule 278 of the Regulations **a person skilled in the art** shall represent, within the meaning of Rule 278 of the present Regulations, a person considered to have access to the whole prior art, possessing common abilities and general knowledge in the technical field in which the technical problem solved in the invention on the date of filing or of recognized priority is set.

(ii) methodologies employed for evaluating the inventive step

Section 15 of the Regulations contains provisions regarding of **Examination of inventive step:**

„275. The inventive step shall be assessed in relation to the claims and the technical problem which the claimed invention solves in the patent application. Examination of inventive step shall be carried out only for the claims which fulfill the requirement of novelty.

276. The inventive step shall be assessed in relation to the prior art including more close solutions from which a mosaic of solutions is formed, containing features of different close solutions and similar to the features of the invention compared in its totality with the claims.

277. Patent applications registered with the AGEPI, which were made available to the public after the filing date of the application under consideration, shall not be taken into consideration in assessing inventive step, even if their filing date is earlier.

278. An invention shall not have on its basis an inventive step and shall be considered as obvious, within the meaning of the provisions of Article 10, paragraph (1) of the Law, if from the analysis of the totality of prior art solutions it is obvious by a further synthesis that the person skilled in the art, using his general knowledge, may arrive at the solution which forms the subject-matter of the patent application.

279. A person skilled in the art shall represent, within the meaning of Rule 278 of the present Regulations, a person considered to have access to the whole prior art, possessing common abilities and general knowledge in the technical field in which the technical problem solved in the invention on the date of filing or of recognized priority is set.

280. Assessment of inventive step may be made by the problem-solution type

approach providing for the following stages:

a) selecting the proximate analogue of the prior art;

b) determining the objective technical problem to be solved;

c) assessing the extent to which the claimed invention, starting from the proximate analogue and the objective technical problem, would have been obvious to the skilled person at the date of filing or at the date of recognized priority.

281. The objective technical problem may be different from the technical problem presented by the applicant in the description of the invention, depending on the prior art determined by the AGEPI.

282. In applying the provisions of Rule 275, an invention shall be considered

as involving an inventive step if it fulfills at least one of the following conditions:

a) it is not obvious to a person skilled in the art from a field of application of the invention or from a field close thereto;

b) the person skilled in the art cannot, on the basis of knowledge in the prior art, solve the problem as the invention solves it;

c) the need for the solution of the problem is present for a long time, and the known solutions are up to the level of solution in the invention;

d) it is used, with or without amendments, in another field, for the solution of

another problem, and the obtained effect is either the same or unexpected, or superior to the effects produced by other inventions in the field in which the invention is superposed, provided the two fields may not be close to each other;

e) consists in the combination of known features in the prior art so that a functional organic relation, a mutual influence, a synergistic effect, an interaction or an interconditioning leading to the achievement of a new technical result is obvious;

f) has as subject-matter an analogous process by which a new effect or a substance with new, unexpected or superior qualities is obtained, or if the raw materials are new, even if the achieved results are the same;

g) represents a selection in a process of particular technical parameters covered within a known range, producing unexpected effects in the operation of the process or the properties of the resulting product;

h) represents a selection from a very large group of compounds having unexpected advantages.

283. In applying the provisions of Rule 278, an invention shall not be considered as involving an inventive step if:

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

b) it can be arrived at merely one problem concerning the saving of materials or energy, optimization of dimensions or reduction in cost prices, without achieving new or superior results;

c) it can be arrived at a problem merely by a simple substitution of materials with known characteristics making them suitable for that use and leading to predictable effects;

d) the problem it solves refers merely to a change in form or aspect for aesthetic purpose;

e) it can be arrived at a problem by a simplification, without maintaining at least the known performances in the prior art;

f) it differs from the known art merely in the use of well-known equivalents;

g) it can be arrived at a problem by the common use of two or more known solutions, and the predictable effect results from the simple summation of the effects of each solution (the juxtaposition of known solutions);

h) it can be arrived at a problem in the field of chemistry or biology consisting in a selection of a particular case from amongst a plurality of previously protected components, provided that such selected case would not lead to special qualities or results in comparison with those of the plurality of components from which it was selected;

i) the solution of the problem relates to the selection of a corresponding known material and/or to the making of certain constructive changes according to rules known by itself;

j) it relates to a natural product which was not influenced technologically;

k) it resides in the choice of particular parameters, dimensions, temperature ranges from a limited range of possibilities, which could be arrived at by successive routine trial or by the application of known design procedures;

l) it can be arrived at merely by a simple extrapolation in a straightforward way from the known art;

m) it consists merely in the use of a known technique in a closely analogous situation ("analogous use").

284. Within the meaning of Rule 283, letter f), of the present Regulations, a means shall be considered to be an equivalent of a feature specified in the claims if it is obvious to a person skilled in the art that such means in the claimed invention performs essentially the same function, in the same way and with the essential achievement of the same result.

285. If the examination reveals that the invention does not involve an inventive step, within the meaning of Rule 282 and Rule 283, AGEPI shall notify such fact to the applicant and shall allow him for response a time limit of three months from the date of dispatch of the notification.

286. AGEPI may, at the request of the applicant, send him the prior art documents taken into consideration upon assessment of inventive step, subject to the payment of the fee prescribed pursuant to Government Decision No. 774 of August 13, 1997."

(iii) having regard to the prior art, the level of inventiveness (obviousness) to meet the inventive step requirement According to the Art. 10(1) of the Law an invention shall be considered as involving an inventive step if, having regard to the state of the art, it is not obvious to a person skilled in the art.

Sufficiency of Disclosure

(i) enabling disclosure requirement

According to the Rule 48 of the Regulations the invention is considered to meet the requirements of Article 36, paragraph (1), of the Law, if it is disclosed in a manner sufficiently clear, complete and correct from the technical-scientific point of view for it to be, on the basis of the information the application contains at the filing date, carried out and used by a person skilled in the art, as claimed, without any additional inventive step. The applicant shall specify the best way of carrying out the invention known to the inventor at the filing date or, where priority has been claimed, at the priority date.

According to the Rule 49 of the Regulations if the invention concerns reproducible biological material which is not available to the public and which cannot be described in the patent application in such a manner as to enable the invention to be carried out by a person skilled in the art, the patent application shall contain an attestation certifying the deposit of that biological material with the National Collection of Nonpathogenic Microorganisms, the Regulations of which is approved by the Government Decision No. 56 of January 26, 2004, (Official Gazette of the Republic of Moldova, 2004, No. 22-25, Art. 184) or with a depositary institution having the status of international depositary authority.

(ii) written description requirement

65. The description shall begin with the specification of the index of classification in the applicable edition of the International Patent Classification under the Strasbourg Agreement on International Patent Classification of March 24, 1971 (hereinafter “the IPC”), to which the Republic of Moldova has adhered by the Parliament Decision No. 1248-XIII of July 10, 1997 (Official Gazette of the Republic of Moldova, 1997, No. 49- 50, Art. 435) to which the claimed invention relates and of the title of the invention, as indicated in the patent application.

66. The description shall successively contain the following: a) the title of the invention as appearing in the patent application form; b) the field of application of the invention; c) the prior art; d) a presentation of the technical problem which the invention solves; e) the disclosure of the invention; f) a statement of any advantageous effects (of the technical result) of the invention with reference to the prior art; g) a brief description of the explicative drawings, if any; h) a detailed description of at least one way of carrying out the invention; i) a list of cited information sources.

67. If the subject-matter of the invention is a nucleotide and/or amino acid sequence, the description shall only be deemed to be disclosed where the description contains a nucleotide and/or amino acid sequence listing and the industrial application thereof. Any nucleotide and/or amino acid sequence listing (hereinafter “the sequence listing”) shall be submitted in the corresponding form of the international standards.

68. Where the subject-matter of the invention is an installation or an apparatus, the explicative drawings necessary for the understanding of the invention shall be annexed to the description.

69. If in the absence of the explicative drawings, the description does not expressly disclose the invention in a manner sufficiently clear and complete, AGEPI shall require the presentation of the necessary drawings within three months from the date of dispatch of the notification.

70. The replacement of a part of the description with a reference to the source containing the necessary data (the source of literature, the description of the invention from the earlier application, the description of the invention from the title of protection etc.) shall not be admissible.

71. The description of the invention shall contain an extension of the title with the delimitation of the concrete fields in which the application of the invention is possible. If there is more than one field, the most preferential shall be stated. The concrete features of the claimed invention shall not be disclosed.