Referring to WIPO Circular C.8828

(i)

Currently, compulsory licenses for inventions are granted in the Republic of Moldova by the courts on the basis of Law No.50-XVI/2008 on the Protection of Inventions:

- In the case of non-exploitation of the invention;

- In the case of national emergency;

- In the case of semiconductor technology for public non-commercial use or to remedy a practice, determined after judicial process to be anti-competitive;

- In the case of the cross license, i.e. when the second invention cannot be exploited without infringing the first invention.

The compulsory license and the conditions applicable to the compulsory licenses are stipulated in Articles 28 and 30 of Law No.50-XVI/2008 on the Protection of Inventions.

Article 28. Compulsory License

(1) If after the expiration of a period of 4 years from the day of filing of the patent application or 3 years from the grant of the patent, whichever is later, the patent owner has not exploited the patent in the territory of the Republic of Moldova or if he has not undertaken serious and effective preparations for such purpose, the courts may grant a compulsory license, on request, to any interested person, unless the patent owner justifies the lack or insufficiency of exploitation. No distinction shall be made between the domestic products or imported products for the purposes of establishing the fact of the lack of exploitation or insufficient exploitation of the patent.

(2) A compulsory license shall be granted solely where the proposed user has made efforts to obtain authorization from the patent owner on reasonable commercial terms and conditions and that such efforts have not been successful within a reasonable period of time. This requirement may be waived in the cases referred to in paragraph (3) below. In such cases, the patent owner shall be notified as soon as reasonable practicable.

(3) A compulsory license may be granted in the case of national emergency or other circumstances of extreme urgency or in cases of public non-commercial use.

(4) In the case of semiconductor technology, a compulsory license may only be granted for public non-commercial use or to remedy a practice, determined after judicial or administrative process to be anti-competitive.

(5) A compulsory license may be granted to a patent owner or an owner of a plant variety patent who cannot exploit his invention or protected plant variety (the second patent) without infringing another patent (the first patent), provided the invention or plant variety claimed in the second patent shall involve an important technical advance of considerable economic significance in relation to the

invention claimed in the first patent. The court shall have the authority to review the existence of these circumstances. In the case of a compulsory license in respect of a patent for an invention or a patent for a plant variety, the owner of the first patent shall be entitled to a cross-license on reasonable terms to use the patented invention or the protected plant variety.

Article 29. Conditions Applicable to Compulsory Licenses

(1) At the time of grant of a compulsory license to exploit the patent under Article 28 above, the court shall specify the types of use covered by such license and the terms and conditions to be observed. The following conditions shall apply:

a) the scope and duration of such use shall be limited to the purpose for which it was authorized;

b) such use shall be non-exclusive;

c) such use shall be non-assignable, except with that part of the enterprise or goodwill which enjoys such use;

d) any such use shall be authorized predominantly for the supply of the domestic market, except where such use is permitted to remedy a practice determined after judicial or administrative process to be anti-competitive;

e) a court may authorize, upon motivated request, that authorization for such use shall be liable, subject to adequate protection of the legitimate interests of the persons so authorized, to be terminated if and when the circumstances which led to it cease to exist and are unlikely to recur The judicial authority shall have the authority to refuse termination of authorization if and where the circumstances which led to such authorization are likely to recur;

f) the license holder shall pay the patent owner an adequate remuneration, taking into account the economic value of the authorization and, eventually, the need to remedy an anti-competitive practice;

g) in case of a compulsory license for a dependent patent or a plant variety patent, the use authorized in respect of the first patent shall be non-assignable, except with the assignment of the second patent.

(2) The legal validity of any decision relating to the authorization of use referred to in paragraph (1) and any other decision relating to the remuneration provided for in respect of such use shall be subject to judicial review or other independent review by a higher authority.

(3) The holder of the license shall notify the AGEPI the decision of the judicial authority to grant or, where appropriate, to terminate a compulsory license. The Agency shall enter the court decision in the National Register of Patents and publish it in BOPI.

(4) If the holder of a compulsory license has not undertaken any effective and serious preparation for exploiting the invention within one year following grant of the license, the compulsory license

may be cancelled by the decision of the court. In any event, a compulsory license shall terminate if its holder has not begun exploitation of the invention within 2 years following the date on which the license was granted to him.

Article 30. Acts Infringing the Licensee's Rights

(1) Without prejudice to the provisions of the license contract, the licensee may only institute proceedings for infringement of his rights in relation to a patent application or patent with the consent of the applicant or owner.

(2) The beneficiary of an exclusive or compulsory license may only institute proceedings for infringement of rights where the patent owner notified formally fails to take such action in his own name within 2 months.

Currently, no compulsory patent licenses have been granted in the Republic of Moldova.

In the future, after the amendments made in the Law No.50-XVI/2008 on the Protection of Inventions, compulsory licenses will also be issued by:

a.) **the court**, on request:

(in the case of non-exploitation and cross license);

- to the Competition Council following its decision, in order to remedy an anti-competitive or unfair competition practice determined by the abusive use of the patent which contributed to the market monopoly and/or the imposition of exaggerated prices;

b.) **by the competent authority designated** according to the legislation on emergency regime:

- in the case of national emergency;
- in other circumstances of extreme urgency (in particular in the interest of national defense or national security and safety);
- in the case of public non-commercial use.

The holder of the license obtained from the competent authority will pay the patent owner a remuneration, which may not exceed 4% of the total price to be paid to the owner.

(ii)

In accordance with Article 10 of Law No. 50-XVI / 2008 on the Protection of Inventions, 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.

The prior art shall be held to comprise everything made available to the public anywhere in the world by means of a written or oral description, by use, or in any other way (the electronic means, particularly the Internet and databases), before the date of filing of the patent application or of priority recognized, provided the date of making available to the public be identifiable. (Rule 251 of the

Regulations on the Procedure of Filing and Examination of a Patent Application and of Issuance of a Patent, hereinafter - the Regulations).

At the same time, 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 (Rule 277 of the Regulations).

An invention shall not have on its basis an inventive step and shall be considered as obvious 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 (Rule 278 of the Regulations).

A person skilled in the art shall represent 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 (Rule 279 of the Regulations).

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 (Rule 280 of the Regulations).

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 (Rule 282 of the Regulations).

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”) (Rule 283 of the Regulations).

According to Rule 284 of the 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.

(iii)

Regarding the confidentiality of the information contained in the patent documents, we can state that all data are confidential until the publication of the patent application after the expiry of the 18-month period. For the disclosure of information, persons are liable for contravention and criminal liability depending on the damage caused. In the relationship between the customer and the attorney according to p.10, 13-17 of the Government Decision No. 541 from 18.07.2011 approving the Regulations on the Activity of the Authorized Intellectual Property Attorneys:

- The authorized attorney must demonstrate honesty, probity, fairness, correctness, sincerity and confidentiality in the relationship with his/her customer, characteristics that motivate the customer's decision to engage him/her.
- The authorized attorney is bound to keep the confidentiality of any data, including personal data, and information that becomes known to him/her directly or indirectly from his/her customer, whether directly linked to or not by the assumed commitment. He/she cannot disclose this information both during the commitment and after its termination, except with the express consent of his/her customer.
- The right and obligation to maintain confidentiality apply to all information acquired during the exercise of the profession and will have to be respected even after the settlement of the commitment, except in cases expressly provided for by law.
- The authorized attorney cannot pass on to any third party any document received from his/her customer, such as documents, printed or electronic files, samples and models, without the consent of the customer.
- The obligation of confidentiality implies an active role of the authorized attorney in ensuring that such confidentiality is preserved, including by the persons he or she employs in order to fulfil a particular commitment or to carry out his/her professional activity in general.
- Among the customers represented jointly, the confidentiality rule does not apply unless the parties decide otherwise.

At the same time, the information placed at: https://www.wipo.int/export/sites/www/scp/en/confidentiality_advisors_clients/docs/03_republic_of_moldova.pdf is to be substituted with the text below as follows: According to Government Decision No.541 approving the Regulations on the Activity of the Authorized Intellectual Property Attorneys of the Republic of Moldova of July 18, 2011, which entered into force from July 22, 2012, patent attorneys shall exercise their powers according to the principles of good faith, honesty, trust and confidentiality. According to Article 185^2, par. 1 of the Criminal Code of the Republic of Moldova, the disclosure of information on IP prior to the official publication of data from the registration request by a person to whom such information was entrusted shall be punished.

(iv)

As far as the technology transfer is concerned, we can mention that it is carried out through the Agency for Innovation and Technology Transfer http://www.aitt.asm.md/node/29.

AGENCY FOR INNOVATION AND TECHNOLOGY TRANSFER plays the role of a pragmatic link Center between the scientists, on the one hand, and the public authorities and entrepreneurs on the other hand, their collaboration being implied by the challenges of the modern world and commitments undertaken by Republic of Moldova towards the international community.

According to its direct tasks and functions, AITT jointly with the Academy of Sciences of Moldova, in accordance with the Law on Scientific-Technological Parks and Innovation Incubators, has created the scientific-technological parks and the innovation incubator, which make up the best solution for Moldovan companies because they provide them with a number of strategic and logistic services for the development.

Currently, in the Republic of Moldova there are three *Scientific-Technological Parks* and *an Innovation Incubator*:

- The Scientific-Technological Park “Academica” - with universal specialization, 27 residents;
- The Scientific-Technological Park “Inagro” - specialized in intensive and ecological agriculture, 8 residents;
- The Scientific-Technological Park “Micronanoteh” - specialized in microelectronics and nanotechnologies, the contest on the residents’ selection is announced;
- The Innovation Incubator “Inovatorul” - with universal specialization, 4 residents.

To coordinate, stimulate and implement the mechanisms of innovation and technology transfer activities, the Supreme Council for Science and Technological Development creates the **Agency for Innovation and Technology Transfer (AITT)**, which acts on the basis of the statute approved by the Supreme Council for Science and Technological Development.

The Agency exercises the following duties:

- implements the state policy in the field of innovation and technology transfer;
- elaborates proposals for improving the normative and legal framework in the field of innovation and technology transfer;
- establishes the strategic directions of innovation and technology transfer activities, reflected in programs and projects at all levels;
- participates in the partnership between the organizations in the field of science and innovation, the higher education institutions and the production enterprises;
- determines the volume of financial allocations to support innovation and technological transfer programs and projects, to be approved by the Supreme Council;
- organizes the state registration and accounting of innovation and technology transfer programs and projects;
- coordinates the process of creating the innovation and technology transfer infrastructure;
- provides specialized assistance in the field of innovation and technology transfer;
- organizes exhibitions of achievements in the field of innovation and technology transfer;
- exercises other duties established by law.

Regarding the information on the legal provisions of the SCP Member States

(i) For the Heading at http://www.wipo.int/scp/en/annex_ii.html, AGEPI informs you that no amendments have occurred;

(ii) For the Heading at https://www.wipo.int/scp/en/revocation_mechanisms/, AGEPI informs you that no amendments have occurred;

(iii) As far as the cooperation on search and examination of patent applications is concerned, we can inform you that AGEPI carries out the substantive examination of patent applications. In the search, the AGEPI examiners use the database of the European Patent Office (EPO), consult the Global Register and the search reports drawn up by the EPO, consult the PATENTSCOPE, as well as carry out the search in the database of the Russian Federal Institute of Industrial Property and in the database of the Eurasian Patent Office. At the same time, on 26.05.2017, AGEPI of the Republic of Moldova and OSIM of Romania concluded a Memorandum on Acceleration of Patent Procedure, thus AGEPI

acknowledges the search report drawn up by OSIM and vice versa OSIM acknowledges the one drawn up by AGEPI. At the same time, since December 2018, AGEPI carries out the patent document retrieval using artificial intelligence in the PATSEARCH database, produced by ROSPATENT.