



Translation from Romanian

THE PARLIAMENT OF ROMANIA

THE CHAMBER OF DEPUTIES

THE SENATE

L A W

on

Utility Models

The Parliament of Romania hereby adopts the present Law.

CHAPTER I

General Provisions

Art. 1. – (1) The utility model protects, within the meaning of this law, any technical invention, provided it is new, exceeds the level of mere professional skill and is susceptible for industrial application.

(2) The following, in particular, shall not be regarded as inventions within the meaning of paragraph (1):

- a) discoveries, scientific theories and mathematical methods;
- b) esthetic creations;
- c) plans, principles and methods in exerting mental activities, games or in the field of economic activities, as well as computer programs;
- d) presentations of information.

(3) The provisions of paragraph (2) shall exclude protection by utility model of the provided objects or activities, only to the extent to which the application for utility model or the utility model refers to the abovementioned objects or activities considered as such.

(4) Utility model protection shall not be granted for registration in respect of:

- (a) inventions the commercial exploitation of which would be contrary to public policy or morality, including the ones harmful to human, animal or plant health or life, or that



could seriously harm the environment, provided that exploitation shall not be excluded merely because it is prohibited by law or regulation;

- (b) plant or animal varieties;
- (c) inventions having as subject matter a biological material;
- (d) inventions having as subject matter a product represented by a chemical or pharmaceutical substance;
- (e) inventions having as subject matter a procedure or a method.

Art. 2. – The right to a utility model shall belong to the inventor or to his successor in rights.

Art. 3. – (1) An invention shall be considered to be new if it does not form part of the state of the art.

(2) The state-of-the-art comprises all knowledge made available to the public by means of a written or verbal description, by use or otherwise, before the deposit date of the application for utility model.

(3) State-of-the-art also includes the contents of the applications for utility model, applications for invention patent filed with the State Office for Inventions and Trademarks, hereinafter referred to as *O.S.I.M.*, as well as of the applications effective in Romania, as they were filed, with the deposit date prior to the one provided at paragraph (2) and were published on or subsequent to this date, according to the law.

(4) In the application of the provisions from paragraphs (2) and (3), the disclosure of the invention shall not be taken into account if it appeared within the interval of 6 months before the deposit date of the application for utility model and if it directly or indirectly results:

- a) from the applicant or his predecessor in rights or
- b) further to an obvious abuse on the applicant or his predecessor in rights.

Art. 4. – An invention shall be considered susceptible of industrial application if its subject matter can be manufactured or used in any kind of industry, including in agriculture.

Art. 5. – (1) The registered utility model confers its holder an exclusive right to exploit the invention on the entire term and to forbid, without his consent, the performance of the following acts: manufacturing, use, offer to sell, sale or import for use, offer to sell or sale of the invention that is protected by the utility model.

(2) The holder shall also have the right to forbid any third party, who does not possess his consent, to supply or offer other persons except entitled persons to exploit the invention protected by the utility model, application means of the invention on the territory of Romania, referring to an essential element of the invention, if the third party is aware or – in the given circumstances – should have been aware that the means are adequate and destined to the application of the invention.

(3) The provisions of paragraph (2) shall not apply to commercial products of large consumption, unless the third party attempts to determine that certain facts that could breach the exclusive right stipulated at paragraph (1) were committed.

(4) If the essential elements of a utility model were taken over from the description, designs, experimental models, devices or equipments that belong to a person other than the holder, without the person's consent, the granted protection may not be used in the detriment of the respective person.

Art. 6. – (1) The rights conferred by a registered utility model shall not extend to the acts stipulated at Art. 5 paragraph (1) on the protected product, made subsequent to the trading of the product in a member state of the European Union, by the holder or with his consent.

(2) However, the rights conferred by a utility model shall extend to the acts stipulated at Art. 5 paragraph (1) on the protected product, made subsequent to the trading of the product outside a member state of the European Union, by the holder or with his consent.

Art. 7. – (1) The term of a utility model is of 6 years, as of the deposit date.

(2) The holder of the right may obtain, based on a petition made in writing to O.S.I.M., the renewal of the protection by the utility model for another term of 2 years,



however not before one year and not later than 6 months prior to the expiry of the term stipulated at paragraph (1).

(3) The holder of the right may obtain, based on a petition made in writing to O.S.I.M., the renewal of the protection by utility model for a second and final term of 2 years, however not before one year and not later than 6 months prior to the expiry of the term stipulated at paragraph (2).

(4) The term of the utility model may not exceed 10 years as of the deposit date.

(5) The renewal tax may be paid until the expiry date of the term stipulated at paragraph (1) or, as the case may be, at paragraph (2), or within a term of 6 months as of any of these dates, with an increase of 50% from the quantum of the legal tax.

(6) The holder of the utility model may pay the cumulated taxes of maintaining into force and renewal taxes for the entire protection term.

(7) The recording of the protection renewal according to the provisions from paragraphs (2) and (3) shall be published in the Official Gazette of Industrial Property, hereinafter referred to as *B.O.P.I.*

Art. 8. – (1) The right to the utility model, the right to the registration of the utility model and the rights deriving from the registration of the utility model may be transmitted integrally or partially.

(2) The utility model may be the subject matter of a security interest or of enforcement measures.

Art. 9. – (1) The protection by utility model ceases by:

- a) term expiry;
- b) failure to pay the renewal taxes of the protection;
- c) the holder waives the registered utility model.

(2) Protection ceasing stipulated at paragraph (1) shall be effective as of the following day of:

a) the expiry day of the utility model term, in the case stipulated at paragraph (1) letters a) and b);

b) the communication by the holder of the waiving, in the case stipulated at paragraph (1) letter c).

(3) If the waive as per the provisions from paragraph (1) letter c) refers only to certain parts of the utility model, it shall remain into force in regard to the other parts. O.S.I.M. shall receive official acknowledgment of the waiving, without examining whether the remaining parts of the utility model continue to fulfill the requirements of the present law and whether the limitation is admissible.

(4) The utility model is considered not effective retroactively as of the deposit date, in case invention patent is granted for an application:

a) in which the priority of the application for utility model is claimed or

b) which was transformed to application for utility model, and the applicant failed to demand expressly the withdrawal of the application for patent.

CHAPTER II

Registration Procedure.

Publishing and Issuing the Certificate

Art. 10. – (1) The application for utility model shall be drafted in Romanian and filed with O.S.I.M., on paper or in another format at the latitude of the applicant and by a transmission means stipulated in the regulation for the application of the present law.

(2) Applications shall contain:

a) the identification data of the applicant;

b) the request of protection by utility model, accompanied by the title of the invention;

c) a description of the invention;

d) one or several claims;

e) the designs to which the description or the claims refer.



(3) The application for utility model shall contain indications to enable the identity of the inventor to be established.

(4) If the applicant and the inventor are not one and the same person, he must declare the latter and prove by a document filed with O.S.I.M., until a decision is passed, that he is entitled to register the utility model.

(5) The applicant is considered, in all procedures before O.S.I.M., to be the person entitled to register the utility model.

(6) One application for utility model shall be filed for each and every invention.

(7) The claims must define clearly the subject matter of the requested protection, must be concise and supported integrally by the description of the invention.

(8) The application shall be accompanied by a summary of the invention. The summary must include a short presentation of the invention; it shall serve exclusively to technical information and may not be taken into account for other purposes, especially for the determination of protection scope.

(9) Up to the time of the decision to register the utility model, alterations in the contents of the application shall be permissible insofar as they do not broaden the scope of the subject matter of the application. No rights may be derived from alterations which broaden the scope of the subject matter of the application.

Art. 11. – The invention must be disclosed in the application for the utility model in a sufficiently clear and complete manner, so that to enable a specialty person in this field to accomplish it.

Art. 12. – (1) The deposit date of the application for the utility model is the date when the following were filed with O.S.I.M.:

- a) an explicit or implicit indication according to which a utility model is applied for;
- b) indications to enable the identity of the applicant to be established or to enable O.S.I.M. to contact the applicant;
- c) a part which may seem at first sight a description of the invention.

(2) Claims and designs in regard to the invention may also be filed within a term of two months as of the deposit date.

(3) In case the requirements stipulated at paragraph (1) letters a) and/or c) are not fulfilled, O.S.I.M. shall notify the applicant the deficiencies found and shall request the

applicant to remedy such within a term of two months as of the date when the requirement stipulated at paragraph (1) letter b) was fulfilled in the least.

(4) The deposit date of the application for the utility model is the date when the documents that include the remedy of the deficiencies signaled in the notification sent in accordance with the provisions from paragraph (3) are filed.

(5) In case the signaled deficiencies failed to be remedied within the granted term or if the deficiencies refer to the requirement stipulated at paragraph (1) letter b), the deposit date shall not be granted, and the application for the utility model is considered not filed.

Art. 13. – The deposit of the application for the utility model has the value of a regulating national deposit as of the deposit date, granted according to the provisions of Art. 12, if the provisions from Art. 10 paragraph (2) are fulfilled.

Art. 14. – (1) An application for utility model may also result from an application for patent having as subject matter the same invention, if the applicant files a transformation application;

a) during the examination petition of the application for patent until the conclusion of the technical preparation to publish the record of the decision to grant the invention patent or to overrule the application for patent;

b) during an interval of 3 months as of the date when O.S.I.M. publishes the record of a decision to cancel the invention patent remained final and irrevocable due to the cause of inventive activity lack.

(2) If the requirements stipulated at paragraph (1) are fulfilled, the application for utility model resulted from the transformation shall also benefit from the same deposit date and from the priority right appeared from the application for invention patent.

(3) The transformation stipulated at paragraph (2) shall not be effective further to the expiry of a period of 10 years computed as of the deposit date of the application for patent.

(4) The examination procedure shall continue for an application of invention patent transformed to an application for utility model if the applicant fails to demand expressly the withdrawal of the application for patent.

(5) European applications for patent may also be transformed to applications for utility model in the situations stipulated at Art. 135 from the Convention on issuing European Patents (Convention of European Patent) adopted in Munich on 5 October 1973, to which

Romania adhered by Law no. 611/2002, with subsequent revisions, in the conditions stipulated by the regulation for the application of the present law.

Art. 15. – (1) The applicant for a utility model may demand, until a decision in regard to registration is passed, its conversion to an application for invention patent, in the conditions stipulated in the regulation for the application of the present law.

(2) An application for invention patent resulted in the conditions stipulated at paragraph (1), benefits from the same deposit date and priority right appeared from the application for utility model.

(3) The conversion of an application for utility model to application for invention patent is not allowed in case the application for utility model resulted from the transformation of an application from invention patent, according to the provisions of Art. 14.

Art. 16. – (1) An application for utility model must refer to a single invention.

(2) The application for utility model which contains two or several inventions must be divided by the applicant, from his own initiative or upon the request of O.S.I.M., until a decision in regard to this application is passed.

(3) In case the applicant fails to divide it by filing the claims to define the protection of a single invention, subject matter of the initial application, until a decision on the initial application is passed, O.S.I.M. declares the application as deemed withdrawn.

Art. 17. – (1) O.S.I.M. shall examine whether the application for utility model fulfills:

- a) the provisions of Art. 10 paragraph (3) on establishing the identity of the inventor;
- b) the provisions of Art. 10 paragraph (4) on the right to the registration of the utility model;
- c) the provisions of Art. 10 paragraph (2) in regard to the contents of the application for utility model;
- d) the conditions concerning the deposit, stipulated at Art. 12 and at Art. 13;
- e) the conditions for the acknowledgment of priority;
- f) the conditions in regard to the existence of a single invention, stipulated at Art. 16 paragraph (1).

(2) O.S.I.M. shall examine whether the invention that represents the subject matter of the application:

a) is not excluded from protection by utility model, according to the provisions from Art. 1 paragraph (2), or may not be protected according to the provisions of Art. 1 paragraph (4);

b) is disclosed, according to the provisions from Art. 11.

(3) O.S.I.M. shall not examine the subject matter of the application for utility model in regard to the fulfillment of the conditions on novelty, exceeding the level of mere professional skill, as well as industrial applicability.

Art. 18. – (1) For all applications for utility model for which the conditions stipulated at Art. 17 paragraphs (1) and (2) are fulfilled on the registration of the utility model, O.S.I.M. shall draft, within a term of 6 months as of the deposit date, a documentation report, in which shall be mentioned the documents taken into account subject to the conditions stipulated at Art. 1.

(2) For drafting the documentation report, the applicant shall file with O.S.I.M., within a term of two months as of the date of filing the application or, as the case may be, as of the deposit date, the proof of paying the legal tax.

(3) No documentation report shall be drafted for the applications resulted from the transformation of an application for invention patent which had already had a documentation report drafted and published by O.S.I.M..

(4) The documentation report, accompanied by copies of the presented documents, shall be transmitted to the applicant together with the notification of O.S.I.M. stating that the applicant should file within a term of two months the proof of paying the tax for publishing and issuing the certificate and maintaining into force the utility model for the first 6 years of protection. Upon the grounded request of the applicant, this term may only be extended once with another two months.

(5) The applicant may amend the claims within the term stipulated at paragraph (4) by filing a new set of claims. In such cases, O.S.I.M. shall not make a supplement or an amendment of the documentation report.

(6) If, during the term stipulated at paragraph (4), the proof of paying the tax is not filed with O.S.I.M., the application shall be declared as deemed withdrawn.

(7) In case the documentation report was not made public once with the publication of the documentation stipulated at Art. 19 paragraph (8), it shall be published subsequently, in the conditions stipulated by the regulation for the application of this law.



Art. 19. – (1) The decisions concerning the application for utility model shall be taken by a specialty examination commission of the Directorate for Invention Patents within O.S.I.M., based on the examination report of the application.

(2) O.S.I.M. shall decide upon the registration of the utility model, if the conditions stipulated at Art. 17 paragraphs (1) and (2) are fulfilled and if the tax for utility model publication, certificate issuing and maintaining into force the utility model for the first 6 years of protection was paid.

(3) Upon the request of the applicant, passing the decision in regard to the registration may be postponed, however without exceeding a term of 18 months as of the deposit date of the application or as of the date of its deposit, in the conditions stipulated by the regulation for the application of the present law.

(4) O.S.I.M. shall decide in regard to the overruling of the utility model registration in the following situations:

a) the invention, subject matter of the application, is excluded from protection by utility model, according to the provisions from Art. 1 paragraph (2) or may not be protected, according to the provisions of Art. 1 paragraph (4);

b) the application for utility model fails to fulfill the provisions of Art. 10 paragraph (1) and/or (2) or of paragraph (7) or of Art. 11 or of Art. 12;

c) the applicant opened the national phase further to the expiry of the term stipulated at Art. 26 paragraph (1) or (2), as the case may be;

d) the applicant, other than the inventor, failed to prove within the term stipulated at Art. 10 paragraph (4) that he is entitled to the registration of the utility model.

(5) The applications for utility models are declared as deemed withdrawn in the following situations:

a) the inventors were not indicated according to the provisions of Art. 10 paragraphs (3) and (4);

b) the petition represented the grounds of the priority claim in a subsequent application filed nationally or for which a national phase was opened in Romania;

c) the applicant failed to submit the claims and/or designs within a term of two months as of the deposit date of the application for utility model;

d) the application for utility model resulted from the transformation of an application for invention patent for which a decision to grant the patent was passed subsequent to the transformation;



e) one of the legal taxes was not paid in the quantum and at the terms stipulated by the present law and by Government Ordinance no. 41/1998 on taxes in the field of industrial property and use regime thereof, republished, with subsequent amendments;

f) the applicant failed to divide the non-unitary application for utility model, according to Art. 16 paragraph (2).

(6) The invention subject matter of the application for utility model has the nature established by the special law and may not be disclosed without the approval of the applicant until publication. O.S.I.M. shall keep the classification level granted by the competent institutions to the filed documents. In case the documents are not declassified prior to the publication of the utility model registration, O.S.I.M. shall publish the utility model registration within a term of one month as of the communication date of information declassification.

(7) The record of the decision to register the utility model or to overrule the model application shall be published in B.O.P.I., within a term of one month as of the expiry of the term stipulated by the law to formulate the challenge and in the conditions stipulated by the regulation for the application of the present law.

(8) Concurrently with the publication of the record on the decision for utility model registration, the public shall be made available the description, claims, or, as the case may be, amended claims, and the designs, as well as the documentation report, unless it is published subsequently.

(9) Any person may request O.S.I.M., by paying the legal tax, the performance of a documentation report based on the amended claims.

(10) O.S.I.M. shall not publish the amendments made subsequent to the deposit date, which broadened the subject matter of the application.

Art. 20. – (1) By virtue of the decision to register the utility model, passed by the specialty examination commission, O.S.I.M. shall issue the holder the utility model certificate, together with the description, claims, and, as the case may be, designs of the utility model.

(2) The issuing date of the certificate is the publication date of recording the registration decision.

(3) The certificate of utility model is a protection title granted without examining the conditions stipulated at Art. 1 paragraph (1), and exerting the exclusive rights shall be made on the holder's liability, by taking into account the documentation report drafted by O.S.I.M..

Art. 21. – (1) O.S.I.M. is the holder of the National Registry of the Applications for Filed Utility Models and of the National Registry of the Registered Utility Models.

(2) The conditions of registration with the national registries stipulated at paragraph (1), for issuing copies or excerpts of the data recorded in such registries, as well as of public inspection of the recorded data are established by the regulation for the application of the present law.

CHAPTER III

Defending the Rights

Art. 22. – (1) The decisions passed according to the provisions of Art. 19 paragraphs (2) and (4) may be challenged at O.S.I.M. in writing and on a grounded basis by the applicant or by the holder of the utility model, within a term of two months as of communication.

(2) The challenge shall be solved at O.S.I.M. by a reexamination commission within the Department of Appeals.

(3) The reexamination commission decides upon sustaining or overruling the challenge and communicates the decision to the applicant.

Art. 23. – (1) A utility model registered with O.S.I.M. may be cancelled for the entire term, upon request, if the following are ascertained:

a) the subject matter of the utility model fails to fulfill the requirements stipulated at Art. 1 paragraph (1) or is part of the categories presented at Art. 1 paragraph (2) or (4), as the case may be;

b) the subject matter of the utility model fails to disclose the invention in a sufficiently clear and complete manner, so that to enable a specialty person in this field to perform it, according to Art. 11;

c) the subject matter of the utility model exceeds the contents of the application, as it was filed;

d) the holder is not entitled to the registration of the utility model;

e) the protection conferred by the utility model was broadened.



(2) If the cancellation reasons refer only to a part of the utility model, it shall be partly cancelled.

(3) The cancellation shall be solved at O.S.I.M. by a reexamination commission within the Department of Appeals.

(4) The decision of the reexamination commission, grounded, shall be communicated to the parties within a term of 15 days as of delivering and may be challenged with appeal at the Law Court Bucharest, within a term of 30 days as of communication.

(5) Within a term of 15 days as of communication, the decisions of the Law Court Bucharest may be challenged with second appeal at the Court of Appeal Bucharest.

(6) The cancellation shall be effective as of the deposit date of the application for the utility model.

Art. 24. – (1) Any person who marks the products or the packages thereof with a sign that may create the impression that the products are protected as utility model, according to the present law, or any person that uses such a sign as heading on the official correspondence, on the firm, on business cards or in announcements, shall be under the obligation to provide information upon the request of any interested person in regard to the utility model underpinning the use of the sign.

(2) Upon the request of the law court, O.S.I.M. shall be under the obligation to forward the acts, documents and information necessary to judge the case with which it was invested, by finally recovering such acts. The summoning to court shall be made only for this purpose.

(3) The petitions at law in the field of the rights of industrial property are exempted from judicial taxes.

CHAPTER IV

International Applications for Protection by Utility Model

Art. 25. – (1) An international application that was granted international deposit date at a receiving office and which is an appointed state in Romania has the same effect as an application of a utility model which was filed with O.S.I.M. on the same date.

(2) An international application shall not be effective in Romania in the cases stipulated at points (i) and (ii) of Art. 24 paragraph (1) of the Cooperation Treaty in the field

of patents, adopted at the Diplomatic Conference from Washington on 19 June 1970, ratified by Romania by the Decree of the State Council no. 81/1979.

Art. 26. – (1) If the applicant wishes to proceed with the international application in Romania, he must open the national phase in Romania for a utility model within a term of 30 months as of the international deposit date or, if a priority was claimed, as of the priority date.

(2) The provisions of paragraph (1) shall also apply on case the applicant, due to justified reasons, opens the national phase within a term of two months as of the expiry date of the term of 30 months, by paying the tax of delayed opening of the national phase.

(3) To open a national phase in Romania, the applicant shall submit an application which must contain the explicit or implicit request for opening the national phase for a utility model, the according translation into Romanian of the description, claims and designs of the international application and shall pay the deposit tax.

(4) Further to the opening of the national phase, the international application shall be subjected to the procedures stipulated by the present law and by the regulation for its application.

(5) In case the applicant failed to fulfill the requirements stipulated at paragraphs (1) and (2), as the case may be, the international application shall be deemed never to have produced the effects of an application for a utility model in Romania.

Art. 27. – An applicant, Romanian natural person or legal person, or with the residence in Romania, or having a real and serious industrial or trading firm in Romania, within the meaning of Art. 3 from the Convention from Paris for the protection of industrial property, from 1883, to which Romania adhered by the Decree of the State Council no. 1177/1968, may submit an international application with O.S.I.M., in the capacity of receiving office. The priority may be claimed either based on an application for utility model, or on an application for invention patent.

CHAPTER V

Transitory and Final Provisions

Art. 28. – The provisions of Law no. 64/1991 on invention patents, republished, in regard to:

- a) definitions;



- b) right to patent;
- c) registration and examination of the application for patent, including for priorities, and for withdrawing the application;
- d) the rights conferred by patent and correlative obligations, as well as previous use rights;
- e) transmitting the rights;
- f) defending the rights;

shall be applied by analogy to the utility models and in accordance with the regulation for the application of the present law.

Art. 29. – The applications for invention patent having the deposit date prior to the date of coming into force of the present law may not be transformed to applications for utility model according to the provisions from Art. 14.

Art. 30. – (1) The present law shall come into force in 90 days as of the publication date in the Official Gazette of Romania, Part I.

(2) The Government shall approve, by decision, the regulation for the application of the present law within the term stipulated at paragraph (1).

Art. 31. – On the date of coming into force of the present law, Government Ordinance no. 41/1998 on taxes in the field of industrial property and use regime thereof, republished, with subsequent amendments, shall be amended as follows:

1. Article 15 shall be amended and shall have the following contents:

“Art. 15. – The provisions of Art. 2 shall not apply for the procedures stipulated at point 5 and at point 6 letters a) and b) from Appendix no. 2.”

2. Article 16 shall be amended and shall have the following contents:

“Art. 16. – The taxes for renewing the protection of the utility models shall be paid concurrently with the tax for maintaining into force or on groups of years, according to Appendix no. 2”

3. Appendix no. 2 shall be amended and shall have the following contents:

“Appendix no. 2

The quantum and terms concerning the payments of the taxes for the applications and registration certificates for utility models

| No. | Subject matter of the payment | Payment term | Quantum | |
|-----|--|--|---------|-------|
| | | | (RON) | (EUR) |
| 1. | Filing the application for utility model | Two months as of deposit | 108 | 20 |
| | a) on paper b) by electronic means | | 72 | 20 |
| 2. | Delayed opening of the national phase | Two months as of the expiry date of the term of 30 months as of the priority date claimed in the international application | 324 | 90 |
| 3. | Drafting and publishing a documentation report | Two months as of the deposit date or concurrently with filing the application by a third party | 360 | 100 |
| 4. | Conversion of an application for utility model to an application for invention patent | Two months as of the deposit date of the conversion application | 36 | 10 |
| 5. | Publishing the utility model (description, claims, designs accompanied by the documentation report, which do not exceed 20 pages), issuing the certificate of utility model and maintaining into force the model for the first 6 years of protection | Two months as of the date of transmitting the documentation report to the applicant | 1440 | 400 |
| | - for each extra page | | 18 | 5 |
| 6. | a) Protection renewal for years 7-8 | Until the commencement of the protection period | 720 | 200 |
| | b) Protection renewal for years 9-10 | Until the commencement of the protection period | 1080 | 300” |

This law was adopted by the Parliament of Romania, by observing the provisions of Art. 75 and of Art. 76 paragraph (2) from the Constitution of Romania, republished.

**PRESIDENT
OF THE CHAMBER OF DEPUTIES
Bogdan Olteanu**

**PRESIDENT
OF THE SENATE
Nicolae Văcăroiu**