HISTORICAL CONSIDERATIONS OF INVENTION PATENTING

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Abstract

This study aims at observing the dynamics of the process of invention protection in Romania. It consists of a chronological analysis of the main pieces of legislation, beginning with Law no. 102/1906, which filled a legislative void and proved extremely important for the social, economic and industrial development of the country. The first Romanian law for the granting of invention patents was inspired by the French and Belgian legislation. Rescinded, amended and completed by subsequent regulations, this piece of legislation was applied until the 30th of December 1967, when it was rescinded by Decree no. 884/1967, the provisions of which are detailed below. The paper also includes a synthesis of the amendments made to Law no. 62/1974. The profound changes which occurred in the Romanian society after 1989 made it necessary to adopt new regulations regarding the protection of technical creations, in order both to stimulate creative activities and to correct the unjust decisions taken on account of the previous legislation.

Key words: *patent, inventor, invention, innovation, rationalization.*

JEL Classification: [K11]

1. Introduction

The first petition for the granting of an invention patent was filed in 1862 to be examined by the Ministry of Agriculture, Commerce and Public Works, for a wooden frame endowed with glass for framing paintings or images. Then, in 1865, Paul Iacovenco obtained the first and only invention patent granted in the United Principalities for the invention called "Water pressure reservoir for the storage of fuel oil and other liquid greases.[1] Until the adoption of a law providing for invention patents, the inventors were protected by special laws, adopted for each individual invention. Here are two relevant examples. Through special laws, Rudolf Kopetzki was able to patent his invention called "Automatic extinguishers" for petrol lamps and lanterns[2], and Ioan G. Danielescu obtained protection for his invention called "The hoe plough"[3].

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[1] Decree no. 1343 published in the Official Gazette of the United Romanian Principalities no. 232 of 21.10/2.11.1865.

[2] Special law promulgated by Royal Decree no. 3416 of 10.12.1898, published in the Official Gazette no. 204 of 12/24.12.1890.

[3] Special law promulgated by Royal Decree no. 2185 published in the Official Gazette no. 17 of 22.04.1900.

2. Law on patents since 1906

The first law on patents in Romania – "Law on Patents" was promulgated by the Royal Decree no. 102 of 13 January 1906 and published in the Official Gazette no. 229 of 17/30 January 1906. The law together with its implementing provisions[4] constituted the legal basis of patenting inventions in our country more than six decades.

As arguments, the rapporteur of the bill noted that:

"Protection of ownership of inventions by a patent granted by the State is a legislative measure has been taken in all civilized countries, starting with France in 1844, because by protecting property work in all forms, could give the guarantees serious for property literary and scientific and human labor is thus allowed to develop freely.

The patent law thus fills this void in the Romanian legislation, and the committee was prompt in promulgating it, as it proved absolutely necessary for the development of the Romanian state, from every point of view: social, economic and especially industrial.

The law was inspired by the French and Belgian legislation, wherein the State granted patents with no guarantees, which made it exempt of any responsibility, and the beneficiary had to resort to legal ways of solving any potential differences with the interested parties. This system was opposed to the German one, wherein it was difficult to obtain invention patents. They were only granted after the approval of a special committee, but they were guaranteed by the State."

It is worth mentioning the fact that the promulgation of the patent law was greatly influenced by Germany, due to its arms industry[5].

The law consisted of 42 articles and 9 chapters, as follows: General provisions; Duration of a patent; Effects of a patent; Formalities for obtaining a patent; Patent fees; Patent service; Nullity and decline actions; Counterfeits, legal pursuit and punishments; Specific and transitory provisions.

According to art.1 of the law mentioned above, any person having invented something new or improved an existing invention, which was likely to be used as an industrial or commercial object, was entitled to exclusive and temporary exploitation rights in Romania, by obtaining an invention or improvement patent.

Art. 2 stipulated the fact that an "importation patent" for any invention or improvement patented in a foreign country, which ensured exclusive and temporary exploitation rights, could be obtained unless the invention had been applied or

[4] Regulation no. 1577 from 12.04 / 05.04.1906 was published in the Official Gazette no. 16 of April 21, 1906.

[5] Around 1900, the German company Krupp furnished more than 2500 pieces of artillery, along with some other 100 spare parts, resulting in more than 250000 items, which were repaired or replaced in the Romanian arsenal due to deterioration during various drills and operations, thus causing significant losses to the German industry. See A. I. Bădărău, N.M. Mihăilescu, *Scurtă istorie a brevetării invențiilor în România,* Vol. I, SOIT Publishing House, Bucharest, 2005, p. 43.

exploited at a national level by people other than the holder of the patent before the promulgation of the law. The "importation patent" could be granted to the holder of a foreign patent or to their legal successor, provided they file for the patent to be granted in no more than six months after the foreign patent had been obtained.

According to art.7, the improvement patent was granted after the modification of the object of an already patented invention. The validity of the improvement patent was similar to that of the main patent, but the duration of the former could not be lower than ten years. Should the two patents be granted for two different persons, the holder of the main patent needed permission from the holder of the improvement patent to exploit it. Also, the holder of the improvement patent needed permission from the holder of the main patent to exploit it.

The patent (be it a main, improvement or importation patent) was granted with no prior examination, no guarantee from the State and "no responsibility for the rights of those who may be offended by the patent"[6]. According to the law, the State did not guarantee the originality, value, or reality of the invention, nor the exactness of the descriptions in the patent. The holder of the respective patent was entirely and solely responsible for them. There was no novelty or utility test before the patent was granted. It was issued "at the risk and at the expense of the person who requested it"[7]. The preliminary test only referred to the regularity of the petition and to the patentability of the invention.

Art. 4 provided that the following inventions were not patentable: a) inventions the purpose of which was illegal, immoral or harmful, or which aimed at misleading the public; b) scientific maxims and axioms; c) inventions which were used by the State; d) new methods and food products for people and cattle; e) pharmaceutical compositions or any other methods which could be used to heal or disinfect; f) crediting or financing plans and combinations; g) teaching, controlling and accountancy methods.

It is worth mentioning the fact that all patent issues were solved by the Industry and Patent Service within the Ministry of Agriculture, Industry, Commerce and Domains, which held a registration record containing all patents in order of their granting, including all the related aspects. After having checked the regularity of the petition, based on the favorable account of the Industry and Patent Service, the patent was granted as consecrated in a Royal Decree published in the Official Gazette, registered in the Patent Record and given to the holder.

According to art. 6 of the Law, the duration of an invention patent was of fifteen years since the submission of the petition to the registration of the Ministry of Agriculture, Industry, Commerce and Domains. The improvement patent was valid for as long as the main patent, but no less than ten years. However, the importation patent could not be valid for longer than the foreign patent and could not exceed fifteen years since the submission of the petition.

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[6] Art. 3 of the Law.
[7] Art. 11 of the Law.

In the absence of a basic condition control[8], the protection title read: "Royal Invention Patent, No …, with no government guarantee".

The holder of an invention patent obtained the exclusive right to exploit the patented object to their own use, to allow certain authorized persons to use it, and to take to court any person who would manufacture the product which constituted the object of the patent, or who used the procedures mentioned in the patent, either by owning, selling, displaying the objects in order to sell them, or bringing counterfeited products on the Romanian territory. Any intentional breach of the rights of the holder of the invention patent constituted a criminal act and was fined. Moreover, the harmed person could file a complaint to civil/correctional institutions and be granted an indemnity. In the event of a faulty violation of the rights of the holder of the invention patent, the latter could file a suit in order to obtain indemnities. However, according to art. 9 of the law, the inventor had to exploit their invention on the Romanian territory for four years since the patent had been issued and to keep exploiting it for two years; if the inventor did not comply with these conditions, the invention patent would no longer be valid.

The invention patent would also lose its validity under the following circumstances: for failing to pay the legal fees, for expressly renouncing the patent, for failing to comply with the legal formalities related to descriptions and drawings, for lack of novelty when the patented object was used, set into motion or effectively exploited on the Romanian territory by another person for commercial purposes, prior to the issue date of the patent, for publishing the descriptions and the drawings in a paper or in a collection before filing, or for having the invention patented at a national level or in a foreign country before filing.

Invention patents were both granted and annulled by Royal Decrees, published in the Official Gazette and in the special patent record and recorded in the registry of the Industry and Patent Service[9].

The purpose of the Romanian legislation was to encourage the inventors. Thus, the holders of an invention patent who proved that they had started a business to the exclusive purpose of exploiting the object of the invention patent would benefit from the advantages of the law for the stimulation of the national industry (art. 13).

Also, patent fees were paid to the accounts of the Romanian Savings Bank and used in order to "found museums and industrial agencies at a national and international level"[10], and to encourage poor Romanian people to manufacture the patented machine.

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[8] The 1906 law maker chose the formal examination system or the absence of a preliminary examination. For developments of the system used for the granting of protection titles (formal examinations, merit tests, delayed examination and mixed examination), see I. Macovei, *Tratat de drept al proprietății intelectuale,* C.H. Beck Publishing House, Bucharest, 2010, pp. 82-85.

[9] The Service kept the following records: the archive record, the special record for filing registration,the patent record and the separate record, which was kept secret, along with the original descriptions, drawings, models or tests for those inventions related to national defense and for state inventions.

[10] Art. 39 of the Law.

3. Decree no. 214/1950[11] and the Resolution of the Cabinet Council no. 943/1950[12]

Decree no. 214/1950 and the Regulation for the functioning thereof, approved by the Resolution of the Cabinet Council no. 943/1950, regulated the foundation of the Committee for Inventions and Discoveries attached to the Cabinet Council, which supervised the activity of the Industrial Property Office. The committee was the legal representative of the state, for all the inventions for which it was the holder of the invention patent. It also issued invention patents.

A novelty aspect was the concept of "an author's certificate" for those inventions which were transferred to the state[13]. According to art. 8 of the Regulation, certificate applications were submitted to the Committee by the employees of various companies and institutions through the innovation collectives functioning within them, or through the People's Town Councils. The institutions, companies and town councils had to submit them to the Council in no more than five days since the registration thereof, along with a notice.

The petitioner was informed of the approval to examine their invention within 45 days since the submission of the patent application, as well as of the estimated date when the invention would be approved and the author's certificate would be issued.

For the approved inventions, the State would undertake all the legal formalities and cover all the expenses incurred by the obtaining of the patent rights and those incurred by the completion and application of the respective invention.

According to art. 9, the invention was patented by the State, provided that the Committee approved it. Upon request, and with the approval of the Committee for Inventions and Discoveries, the inventor's name was mentioned on the invention patent.

The persons who invented something upon request of the state or who were financed by the state in order to invent something would only receive an author's certificate[14]. It is worth mentioning the fact that applying for an author's certificate implied that the State was given the right to exploit the invention. The author's certificate stood for a cession of the right to exploit their invention to the state[15].

The Committee would examine the inventions for which an author's certificate was requested in terms of novelty, utility and feasibility and would determine the

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[11] Decree for the foundation of the Committee for Inventions and Discoveries of the People's Republic of Romania, published in the Official Gazette no. 121 of the 27th of December 1950.

[12] Regulation regarding the functioning of the Committee for Inventions and Discoveries of the People's Republic of Romania and of the various organizations within the Ministries, Institutions and Companies for the funding of experiments and the rewarding of inventors.

[13] For details on the author's certificate, see Y. Eminescu, *Apărarea descoperirilor, invenţiilor şi inovaţiilor în dreptul socialist. Studiu de drept comparat,* Academy of Popular Republic of Romania Publishing House, 1962, pp. 115-117.

[14] Art. 11 of the Regulation.

[15] A. I. Bădărău, N. M. Mihăilescu, in the above-mentioned paper, p. 106.

amount of the rewards to be granted to those who had invented and discovered something. As such, it is necessary to emphasize the fact that, between 1950 and 1967, two systems were used for granting invention patents, namely: *the merit test system,* for those inventions transferred to the State, and *the formal examination system*, for the rest.

Last but not least, art. 60 of the Regulation stipulated that the holder of an invention patent issued on account of Law 102/1906 would have to file for an author's certificate, and that the authorship of the invention was not given for granted.

Art. 10 of the Invention Patent Law was explicitly rescinded by Decree no. 86 of the 17th of April 1954[16]. Art. 10 provided that the invention patents were only granted through a Royal Decree. The new regulation stipulated the fact that the invention, improvement and importation patents were hence granted following a Resolution of the Cabinet Council, upon the proposal of the State Committee for Technology, which supervised the activity of the Inventions Directorate. Later, Decree no. 120/1955[17] provided that the Standards Directorate attached to the State Planning Committee be reorganized as a State Office for Standards and Inventions (S.O.S.I.) attached to the State Planning Committee, and included the Inventions Directorate. According to this piece of legislation, invention and supplementary (improvement) patents were granted or canceled by the State Office for Standards and Inventions, and then published. The Resolution of the Cabinet Council no. 718 of the 12th of May 1955 for the organization of the State Office for Standards and Inventions and for the approval of the Regulation providing for the organization and functioning thereof, stipulated the foundation of the Inventions Committee and of the Appeal Committee within the State Office. The attributions thereof included the granting of author's certificates and invention patents. The Resolution of the Cabinet Council no. 762 of the 24th of July 1951 regulated the foundation of the State Committee for Technology, attached to the Cabinet Council, which supervised the activity of the Inventions Directorate. The State Committee for Technology was dissolved by the Resolution of the Cabinet Council no. 2984 of the 30th of December 1952, and the Inventions and Innovations Directorate was attached to the Cabinet Council. The Inventions and Innovations Directorate was dissolved by the Resolution of the Cabinet Council no. 4262 of the 18th of December 1953, and its attributions of patent granting were assumed by the Invention Office, which was going to be founded within the Standards Directorate attached to the State Planning Committee. Also, Decree no. 120 of the 21st of April 1955 regulated the reorganization of the Standards Directorate as the State Office for Standards and Inventions (S.O.S.I.) attached to the State Planning Office (S.P.O.). Decree no. 406 of the 18th of August 1956 stipulated the transfer of the supervision of the activity of the Inventions Directorate to the State Committee for Technology (S.C.T.).

In this field, the activity of the specialized entities was regulated by several

[16] The decree was not published.

[17] The decree for the organization of the State Office of Standards and Inventions was published in the Official Gazette no. 120 of the 21st of April 1955.

national pieces of legislation, namely: Decree no. 495 of the 26th of November 1953 regarding the functioning of the Chamber of Commerce of the People's Republic of Romania and the approval of the Regulation regarding the organization and functioning of the Arbitration Board attached to the Chamber of Commerce of the People's Republic of Romania[18] for the foundation of the State Office of Trademarks and Inventions for foreign people; the Regulation regarding the organization and functioning of the State Office of Trademarks and Inventions for foreign people attached to the Chamber of Commerce of the People's Republic of Romania[19]; Decree no. 65 of the 19th of February 1957 regarding the foundation of the General Directorate for metrology, standards and inventions[20], amended by Decree no. 13 of the 23rd of January 1959 which provisioned the modification of the name of the Directorate to that of General Directorate for energy, metrology, standards and inventions, and Decree no. 95/1961 which restored its original name; Decision no. 210 of the 20th of February 1957 regarding the foundation of the General Directorate for metrology, standards and inventions attached to the Cabinet Council.

During this time, the 1906 Law of Invention Patents was expressly and implicitly amended and rescinded, as follows:

-Express amendments and rescissions: art. 2[21], art. 15[22], art. 21[23], art. 27[24], art. 34[25];

-Implicit rescissions and amendments: art. 3[26], art. 8[27], art. 9 let. a)[28], art. 9 let. e)[29], art. 9 last paragraph, art. 10, 12, 15, 16, 18-21, 24 para. 2, 26, 31[30], art. 13[31], art. 17[32], art. 33, 35, 40-42[33], art. 38[34] and art. 39[35].

[18] Published in the Official Gazette, issue no. 49 of 26.11.1953, valid through 22.11.1973, when it was replaced by Decree no. 623/1973.
[19] Approved by the Resolution of the Cabinet Council no. 3940 of 26.11.1953.
[20] Published in the Official Gazette of the People's Republic of Romania no. 6 of 19.02.1957.
[21] Rescinded by Decree no. 120 of 30.04.1929.
[22] Ammended by Decree no. 2680 of 6.08.1929.
[23] *Ibidem.*
[24] *Ibidem.*
[25] Rescinded by Decree no. 120 of 20.04.1955.
[26] Amended by art. 8 of Decree no. 120/1955;
[27] Implicitly rescinded by the rescission of art. 2 and 34.
[28] Implicitly amended by Decree no. 324/1925.
[29] Implicitly amended by Decree no. 120/1955.
[30] *Ibidem.*
[31] Lost its purpose after the Law of the 13th of February 1912 for the stimulation of the national industry was no longer applied.
[32] Implicitly rescinded by Decree no. 324/1955.
[33] All 5 articles were provisional.
[34] Implicitly rescinded by R.C.C. no. 943/1950.
[35] Implicitly rescinded by Decree no. 324/1955.

4. Decree no. 884 of the 8th of September 1967 on inventions, innovations and rationalizations[36]

The first piece of legislation which helped regulate the protection of inventions in Romania was the 1906 Law of Invention Patents, applied until 1967, with various rescissions, amendments and additions introduced by further regulations.

Decree no. 884/1967 regarding inventions, innovations and rationalizations brought a series of changes to the previous regulation.

First of all, it is worth mentioning the fact that the provisions on inventions, previously regulated in various pieces of legislation (the 1906 Law of Patents, the Regulation of the 27th of December 1950 regarding the functioning of the Committee for inventions and discoveries, Decree no. 120 of the 30th of April 1955 and the Regulation on Innovations of the 11th of July 1953), as well as those which provided for innovations and rationalizations, were all compiled in one piece of legislation.

The new regulation limited the field of the legal protection by defining the notion of "invention"[37]. Thus, according to art. 4, "invention" meant "providing a technical solution for any branch of the economy, science, culture, social security or national defense, which constitutes novelty and progress as compared to the current state of the global technology". According to art. 10, a patent could be obtained for any invention which could be applied in the industry or in any branch of the economy, science, culture, social security or national defense", "except for those which go against the law, order or rules of socialist cohabitation".

The decree restricted the protection of the innovations and rationalizations in the field of production to those proposals which were of significant technical or economic value. Also, the contents of the notion of "innovation" were restricted to define the solution to a technical problem in any branch of the national economy, by the adoption of modern solutions, which were likely to generate economic benefits or to improve the quality of the products or of the working conditions and the purpose of which was the production of new machines, aggregates, facilities, installations, products, technological procedures, automation, apparatuses, building elements or structures. Innovation also included the constructive and functional improvement of the above-mentioned objects, provided that it constituted novelty and progress as compared to the current state of the company where it was implemented, that it brought predictable economic advantages of at least 20.000 lei within the first year of use, and that it improved the quality of the products or of the working conditions[38]. Rationalization represented both a solution to a technical problem, which complied

[36] Published in the Official Gazette, issue no. 85 of 30.10.1967, approved by the Grand National Assembly by Law no. 31 of 30.12.1967.

[37] For qualifying elements of the invention according to Decree no. 884/1967, see Y. Eminescu, *Dreptul de inventator în Republica Socialistă România,* Academy of Socialist Republic of Romania Publishing House, Bucharest, 1969, pp. 49-66.

[38] The resolution of the 7th of September 1950 regulated the protection of innovations, which were unfamiliar technical creations, consisting of technical improvements and rationalizations in the fields of production and administration.

with the criteria mentioned in art. 32 para. 2, and brought predictable economic advantages of at least 20.000 lei within the first year of use, and a solution to a management problem in any branch of the national economy, which constituted novelty for the company where it was implemented and contributed to the improved use of the work materials, with foreseeable economic sustainability.

An important change introduced by the new regulation consisted of the patent being the sole protection title for inventions. In the previous versions, a patent only consecrated the sole right to exploit the invention, and the author's certificate was the consequence of the inventor's own will to grant the state the right to use their invention and to accept the state's offer. According to the new regulation[39], the author of an invention or the legal successor thereof was entitled to ask for the invention patent to be issued, or to transfer the right to use their invention to a company, in which case the patent is granted, and the author, receive an inventor's certificate. It is necessary to emphasize the fact that, unlike the author's certificate in the previous version[40], the inventor's certificate was no longer a protection title for the invention, but merely a proof of the fact that the person was the author of the respective invention and the grounds for the inventor to exercise certain rights, the most important of which being the one to receive proper payment to the amount provided by Law[41].

An exception to the provisions of art. 6 of the Decree no. 884/1967 is the fact that the right to obtain a patent resulted *ex lege* in favor of the companies, for those inventions which they had requested or supported, provided that the financial support was of at least two thirds of the total cost incurred by the production of the invention. Also, invention patents were granted exclusively to state companies, for those inventions the objects of which were substances resulting from nuclear techniques or procedures, chemical products, medicine, disinfectants, food and spices, as well as new types of plants or breeds of animals which provided higher productivity and quality than the existing ones[42].

Unlike the previous version, invention patents were granted to state companies, cooperatives or public organizations, not to ministries or state-controlled companies, cooperatives or organizations. According to the provisions of art. 19, if the invention patent was granted to a company, the respective inventions could be used by any state company, with no preliminary formalities, with the mere obligation of informing the company which held the invention patent, as well as the General Directorate for Metrology, Standards and Inventions, and to contribute to the payment of the inventor's reward.

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[39] Art. 6 of Decree no. 884/1967.

[40] The author's certificate for inventions transferred to the state was regulated for the first time by the resolution issued on the 7th of September 1950. See Y. Eminescu, *Invenţii şi inovaţii*, Scientific and Enciclopedic Publishing House, Bucharest, 1977, p. 8.

[41] Y. Eminescu, *Legislaţia invenţiilor, inovaţiilor şi raţionalizărilor. Texte comentate*, Scientific Publishing House, Bucharest, 1969, p. 13.

[42] Art. 7 let. a) and b) of Decree no. 884/1967.

The 1967 Decree adopted the novelty test for all inventions[43]. It was not considered a novelty if, before the constitution of the filing or before the date of priority acknowledged by the General Directorate for Metrology, Standards and Inventions, as the case may be, the respective invention: a) had already constituted the object of another patent petition for which filing had been submitted; b) had already been the object of an invention patent or of an author certificate granted at a national level or published abroad; c) had already been described in a documentary at a national level or abroad, so as to be reproducible by a specialist; d) had already been publicly revealed either at a national level or abroad, by display, application or by any other means, so as to be reproducible by a specialist[44].

Another important change consisted of the transfer of the rights to use the invention, which could be either: a common law cession[45] or a special cession[46], which was a newly introduced term. In the case of cession transferred to a company, it was also necessary to file a written statement registered at the General Directorate for Metrology, Standards and Inventions, as well as the invention patent, if issued. Should the cession statement not be accompanied by the invention patent, the inventor certificate was only issued after the patent had been filed[47].

Moreover, failure to comply with the obligation to use the invention was no longer sanctioned by the termination of the rights, but by issuing a mandatory license, according to art. 24 of Decree no. 884/1967[48].

As for the protection of the inventors', innovators' and rationalizers' rights, in Decree no. 884/1967 courts were given wider competences: court rulings were always controlled by higher courts; attempts of administrative reconciliation were annulled; in all cases, the dissatisfied parties were entitled to appeal against the rulings of invention institutions to the Bucharest Municipal Court, which became

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[43] In the previous version, the novelty test was limited to the inventions for which an author's certificate was requested. See Y. Eminescu, *work cited.,* p. 7.

[44] Art. 13 of the Resolution for the application of Decree no. 884/1967 regarding inventions, innovations and rationalizations published in the Official Gazette of the People's Republic of Romania no. 2250 of 12.10.1967.

[45] According to art. 22 of Decree no. 884/1967, there can only be transferred the rights related to the invention patent and the patrimonial rights deriving from the invention patent and from the inventor's certificate.

[46] Art. 6 of the Decree stipulates the fact that the author of an invention or their legal successor can transfer the right of use to a company, in which case the latter is given the invention patent, and the author receives an inventor's certificate.

[47] Art. 50 of the Resolution for the application of Decree no. 884/1967.

[48] The General Directorate for Metrology, Standards and Inventions (G.D.M.S.I.) could grant mandatory licences to patented inventions under the following circumstances: a) for inventions pertaining to the common interest or to the national defense, unless an agreement has been reached with their inventors regarding the use thereof; b) for other inventions, unless unused or used to a small extent at the national level, due to the owner's failure to take the necessary actions within four years since the constitution of the filing or three years since the patent has been issued, with application of the last deadline. The beneficiary of a mandatory licence owed the holder of the invention patent an indemnity, to the amount which they have agreed upon. Should an agreement failed to be reached, the holder of the patent could take the issue to court (art. 25 of Decree no. 884/1967).

specialized in invention patents[49].

5. Law no. 62/1974 regarding inventions and innovations[50]

As defined by the law, the National Council for Science and Technology coordinated the State Office of Trademarks and Inventions, which was a specialized state institution, with autonomous activities, and the attributions of which included: the novelty and technical progress of the suggested inventions; the granting of invention patents; the guidance and control of various activities, such as experiments, applications and improvement of inventions; responsibility regarding the protection of inventions.

Law no. 62/1974 divided technical creations into two categories: inventions and innovations. The suggested solution could be absolutely new (which made it an invention) or relatively new, as compared to the current level of technology in a given field of activity (which made it an innovation).

Art. 10 of the Law of inventions and innovations defined the latter as: "a scientific or technical creation, which constitutes a novelty or a progress as compared to the current stage of the global technology, which has not yet been patented or made available to the public either at a national or at an international level, a technical solution which can be applied to solve issues related to economy, science, health care, national defense or any other field of the economic or social life"[51].

The law makes no amendments related to complementary inventions[52], defined as improvements or completions of previous inventions, which could not be applied in the absence thereof. The invention patents for this category were granted under the same circumstances as in the case of the inventions which they completed[53].

As a novelty aspect, the range of innovations was restricted, by highly rigorous conditions imposed for their protection[54]. According to art. 65 of Law no. 62/1974, an innovation was the technical solution to an issue related to industry or to any other field of the economy, science, culture, health care and national defense or any other

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[49] For developments in the field of inventors' protection, see Y. Eminescu, *Legislația invențiilor, inovațiilor și raționalizărilor. Texte comentate*, Scientific Publishing House, Bucharest, 1969, pp. 21-22.

[50] Published in the Official Gazette of the People's Republic of Romania no. 137 of 2.11.1974. According to art. 83 of Law no. 62/1974, upon the entry into force of the law, the Decree no. 884/1967 regarding inventions, innovations and rationalizations, as well as any other contradictory provisions were rescinded.

[51] As regulated by Law no. 62/1974, whereas the solution had to be technical, the issue it addressed could be related to any field of the economic and social life, thus clarifying the problem generated by the previous version of the regulation, "solution to a technical problem", which went against both the nature of inventions and the provisions of art. 4 of Decree no. 884/1967 according to which the problem could be related to any field of the economic and social life.

[52] See art. 11 of Decree no. 884/1967.

[53] According to art. 16 of Law no. 62/1974.

[54] For details, see Y. Eminescu, *Invenții și inovații*, Scientific and Enciclopedic Publishing House, Bucharest, 1977, p. 22.

field of the social and economic life, which was "a national novelty or progress, likely to imply economic and social advantages" and which had not yet been applied on the Romanian territory.

As for the holders of an invention patent, art. 14 of the Law identified 3 distinctive situations, namely:

- the patent was granted to *socialist organizations,* for those inventions achieved by their employees during their employment contract, which were related to their work, and for those inventions resulting from various works requested or supported by the socialist organizations;

- the patent was granted to *state organizations,* not including cooperatives or popular institutions, for those inventions which the regime had to absolutely supervise and control[55];

-the invention belonged to individual or collective authors, for the rest. They could choose between requesting an invention patent and transferring the right to use the respective invention to a socialist organization, which would assume the implementation thereof.

For those inventions which were patented on behalf of a state socialist organization, the author was granted an inventor's certificate, which meant that the solution provided by the previous regulation was maintained.

According to art. 18 of the above-mentioned piece of legislation, the petition for an invention patent was filed to SOIT (the State Office for Inventions and Trademarks) either by the socialist organization, or upon the author's request or *ex officio*. The inventor could file such petition themselves if the invention was listed among those for which a patent could be granted directly to the author or if the socialist organization they had notified failed to comply with the request within thirty days.

A particular aspect of this law was the fact that high emphasis was placed upon the research institutes involved in the granting of an invention patent. Thus, the patent was granted by the SOIT after the petition had been examined in terms of the compliance of the invention with the criteria set for the existence of a patentable invention, based upon a favorable notice issued by the research institutes. The notice was sent to the Office within thirty days since the patent documentation had been received.

The new regulation made significant changes to the moral and financial rewards to be paid to the holders of an inventor's certificate. Thus, the financial reward to be paid to the authors for an invention which could be applied in the economic field was limited to an annual amount of up to three times more than the annual tariff retribution for the position of main scientific researcher in the respective branch, for no more than 5 years. The amount of the reward was the same, regardless of the

[55] Those inventions the object of which was obtained through nuclear or chemical methods, medicine, various methods of diagnosis and medical treatment, disinfectants, food and spices, as well as new types of plants, bacteria and fungi, new breeds of animals and silkworms, regardless of the conditions in which they were obtained.

number of authors, and it only covered the time during which the invention had effectively been applied. If an author had more than one applied invention, the amount of the reward was the same. The moral rewards listed by art. 37 of this piece of legislation included: scientific titles, orders and medals, professional degrees and higher positions.

A significant aspect of novelty which is worth emphasizing is the fact that the provisions of art. 3 of the Law consecrated the obligation of the research institutes, science academies, research, planning and educational units, as well as the other types of socialist organizations, not only to stimulate and guide the activity of the members of the scientific and technical teams in order to invent new things, but also to take all the necessary measures so as to properly value the latter in their production process and in their social and cultural activity. Also, according to art. 5 of the Law, the ministries, state organizations and socialist units, cooperatives and popular councils were obligated to identify original creations and technical ideas, protect them by having them patented and take all the necessary measures so as to promote research, planning, experiments, application and generalization of inventions in all fields of activity. Another novelty aspect is the obligation of the research institutes, science academies, research, planning and educational units to closely supervise the way inventions were applied in the production process and to ensure the constant improvement of technical solutions.

Another important aspect refers to the fact that the state held the right to exploit the inventions, and the obligation to ensure the proper conditions for the experimentation, exploitation, development and generalization thereof.

Therefore, unlike previous legislation, research institutes played an important role both in the patenting process and in the later stages. The invention patent was granted by the State Office for Inventions and Trademarks, after having been examined in terms of the compliance of the invention with the criteria set for the existence of a patentable invention, based upon a favorable notice issued by the research institutes, according to art. 22 of the above-mentioned law. The decision as to the granting the patent or rejecting the petition had to be taken by the SOIT in no more than two years since the petition had been filed.

After the granting of the invention patent, the socialist organizations had to apply the invention within one year since they had been granted ownership. This term could be extended by the research institutes, on serious grounds.

All the inventions for which an invention patent was requested constituted a national secret until the patent had been issued and published in the Bulletin for inventions and trademarks or until the SOIT has sent it abroad in order to be patented. Therefore, the patenting procedure was made more difficult by the introduction of a notice of the research institutes and by the classification as national secrets to all the inventions of the Romanian citizens or of the foreign people residing in Romania, given the fact that the documentation was a secret itself.

6. Legal regulation of patents since 1989

The profound changes that have occurred in the Romanian society after 1989 necessitated new regulations regarding the protection of technical creation.

Nowadays, the national legislation provides for the invention patents as follows: Law no. 64/1991 regarding the invention patents[56]; Law no. 83/2014 regarding the employees' inventions[57]; Law no. 93/1998 regarding the transitory patent protection[58]; Law no. 255/1998 regarding the protection of new types of plants[59]; G.D. no. 547/2008 issued for the approval of the Regulation regarding the application of Law no. 64/1991 regarding the invention patents[60]; Law no. 31/2015 regarding the cancellation of the provisions of art. 4 of the G.O. no. 41/1998 regarding the taxation of industrial property and the use thereof[61]; G.O. no. 41/1998 regarding the taxation of industrial property and the use thereof[62].

The Romanian state has signed the following treaties and multilateral agreements in the field of invention patents: the Convention for the protection of industrial property, signed in Paris on the 20th of March 1883, and revisited in Stockholm on the 14th of July 1967[63]; the Agreement concerning the International Patent Classification, concluded in Strasbourg on the 26th of March 1971[64]; the Convention for the foundation of the World Industrial Property Organization, signed in Stockholm on the 14th of July 1967[65]; the Patent Cooperation Treaty adopted at the Washington Convention on Diplomatic Relations on the 19th of June 1970[66]; the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure on the 28th of April 1977[67]; the European Patent Convention, signed in Munich on the 5th of October 1973[68]; the Marrakesh

[56] Republished in the Official Gazette of Romania, Part I, no. 613 of 19.08.2014.
[57] Published in the Official Gazette of Romania, Part I, no 471 of 26.07.2014.
[58] Published in the Official Gazette of Romania, Part I, no.186 of 20.05.1998.
[59] Republished in the Official Gazette of Romania, Part I, no. 65 din 26.01.2007.
[60] Published in the Official Gazette of Romania, Part I, no. 348 of 22.05.2008.
[61] Published in the Official Gazette of Romania, Part I, no. 169 of 11.03.2015.
[62] Published in the Official Gazette of Romania, Part I, no. 959 of 26.11.2006.
[63] Ratified by the Romanian state in Decree no. 1177/1968 published in the Official Gazette no. 1 of 6.01.1969.
[64] Romania expressed their approval by Law no. 3/1998 published in the Official Gazette of Romania, Part I, no.10 of 14.01.1998.
[65] The convention was ratified by the Romanian state by Decree no. 1175/1968 published in the Official Gazette of Romania, Part I, no.1 of 6.01.1969.
[66] The treaty was ratified by Decree nr. 81/1979 published in the Official Gazette of Romania, Part I, no. 22 of 8.03.1979.
[67] Romania expressed their approval by Law no. 75/1999 published in the Official Gazette of Romania, Part I, no. 210 of 13.05.1999.
[68] Romania expressed their approval by Law no. 611/2002 published in the Official Gazette of

Agreement Establishing the World Trade Organization – Appendix 1C; the Marrakesh Agreement on Trade-Related Aspects of Intellectual Property Rights signed on the 15th of April 1994[69].

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[69] Ratified by the Romanian state on 22.12.1994 by Law no. 133/1994 published in the Official Gazette of Romania, Part I, no. 360 of 27.12.1994.