

## CONSIDERATIONS ON INTERPRETATION OF SAME CASES IN CONNECTION WITH ARTICLE 10 OF PATENT LAW NO. 64/1991

Eng. Ph.D. Student Tiberiu-Octavian CUJBA  
"Ștefan cel Mare" University of Suceava, Romania  
Faculty of Electrical Engineering and Computer Science  
[tiberiucujba@yahoo.com](mailto:tiberiucujba@yahoo.com)

### **Abstract**

*Invention is subject to Patent Law no. 64/1991. As a result of his activity, if the conditions required by law, the inventor receives a patent. For like to create a technique to be declared invention it must meet following conditions: is new, is the result of an inventive step and have industrial application. In connection with first condition, we present some significant cases and reviews of rigor.. Failure patenting an invention of the author's fault is the main cause ignorance of Patent Law having bad track. Situations analyzed represent colors look the same, namely, that the inventor need to patent his invention and only then you can to popularize by different means which have access.*

**Keywords:** novelty, patent, priority, review, invention.

**JEL Classification:** K23

## **1. INTRODUCTION**

This paper addresses some aspects of the field of intellectual property right. Today, intellectual property right has three branches: Copyright (which aims at the creative literary, musical, artistic etc.), The industrial property right (which targets scientific and technical inventions in the field) and Trademark Law with geographical indications (which aims at distinguishing insignia graphics and names given products, industrial firms, etc.).

Relationships that arise between people following the appearance and use of inventions forming the subject of the industrial property right and are covered in our country by Law no. 64/1991 for patenting inventions.

For an invention to be patented it must meet the condition of novelty. Sometimes, the inventor, first made public his invention and only after it demanded introduce invention brevet, situation unsupported by current legislation. Cases in which a character loses his new invention (attending a conference, attending an exhibition or publication of an article that reveals the secret to having invention, it has not applied for patent) are analyzed in this work. We see the fault of the inventor, it is possible that the invention not be patented because it lost the character of novelty.. The time practical experience in industrial property law has led to some legal regulations as regards the condition of novelty for an invention to be patented After he made the invention, the first step you need to do it is the application for a patent. Emphasize that the popularization through various means of invention before the patent application may lead to failure the condition of novelty under Article 10 by Patent Law.

### **Premises in tackling creativity**

Exigencies of contemporary life and increasingly acute need to solve complex problems in all sectors of activity creativity in education have become priority, account appears to need stringent requirement for company, for all sectors. This explains the fact that, lately the attention given to creativity and education it is enhanced because:

- ❖ appeared institutes, foundations, associations, circles, aiming to support creativity in various fields;
- ❖ a series of treaties, books, manuals and studies specialized in various fields have made instead of chapters and subchapters devoted to creativity;
- ❖ is organizing public events - congress symposia, discussion, meetings, exhibitions, radio and TV shows - on creativity.

## 2. THE INVENTION

According to the Rumanian legislation through Patent Law no. 64 of 11 October 1991 (1) agreement and legislation in most industrial developed countries, invention patentable is the scientific or technique creation that meets the following conditions:

- is new;
- is the result of an inventive step;
- is susceptible of industrial application.

Patented invention may relate to a product, process or method. The invention having as object a new variety of plant (2), a hybrid or a new breed of animals shall be patentable if they are new, distinct, homogeneous and stable.

No patentable inventions contrary to public policy and morals.

No patentable inventions consider giving in defined above: ideas, scientific discoveries, mathematical methods, software itself with economic solutions or organizing, charts, methods of education and training rules of the game plans and urban systems and methods physical phenomena in itself, culinary recipes, aesthetic creations.

Invention patent protection is a title which admits the holder or his successor in exclusive rights to use the invention in Romania, the entire duration of validity (3). State Office for Inventions and Trademarks (OSIM) is the only governmental body empowered to registering patent applications for learn, consider these requests and decide on granting the patent on the three conditions of patentability, in accordance with the Regulation implementing Patent Law nr.64/1991(4).

The concept contract, patent is a contract, the inventor is required to give his invention, to make available his invention and the state undertakes to provide the inventor for a certain period determined, the exclusive right to use the invention in exchange for advantages that it acquires the company from using the invention

Invention patent is granted for a period of 20 years calculated from the date on which a regular national filing. He is in force as long as on pay annual maintenance fees (anuria).

If an invention of perfecting validity duration of the patent granted is limited to that granted the patent granted for an invention that improves, but would not be less than 10 years.

Patents are part of the National Register of Patent.

A patent may relate to one invention

May be granted a patent for more invention (invention group) only if is based on a single inventive concept (criteria of uniqueness of the invention). Such inventions may relate for example:

- a process (a method) and a technical means (device, machine, plant) for its implementation;
- product and a process for obtaining it;
- a product of its obtaining process and technical means for implementation of the process;
- items and technical means for accomplishment.

A patent application referring to several inventions that do not meet the criterion of unity in the conventions is considered fragmented and it may be revised by the applicant (upon request by OSIM or on its own initiative) in several cereals unit - divisional applications - with the benefit of of date its initial deposit (non-unitary demand).

## 3. THE NOVELTY

**The classification of inventions by novelty shoulders:**

- f1** – inventions made by associating solutions;
- f2** – inventions made by modifying the shape of the object or its elements;
- f3** – inventions made by changing dimensions;

- f4** – inventions made by use of a product or a known method;
- f5** – inventions made by replacement of materials;
- f6** – invention by replacing in a car or installation of a device with another equivalent;
- f7** – inventions made by altering the chemical composition or proportions of materials;
- f8** – inventions made by changing the parameters of technological operations;
- f9** – inventions made by changing the order of operations and stages in technological processes;
- f10** – inventions made by constructive simplification or elimination phase;
- f11** – inventions made by modifying the schema electrical, electronic, hydraulics, fluids, kinematics, of automation of a process.

This paper aims to make a number of considerations on the specific cases on the quality of the new condition imposed by the legislature as conclusive required for the grant the patent, the inventor sought with all consequences arising from in acquirement of that right (5). First to see them the Patent Low no. 64/1991, republiched:

„Art.10 – (1) An invention is new if it is contained in the state of the art :

(2) State of the art includes all knowledge that has become publicly available a written or oral description, by use or in any other way, until the date of filing patent application.

Art.11 – (1) In applying of art. 10 the invention disclosure is not taken account if occurred in period of 6 months before the date of filing the patent application and if directly or indirectly as a result of:

- a) an obvious abuse about in an applicant or his predecessor his rights;
- b) that the applicant or predecessor in title has displayed the invention in an exhibition level official or officially recognized under the Convention on International Exhibitions signed in Paris on November 22, 1928, with subsequent revisions.

(2) The provisions of paragraph apply only if the registration application for patent to learn the applicant stated that invention has actually been exposed and if, in term and in conditions stipulated by the regulations implementing this law, submit a document to support his declaration.”

*First case:* The famous inventor Professor dr. ing. Vitalie Belous from Iassy, confesses (6)

„ Just from personal experience can reveal if my first invention, which, because of ignorance the legislation was not patented because it appeared in a specialized magazine, being disclosed as such.”

*Commentary:* The loss of novelty character of law required by Article 10 paragraph (2), valid and into the old legislation has been produced by the article signed by prof.dr. ing Vitalie Belous (7) as this article was published at a termen (8) offenders before placing patent application, having as object of the invention, the same device, which is had done speaking scientific journal secret invention thus revealed that Article 38 paragrph 2) of Regulations for application Patent Law, quote: ”Art 38 – 2) In the application of Article. 10 paragraph. 2) of the Patent Low, *publicly available knowledge* means the information to which the public has access, wherever in the world, through: a) the various media or on different channels of information from patent documents or other information.” And stil: „Art.38 – 5) Public access provisions of paragraphe 2) means and that comprehensive paper or public presentation of their oral information about is in a public library with unrestricted access”.

As noted in the introduction first step was made after making of Invention is the patent registration application. Prezentation of the invention in an article published in a specialized magazine resulted in loss of character of novelty, invention secrecy is unveiled. As a result, the invention disclosed, was included in the state of the art starting from the date of publication in the magazine article specialitate. Demand patent was rejected because they object to the registration date was included in the prior art invention. Show him the way to establish the novelty is made by comparison with the state of the art world found in the database of OSIM.

*The second case:* In a lawsuit (9) pending at 1970, the Municipal Court of Bucharest was asked cancellation Patent nr.49513 because the invention was disclosed by the subject held a

scientific session and by a photo of the prototype of the invention, which subsequently recorded his OSIM.

*Commentary:* The loss of character of novelty, which the application for annulment of the patent. was done by revealing the secret of invention, regulation „Article. 38 - 2) b) *Oral description*, in meaning of article 10 paragraph. 2) of the Act, may consist into a presentation at a conference in broadcasting in the equipment for playing sound recordings, such as tapes, discs or similar”. However, this case had a favorable denouement inventor, because on the evidence given court cancellation of the patent application except that the innovations were not disclosed: the photo the generic does not disclose the innovations of invention and summary essay held the session concerned the analysis of the possibilities of rational use of car and not to its constitutive elements (10). Disclosure of the invention is by establishing regular national filing, and is important to protect its patent.

This case is similar to first. Participation in a conference presupposes, most often published essays present a printed volume that is treated in scientific practice with a specialized magazine, was later quoted in the references of other authors. Sometimes oral explanations and answers to questions are extensive and can reveal the secret of the subject invention if it consists in informing presented. However, as I saw, the court found insufficient evidence to prosecute. and the inventor has been patented as the defense of the invention proved that the secret was not revealed. At the time of application for patent, an invention that was not included in the state of the art world.

*Third case:* The issue of Romanian Television informative TVR1 of August 10, 2009, Telejurnal, broadcast hours 20-21, was presented with title story *Filter innovative* as follows content: after taking part in The 37<sup>th</sup> International Exhibition of Inventions Geneva, 1-5 April 2009, student Birtok-Băneasa Corneliu from Deva was awarded the Silver Medal for the invention „Filter superabsorbent reverse” because of which reduce fuel consumption by 20% the test motor. In support of the inventor were questioned two drivers, who testified to confirm the performance of the invention. At the end reportage was made to specify that Birtok Băneasa Corneliu has decided submit the patent application with OSIM Bucharest having as object the invention award Geneva.

*Commentary:* Keeping the innovations required by article. 10 paragraph. 2) of the Act is possible, in this case, in terms of Art. 11 - 1), b) and 2) of the same law. To support the statement earlier in the review, we note that the date of exposure to The International Exhibition of Inventions

of Geneva (April 1, 2009) (11) till broadcast reportage TVR 1 (August 10, 2009), date on which the inventor has decided to apply for patent. It had been 4 months and 10 days of the time allowed by law invoked by 6 months (11) actually whereby the invention retains its character of novelty (12), because secret, the first form of protection of the invention (13), is regarded as not being disclosed, under this law. Of course, in this case are more extensive procedures, the need for the applicant to submit OSIM within months of filing the patent application, *Certificate of exhibition* in accordance with Art. 28 paragraph 2) of Regulation.

#### 4. CONCLUSIONS

➤ Considerations presented highlights in special one obstacles gnosiology in technical and creative process that is knowing patenting legislation inventions, with particular reference to some cases where the invention can't be patented, because non-compliance with Art. 10 of the Patent Law, **novelty loses its character the fault of the author** As a true invention is made than the time when is industrial implemented, it is obvious that the author need to know all relevant legislation, not only of patenting, industrial property. All inventors know how difficult it is to write your first description of the invention, technical and legal act pretentious. With the increasing number of written descriptions. time consumed for this fall, from several weeks to several hours, drawing no longer constitutes a real obstacle in the development of creation.

➤ You can add to that patent cases whose inventors could not benefit of their work and which are currently **provided remedies** (14)

➤ Relationships that arise between people because of fulfillment and use creations resulting from the inventive process, are regulated by legal rules subject to intellectual property law. Most new legislation enshrine the fact that, currently, **boundary between copyright and industrial property that tends to fade** (15) which leads to the conclusion that the principles of Art. 10 of Patent Law.

➤ See that exhortation: „**To rush you inventors inventions**”, often argued in the literature (16), is still valid, to meet the requirements of article 10 of Patent Law.

➤ Finally, remember and another point, enabling the compliance status of new called invention, according Article 10 to the law of patenting inventions namely, **that the new legislation cela education must take into account providing the institutional framework for the development of divergent thinking**, which is the path leading to the creative process, generating quality of new inventions imposed, as one of the prerequisites for certification under Patent Law.

ow are general in extended field of intellectual property.

## ENDNOTES

(1) *Republished within the meaning of Art. IV of law no. 28/2007 for amending and completing the Patent Law no*

*64/1991, published in the Official Gazette of Romania, Part I, no. 44 of 10 January, 2007 and rectified in the Official*

*Gazette of Romania, Part. I, no. 351 of 23 May, 2007, the texts being given a new number.*

*Patent Law no. 64/1991 was republished in the Official Gazette of Romania, Part. I, no. 752 of 15 October, 2002, subsequently amended by:*

- *Law no. 57/2003 on the Fiscal Code, published in Official Gazette of Romania, Part. I, no. 927 of 23 December, 2003;*

- *Gouvernement Emergency Ordinance no. 190/2005, concerning necessary measures to be taken within the European integration process, published in the Official Gazette of Romania, Part. I, no. 1179 of 28 December, 2005, approved with the corresponding amendments and completions by the Law no. 332/2006, published in the Official Gazette of Romania, Part. I, no. 629 of 20 July, 2006;*

- *Law no. 278/2006 for amending and completing the Criminal Code, as well as for amending and completing other laws, published in the Official Gazette of Romania, Part. I, no. 601 of 12 July, 2006.*

(2) *Ciprian Raul Romișan, Protecția noilor soiuri de plante prin mijloace de drept penal. Propuneri de lege ferenda. Drept comparat. Revista română de dreptul proprietății intelectuale nr. 1/2004.*

(3) *Art. 31 - (1) of Patent Law 64/1991. „Duration of patent is 20 years”.*

(4) *The decision no. 547 of May, 21, 2008, published in the Official Gazette of Romania, Part I, no. 456 from June 18, 2008, for approval of the application of the Patent Law no. 64/1991, republished.*

(5) *Ioan Cameniță, Protecția invențiilor prin brevete, Editura Academiei, București, 1977, p. 64.*

(6) *Vitalie Belous. Creația tehnică în construcția de mașini. Inventica, Editura Junimea, Iași, 1986, p. 52.*

(7) *Vitalie Belous, Frână centrifugală autoreglabilă, Bul. Inst. polit. Iași, tom. VI, fasc. 3-4, 1960, p. 345-350.*

(8) *Article 28 – (9) of Regulation enforcement Patent Law 64/1991, State of the art which:...” is the relevant date of document”.*

(9) *Ioan Cameniță, op. cit., p. 70.*

(10) *Ioan Cameniță, op. cit., p. 71.*

(11) *Le 37E Salon International des Inventions des Techniques et Produits Nouveaux, Geneve, 1-5 avril 2009, Catalogue officiel, Classe P, p. 123.*

(12) *Art. 11 – (1) of Patent Law 64/1991.*

(13) *Răzvan Dincă. Invenția secretă, RRDPI no. 2/2009, p. 75-79, “The first form of protection of the invention is the secret” and consequential, disclosure of secrets is first step for state of the art coverage, which means the loss of novelty character.*

(14) *Law no. 214 of 14.10.2008, the Government Emergency Ordinance no. 100/2005 on enforcing intellectual property industries.*

(15) *Yolanda Eminescu, Dreptul de autor, Editura Lumina Lex, București, 1994, p. 14.*

(16) *www.osim.ro*

**BIBLIOGRAPHY**

1. Belous, V. *Creația tehnică în construcția de mașini. Inventica*, Editura Junimea, Iași, 1986
2. Cameniță, I. *Protecția invențiilor prin brevete*, Editura Academiei, București, 1977
3. Catalogue Officiel 37<sup>E</sup> Salon International des Inventions des Techniques et Pproduits Nouveaux, Geneve, 1-5 avril 2009
4. Cernomazu, D. *Inventică și design* Editura Universității „Ștefan cel Mare”, Suceava, 2002
5. Dincă, R. *Invenția secretă*, Revista româna de dreptul proprietății intelectuale nr. 2/2009
6. Eminescu, Yolanda *Dreptul de autor*, Editura Lumina Lex, București, 1994
7. Legea nr.64/1991 privind brevetele de invenție
8. Legea nr. 214 din 14.10.2008, privind completarea Ordonanței de urgență a Guvernului nr. 100/2005 privind asigurarea drepturilor de proprietate industrială
9. Regulament de aplicare a Legii nr. 64/1991 privind brevetele de invenție
10. [www.osim.ro](http://www.osim.ro)