Inventions. International Patentability

Inventions created in the Republic of Moldova shall be patented abroad by three possible routes:

- national route
- regional route
- international route.

National route. According to one of the basic principles of the Paris Convention for the Protection of Industrial Property, any applicant who has filed a patent application with the AGEPI may register, within 12 months, a patent application for that invention in any of the member countries the Paris Convention, claiming priority of the original application.

Regional route. By this route, on the basis of regional Conventions and agreements by filing an application to a receiving office can be obtained a regional patent which is available in several countries, for example: *European patent* (under the European Patent Convention); *Eurasian patent* (under the Eurasian Patent Convention); *OAPI patent* (under the Agreement on the Creation of the African Intellectual Property Organization); *ARIPO patent* (under the Agreement on the Creation of the African Regional Industrial Property Organization).

International route. By this route, under the Patent Cooperation Treaty (PCT), filing with a receiving Office of an application, called international application, with the designation in that application of all the states where protection is sought, shall produce the effects of a national application in each designated Contracting State to obtain a patent in this country subject to the entry into the national phase in that country in accordance with the PCT and payment of the prescribed fees.

- PCT application [1]
  AGEPI shall act as receiving Office for applications filed under the PCT.

  Filing and registration of international applications under Rule 19 of the Regulations under the PCT application shall fall within the competence of AGEPI and shall be carried out where one of the applicants is a national or a resident of the Republic of Moldova, irrespective of whether he seeks protection for all or only some countries. International patent application must contain: a completed application form, a description, one or more claims, one or more drawings (where applicable) and an abstract.

  Inventions created in the Republic of Moldova shall be patented abroad after the expiry of one month from the date of filing with the AGEPI of a national patent application for the same invention. The applicant is entitled to claim in the international application, subject to the provisions of the Paris Convention, the priority of an earlier application for the same invention, within a maximum period of 12 months from the filing date of the earlier application. Where priority is claimed in the international application on the basis of the national application, it shall be indicated in the PCT application.

  AGEPI, as the competent receiving Office, receives international applications filed in one of the languages: English, French, German or Russian; typed or printed. International application shall be prepared by the applicant in compliance with the conditions prescribed by the PCT Treaty and the Implementing Regulations under the PCT, using a standard form developed by the International Bureau of WIPO PCT/RO/101 (BI) and which can be obtained free of charge with the AGEPI or on WIPO website:
  http://www.wipo.int/pct/en/forms/index.html [2]

  The international application shall be filed with the AGEPI in three copies (each to be good for

multiplication in an unlimited number of copies) by the end of the 12th month, considered from the filing date of the regular national application. AGEPI shall carry out the formal checkup and shall invite the applicant to complete or correct (where appropriate) the international application.

AGEPI as the receiving Office shall transmit the original copy of the international application, the basic fee to the International Bureau, and shall transmit a copy of the application and the search fee to the International Searching Authority not later than the 12th month from the filing date of the international application or not later than 15 days before the expiry of 13 months from the priority date.

Payment of the following fees shall be required concomitantly with the filing of the application:

No.	Fee*	Amounts of Fees
1	International filing fee (PCT Rule 15.2 of the Regulations under the PCT)**	
	a) if the international application contains not more than 30 sheets	**$1,471**
	b) if the international application contains more than 30 sheets	**$1,471** plus **$17** for each additional sheet
2	International search fee	**$209**, where the international search is carried out with Rospatent and the application was submitted in Russian; **€868**, where the international search is carried out with Rospatent and the application was submitted in English or **€1,875**, where the international search is carried out with the EPO***
3	Preliminary examination fee (PCT Rule 58 of the Regulations under the PCT)	**2,700 RUB** where the international search report was established by Rospatent and the application was submitted in Russian; **4,050 RUB** where the international search report was established by Rospatent and the application was submitted in Russian; **10,500 RUB** where the international search report was established by Rospatent and the application was submitted in English; **15,750 RUB** where the international search report was established by Rospatent and the application was submitted in English; **€19,30**, where the preliminary examination is carried out at the EPO***

No.	Fee*	Amounts of Fees
4	Priority document issuance fee	**€20**
5	International application receipt and transmittal fee	**€100**

Notes:

*List of PCT fees applicable from 01.02.2014 (during the year the fees can be modified).

**The fee is reduced by 90% for international applications filed by any applicant who is a natural person and who is a national of and resides in a State whose per capita national income is below US$ 3,000 (according to the average per capita national income figures used by the United Nations for determining its scale of assessments for the contributions payable for the years 1995, 1996 and 1997); if there are several applicants, each must satisfy those criteria.

***The fee is reduced by 75% where the applicant is a natural person and who is a national of and a State and resides in a state that is indicated in the EPO Administrative Decision of 21 October 2008 (OJ EPO 11/2008, page 521); if there are several applicants, each of which must satisfy those criteria.

Close [1]

- Eurasian application [1]
  On 26 April 2012, Republic of Moldova denounced the Eurasian Patent Convention.

  According to the Cooperation Agreement on the Legal Protection of Inventions in the Republic of Moldova, signed on 12 April 2012 by the Director General of AGEPI and President of the Eurasian Patent Office (EAPO), Moldova recognizes on its territory the effect of Eurasian patents issued prior to entry into force of the denunciation by our country of the Eurasian Patent Convention, on 26 April 2012, until the expiry of the term of validity of such patents or until the appearance of other legal circumstances that would lead to the termination of their validity.

  Normative documents regulating the procedure of filing an Eurasian patent application: https://www.eapo.org/en/ [3]

  Filing of the application

  Applicants of the Republic of Moldova may file a Eurasian patent application directly with the Eurasian Patent Office.

  Close [1]

- European patent [1]
  If one wishes to obtain a European patent, two options are possible: direct European route and Euro-PCT route, i.e. international route. With the direct European route, the entire European patent grant procedure is governed by the EPC alone.

  With the Euro-PCT route, the first phase of the patent grant procedure, called the international phase, is subject to the PCT and shall include:

  - filing of an international application,
  - carrying out of the international search by the International Searching Authority,
  - publication by the IB of the application with the search report containing the written opinion and,
  - optionally, carrying out of the international preliminary examination by the International Preliminary Examining Authority

  After that there follows the regional phase exercised before the EPO as designated or elected Office according to the provisions of the EPC.

  Members of the EPC are currently 38 states (27 EU Member States, and Albania, Croatia,

Macedonia, Iceland, Liechtenstein, Monaco, Norway, san Marino, Serbia, Switzerland and Turkey) and besides, the European patent may be extended to 2 more countries (Bosnia and Herzegovina, Montenegro) with which the EPO concluded extension agreements. Also, the European patent can be validated in Morocco, with which the EPO concluded a validation agreement. Therefore, according to the EPC, patent protection of invention can be obtained in 41 countries by filing a single application.

However, there are some Member States of the EPC for which the national route is not possible. If the applicant wishes to obtain protection in Belgium, Cyprus, France, Greece, Ireland, Italy, Monaco, Holland and Slovenia, on the basis of an international application protection in these countries can be obtained only by obtaining a European patent by the European route.

In the case of international applications, the applicant must decide on the future patenting route before the expiration of the international phase. If he wishes to obtain a European patent, then he must initiate in due time the Euro -PCT procedure (European phase) before the EPO, which acts as a designated or elected Office.

The applicant must decide at the European phase in which EPC Member State he wishes to obtain protection by European patent. He may choose all or any member state of the EPC. He must also decide whether he wishes to extend the Euro-PCT application to some states which accept this procedure.

Time Limit for Entering the European Phase

The time limit for entering the European phase is 31 months from the filing date or priority date. This time limit shall apply regardless of whether the preliminary examination procedure was or was not requested under Chapter II PCT. As an exception, where a person seeks protection in Switzerland (CH), Luxembourg (LU), Sweden (SE) and the preliminary examination was not requested under Chapter II PCT, the time limit for entering the national phase shall be 20/21 months.

Earlier Entry into the European Phase

The applicant may enter the European phase before the expiration of the time limit of 31 months. In that case the applicant must submit an express request for earlier entry into the European phase. In addition, if the IB has not transmitted to the EPO a copy of the international application, the search report with the written opinion of the International Searching Authority and, where appropriate, the preliminary examination report, the applicant shall ask the IB to transmit those documents to him. EPO will start the procedure when all the requirements are satisfied.

Acceleration of the Procedure – “PACE” Programme

In addition to the possibility of earlier entry into the European phase the applicant may request the acceleration of the examination procedure on or after entry into the European phase of the corresponding application. Acceleration of the examination procedures may be requested for formal examination, drawing up of the supplementary European search rapport and substantive examination of the application.

Actions Taken by the Applicant to Initiate the European Phase of the Euro-PCT Route

Minimum Requirements

Usually, the applicant needs not transmit a copy of the international application to the EPO as IB usually does this. The applicant must take the following steps within 31 months from the filing or priority date, where appropriate:

- furnish the translation into one of the three official languages (En., Fr., De.) if the Euro-

PCT application has not been published in one of these languages;
- specify the application documents on which the European patent grant procedure must be based;
- pay the European filing fee and the designation fees;
- pay the search fee if an additional search report is required;
- submit the request for examination and pay the examination fee;
- pay, where appropriate, the maintenance fee for the third year;
- pay, where appropriate, the fee for claims;
- if the applicant has no residence or establishment in one of the EPC Contracting States, designate within the prescribed time limit the patent attorney.

Amount of Fees Payable in the European Phase

The amount of all fees charged by the EPO can be found on the EPO website: http://www.epo.org/applying/forms-fees/fees.html [4] , http://www.epo.org/applying/forms-fees/international-fees.html [5] .

From the main fees may be mentioned the following, (euro):

No.	Fee	Amount of Fee
1	Filing fee	200
2	Online filing fee	115
3	European search fee	1,165
4	International search fee	1,875
5	Designation fee, for each state (max. 7) for applications filed by 01.04.2009	95
6	Designation fee, for all designated countries, for applications filed on/after 01.04.2009	555
7	Extension fee, for each state	102
8	Examination fee for applications filed on/after 01.07.2005	1,555
9	Examination fee for international applications Filed by 01.07.2005 and for international applications filed on/after 01.07.2005 without additional European search report	1,730
10	Opposition fee	745
11	Issuance and publication fee	875
12	Maintenance fee:	
	- for the 3rd year	445
	- for the 4th year	555
	- for the 5th year	775

How to initiate proceedings before the EPO as designated or elected Office

If the applicant enters the European phase before the EPO without requesting the preliminary examination in the international phase, the EPO will act as designated Office. If the applicant enters the European phase before the EPO after the preliminary examination, the EPO will act as elected Office.

For entry into the European phase the applicant must use the EPO Form 1200 form available at: http://www.epo.org/applying/forms-fees/forms.html [6]

When completing the form it is recommended to consult the explanatory notes to this form. The form must be filed with the EPO in Munich, Berlin and The Hague directly or by mail, or by fax, or by electronic filing. Applicants must indicate the number of the European

application, which is communicated by the EPO approximately two months before the expiry of the international phase. Applicants who were not notified of that number may indicate the PCT application number or PCT publication number.

EPO Form 1200 may be filed electronically using the software *epoline* (www.epo.org [7] /applying/online-services.html). In such case the applicant will benefit from a reduction in the filing fee.

Representation

Applicants not having their residence or place of business in an EPC Contracting State shall be represented before the EPO by professional representatives authorized to act before the EPO – patent attorneys and act through them in all proceedings established by the EPO, except for filing a EPO application form 1200, submitting a translation of the application, where appropriate, and paying fees, if these actions are performed before the expiry of the time limit of 31 months for entering the European phase. After the expiry of this time limit all actions before the EPO can be performed only through patent attorneys. The applicant cannot act through his representative designated for the international phase if he is not a professional representative authorized to act before the EPO (patent attorney). Therefore non-resident applicants must designate the patent attorney prior to initiation of proceedings before the EPO, on completion of the EPO Application Form 1200.

Patent Attorneys:

http://www.epo.org/applying/online-services/representatives.html [8]

Submission of translation and other documents

The translation shall include:

- the description
- the initial claims
- any text of the drawings
- the abstract

Where appropriate, the translation shall include:

- the amended claims and the statement, according to Art. 19 of PCT, explaining the amendments and indicating any impact thereof on the description and the drawings, if the applicant wishes them to be taken into consideration in subsequent procedures;
- any published request for rectification;
- any reference to deposited biological material, including a copy of the deposit document of the respective institution;
- the translation of any annexes to the preliminary examination report, where appropriate;
- the list of sequences in accordance with the standard specified in Annex C of the PCT Administrative Instructions, if the subject-matter of the application relates to nucleotide sequences and/or amino acids.

Payment of fees

The filing fee shall be paid before the expiration of the time limit of 31 months from the filing date or priority date. If the filing fee is not paid in due time, the application shall be deemed to be withdrawn and the applicant shall be notified of this fact. Loss of rights shall be deemed not to have been occurred if the applicant pays within 2 months of dispatch of the notification the prescribed fee and surcharge.

The designation fee shall be paid within 31 months from the filing date or priority date, or 6 months after the publication of international search report. If no designation fee is paid in due time, the application shall be deemed to be withdrawn and the applicant shall be notified accordingly. Loss of rights shall be deemed not to have been occurred if the applicant pays

within 2 months of notification the prescribed fee and surcharge.

If the applicant wishes to extend his patent to some EPC non-contracting states, he must pay the extension fee for each State which has signed an extension agreement with the EPO, the time limit for payment being 31 months from the filing date or priority date with a grace period of 2 months from this date.

The fee for claims shall be paid for each claim in excess of 15, payment being made at the time of payment of the filing fee, or within 1 month of dispatch of the notification of the need for paying this fee. Otherwise such claims shall be considered to be abandoned.

Maintenance Fee

The maintenance fee for Euro-PCT applications shall be paid for the third and each subsequent year from the filing date of the international application. The time limit for payment is 31 months from the filing date with a grace period of 6 months during which shall be paid a surcharge of 10%.

Examination Procedure

The European examination procedure shall include two stages.

The first stage, which is mandatory for all applications, comprises the formal examination of the application, supplementary European search with the preparation of the search report containing an opinion on patentability of the invention and publication of the application and the search report.

The second stage, which is performed only in the case of filing of a written request for procedure and payment of the examination fee, comprises the substantive examination of the application.

Supplementary European Search

Usually, for each international application entering the European phase must be carried out a supplementary European search subject to the payment of the search fee.

The fee for supplementary European search shall be paid within 31 months from the filing date or priority date of the application.

If no search fee has been paid in due time, the application shall be deemed to be withdrawn and the applicant shall be notified accordingly. Loss of rights shall be deemed not to have been occurred if the applicant pays within 2 months of dispatch of the notification the prescribed fee and surcharge.

Request for Examination Procedure

Substantive examination of the application may only be conducted on the basis of an explicit request in this regard. When using the EPO Form 1200 this condition is satisfied by completing the respective form compartment and subject to payment of the examination fee.

The time limit for requesting the examination procedure and paying the respective fee is 31 months from the filing date or priority date, or 6 months as from the publication of the international search report, whichever time limit expires later. If the request for examination procedure was made before the transmittal of the supplementary European search report, the EPO shall invite the applicant to indicate whether he wishes to continue the procedure in respect of the application. If the applicant does not wish to follow the further procedure, he may withdraw the application or not reply to the invitation in due time. In this case the examination fee shall be refunded in full. If the applicant decides to stop the procedure at a later stage, the examination fee shall be refunded in the amount of 75%, if the examination

procedure has not been started yet.

The examination fee shall be reduced by 50% if the EPO as International Preliminary Examination Authority has drawn up an international preliminary examination report in respect of that application.

If the request for examination procedure and payment of the examination fee were not made in due time, the application shall be deemed withdrawn and the applicant shall be notified of this fact and of the opportunity to remedy these irregularities within 2 months.

Substantive Examination of Application

After receipt of the European search report the applicant may make judgments about the essence of the report and may amend the description, the claims and the drawings. During the examination the applicant may be notified of the need to remedy certain irregularities in the description, claims and drawings. If the applicant fails to submit an answer within the prescribed time limit, the application shall be considered withdrawn.

Grant of a Patent

A European patent shall be granted if, in the examination, it is found that the application and the invention which forms its subject-matter meet the requirements prescribed by the Convention. Before the adoption of the decision of grant, the applicant shall be communicated the text of the patent to be granted and shall be required, within 4 months, to pay the issuance and publication fees, and to furnish the translation of the claims in the other two official languages of the EPO. The decision to grant the European patent shall take effect from the date on which the mention of the grant is published in the European Patent Bulletin. After publication of the mention of grant of the European patent the EPO shall publish the patent specification containing the description, claims and drawings.

In order that the European patent be valid in all designated countries, in those countries that have an official language different from the language in which the patent was granted, the patent owner must submit to the industrial property office of that country the translation of the patent in that official language. Luxembourg and Monaco do not require furnishing of the translation of the patent, and Slovenia requires only furnishing of the translation of the claims. The time limit for furnishing the translation shall be 3 months from the date of publication, and for Ireland – 6 months. Failure to furnish the translation, the patent shall be deemed not to have taken effect in that State.

To maintain the European patent in force the patent owner must pay with the national IP offices of the designated states the annual maintenance fees in accordance with the national legislation of those States.

Cost of the European Patent

The approximate cost of an average European patent, valid in 8 designated states, with a description of 20 pages, 10 claims, maintained 10 years, is 30,000 EUR, of which 14% EPO fees, 18% patent attorney services, 39% fees for patent translation into the languages of the designated states and 29% maintenance of patent in the designated states.

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