

INVESTING IN ROMANIA



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Romania is a party to the Paris Convention of 1883 for the protection of industrial property, and also signed all subsequent amendments of the same. According to Article 1.2. of the Paris Convention, "the object of the protection of industrial property includes patents, utility models, industrial designs or models, brands and trademarks, service marks, trade names and indications of origin, as well as the prevention of unfair competition."

PATENTS

Romania adhered, by means of Law no. 611/2002, to the Convention regarding the issuance of European patents. The European Patent Convention is a private arrangement between countries and its purpose is the issuance of the European patents, which have the same effect in one or several member signatory states and should comply with the same conditions as a national patent in the states designated by a patent applicant.

The basic normative act that regulates the protection of national patents in Romania is Law no. 64/1991 as republished in October 2007 and its norms of implementation approved by Government Decision no. 499/2003. Protection is granted under this law in the event that a main patent was registered with the State Office for Patents and Trademarks

("OSIM"). For European patents, the protection period starts from the date of the patent statutory deposit, established according to the European Patent Convention.

Romania is also a party to the Treaty for cooperation in the patents field, adopted in the diplomatic Conference of Washington on June 19, 1970, the purpose of which is the cooperation of the member states with respect to the storage, documenting and review of patent applications.

Also in connection to this legislation, Romania has passed the Law no. 350/2007 regarding utility models. This enactment provides protection for technical innovations which do not fulfill the inventive activity requirement under Law no. 64/1991.

TRADEMARKS

Romania adhered to the Paris Convention for the protection of industrial property, to the Madrid Arrangement for international registration of trademarks and to the Protocol

relating to this Arrangement, as well as the international classifications in the field of industrial property, adopted by means of the Nice and Vienna Arrangements.

The internal legal framework regulating the protection of trademarks is Law no. 84/1998 and Government Resolution no. 833/1998 which contains the implementing regulation. Said normative acts detail the procedure for the registration of trademarks with OSIM, the right of priority and the right of exclusive use of trademarks, as well as the rights and obligations arising from the registration of the trademarks. The right of exclusive use of any trademark is acquired and protected by means of the registration of such trademark with OSIM, operating in favor of the first individual/legal entity who/which files the registration application of the trademark (the national statutory deposit). The only exception to the above-mentioned rule is the well-known trademarks, to the effect that the rights over such trademarks are acknowledged even in the absence of a prior registration thereof. The well-known nature must be proven by documents and shall be determined in consideration of the elements related to the acknowledgment by the target consumers of the products/services the trademark is addresses to, such as: ways of distribution (e.g. through sales agents), activities of promotion, quantities of traded products and/or services, etc.

The duty of proving the well-known nature of a trademark is incumbent upon the person invoking such well-known nature.

Rights conferred by the registration of trademarks

The registration of any trademark confers its holder an exclusive right of use over such trademark, consisting of two components:

(a) The right of priority, acknowledged as having effects starting from the date of establishment of the deposit, by means of the registration application, which may be opposed to any other subsequent trustee for the same type of trademark with the same products or the same services; and

(b) The right of exclusive use, allowing the holder to make exclusive use of the trademark



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with respect to the products and services for which the registration was made.

The holder of a trademark may demand the competent court to prohibit any third parties to use, in their commercial activity, without its express consent, its registered trademark; it shall also have the possibility to demand the recovery of the prejudice caused pursuant to the illegal use of the trademark.

The trademark holder may also transfer its rights over the trademark by means of an assignment or under a license. The assignment of the rights over the trademark may be performed with respect to all services and products for which the trademark is registered or solely with respect to part of the same, however, the assignment may not be territorially limited. Under the license contract, the holder of a trademark may authorize third parties to use the trademark on the entire territory of Romania or on a certain area of the same, for part of, or for all services and products for which the trademark was registered. Both the assignment and the license of a trademark may be opposed to a third party solely after their registration with the National Trademarks' Register.

Community Trademark

By means of the treaty of accession to the European Union, Romania agreed that the community trademark should also produce effects on its territory. Thus, as of the accession date, European Council Regulation 40/94/EC of December 20, 1993 which established the community trademark ("The Community Trade Mark Regulation") has also been producing effects with respect to Romania.

There must be considered the fact that the legal regime of the community trademark has been conceived so as to coexist with national trademarks protected in member states. The rule upon which such coexistence between community trademarks and national trademarks is based is as follows (i) on the one hand, a community trademark cannot be registered if an identical or a similar trademark has been previously registered for identical or similar products in one of the member states and (ii) on the other hand, a national trademark cannot be registered if a similar community



trademark has been previously registered for the same products.

Notwithstanding such rule, it was decided to adopt the solution of unconditional extension of the community trade mark's effects upon the territory of the new member states, a temporary solution that applies to community trademarks and community trademark applications filed with the Office for the Harmonization of the Internal Market ("OHIM") prior to the accession date. Subsequently to the accession, the aforementioned rule becomes fully operational, and the general rules of the Community Trade Mark Regulation shall apply.

As a temporary norm, according to art. 159a of the Community Trade Mark Regulation, the holder of a trademark registered in Romania has the following rights, by means of which it may limit the effects of the community trademarks' extension:

(a) With respect to the applications regarding a community trademark that were filed with OHIM less than 6 months prior to Romania's accession date, the holder of a national trademark the registration date or the acknowledged priority of which is prior to that pertaining to the respective application, may file an opposition in accordance with the provisions of the Community Trade Mark Regulation.

(b) The holder of a trademark that was registered in Romania prior to the accession, may demand the court to prohibit the use of a

community trademark in Romania if such community trademark is identical with or similar to the respective national trademark and is used for identical or similar products.

COPYRIGHTS AND RELATED RIGHTS

Romania has been a member of the Bern Convention for the protection of literary and artistic works since 1886. Romania adhered to the Convention, after having been revised in Paris, by Law no. 77/1998. The domestic legal framework regulating copyrights and related rights is represented by Law no. 8/1996, setting forth norms referring to moral and patrimonial rights comprised by copyrights and related rights, the length of time for the acknowledgment of such rights, and the protection granted to the owner of said rights.

Law no. 8/1996, as subsequently amended, transposes the following directives into domestic law:

- Council Directive 91/250/EEA of May 14, 1991 on the legal protection of computer programs;
- Council Directive 92/100/EEA of November 19, 1992 on the rental and lending right and certain copyright-related rights. In the intellectual property field;
- Council Directive 93/83/EEA of September 27, 1993 relating to the coordination of certain rules of the royalty and the rights close to the royalty applicable to broadcasting by satellite and the retransmission by cable;
- Council Directive 93/98/EEA of October 29, 1993 relating to the coordination of the duration for the protection of copyright and certain connected rights;
- Directive 96/9/EC of the European Parliament and of the Council of March 11, 1996 on the legal protection of databases;
- Directive 2001/29/EC of the European Parliament and of the Council of May 22, 2001 on the harmonization of certain aspects of copyright and related rights in the information society;
- Directive 2001/84/EC of the European Parliament and of the Council of September 27, 2001 on the resale right for the benefit of the author of an original work of art;
- Directive 2004/48/EC of the European Parliament and of the Council of April 29, 2004 on the enforcement of intellectual property

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rights.

The Romanian Copyright Office ("ORDA") was established under no. Law 8/1996 as the institution with prerogatives in what concerns the protection of copyright and the related rights.

According to Romanian law, a work sprung from intellectual inspiration is acknowledged and protected, regardless of its disclosure to the public, by the mere fact of its creation.

Content of the copyrights

Romanian law grants authors patrimonial rights and moral rights with respect to the work they create. The author of a work enjoys an exclusive patrimonial right to decide whether, how and when his/her work can be used or exploited, including the decision to consent to the use of the work by other persons. The author may also authorize the translation of the work, the publication of the same, its adaptation, as well as any other transformation of his/her work, whereby a derived work is obtained.

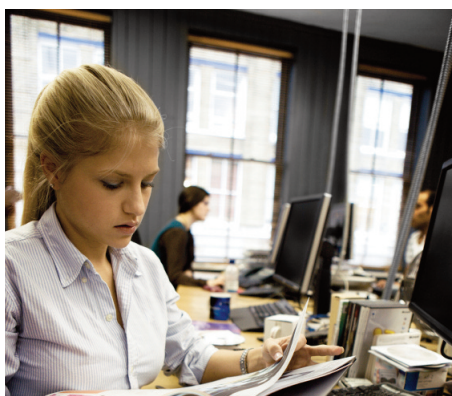
Patrimonial rights are protected throughout the lifetime of the author or authors and can be bequeathed for 70 years after the death of the author or the last co-author. For certain kinds of works, the protection term and the way it is calculated differ from the rule set forth above.

INDUSTRIAL MODELS AND DESIGNS

Industrial models and designs are protected in Romania by registration with OSIM under Law no. 129/1992 as further amended and republished, and Government Resolution no. 211/2008 which also contains its norms of application.

Romania is also a party to the Hague Agreement regarding the international deposits of industrial designs and models, adopted on November 6, 1925, with its subsequent amendments and additions, to which Romania adhered under Law no. 44/1992.

The right to carry out the registration of an industrial design or model belongs to the author of the same or to his/her legal successors. The registration form and the description of the new elements, characteristic for the industrial designs or models the



registration of which is demanded, accompanied by graphic representations of the industrial designs or models, shall be lodged with OSIM and represent the national statutory deposit. The statutory national deposits give the applicant a right of priority, beginning from the date of registration of such industrial designs or models, as to any other subsequent deposit by a third party regarding the same designs or models. Priority may also be claimed by the holder pursuant to exhibiting the industrial design or model in an international exhibition or following the creation of a statutory deposit in a foreign country, provided that the registration application is lodged within six (6) months following the date of exhibiting the products in said exhibition or the date of said deposit.

Rights conferred by the registration of industrial designs and models

The certificate of registration confers its holder an exclusive right of exploitation of the industrial design or model, as well as the right to prohibit any third party to carry out, without his/her consent, the following activities: duplicating, manufacturing, offering for sale, using, importing or storing for marketing purposes, offering for sale products exhibiting the protected industrial designs or models. Such rights are acknowledged to the holder for a period that may not exceed 25 years.

Transfer of rights

The right regarding the issuance of the certificate of registration, the rights arising from

the application for the registration of the industrial design or model, as well as the rights arising from the issued certificate of registration are transferable by means of an assignment or under a license.

The transfer shall be registered with OSIM and it shall be binding upon third parties, solely beginning from the date of its publication in the Official Industrial Property Bulletin.

Community Industrial Designs and Models

Under the treaty of accession to the European Union, Romania agreed that community designs and models should produce effects in its respect as well. Therefore, as of the accession date, European Council Regulation 6/2002 of December 12, 2001, for the establishment of community designs and models ("Regulation on Community Designs and Models") has been producing effects with respect to Romania as well. There must be taken into consideration the fact that the legal regime of the community designs and models has been conceived so as to coexist with national designs and models protected in member states.

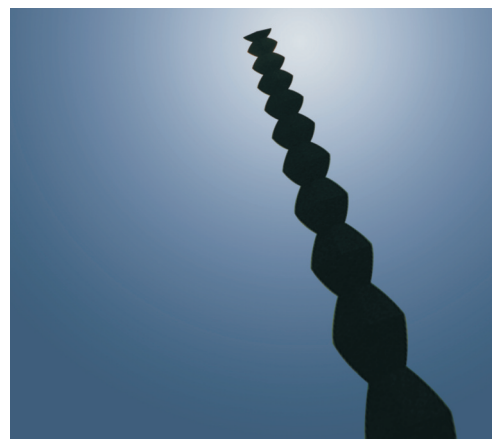
As a temporary norm, according to art. 110a of the Regulation on Community Designs and Model, the holder of a design or model registered in Romania may oppose the use of a community design or model in the following cases:

(a) If the community design or model conflicts with a design or model that was previously registered in Romania or was made public after the date of the community deposit or, if a priority has been claimed, the date of priority of the community design or model, and which has been protected in Romania as a registered design or model or as a design or model application starting from a date that was prior to the aforementioned dates;

(b) If a distinctive sign is used in a subsequent community design or model and the Romanian law that governs the legal regime of that sign entitles the holder to prohibit such use;

(c) If the community design or model represents an unauthorized use of an artwork protected in Romania according to Law no. 8/1996 regarding copyright and connected rights.

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UTILITY MODELS

The utility model is the most recent legal protection element regulated under Law no.350/2007, completing the legislation on intellectual property in Romania.

According to said law, the utility model helps protect any technical invention, provided that it is new, it goes beyond the level of mere ordinary skill and it is susceptible of having an industrial use.

Protection by a utility model confers its holder an exclusive right to exploit the invention for a period that may not exceed 10 years.

Principally, the conditions to grant such a protection are very close with the ones asked for patents: to be of technical nature, to be new and to be susceptible of having an industrial use; the major difference consists in the fact that the patent is supposed to be the result of an inventive activity, while the utility model only has to prove the fact that its creation is due to a higher level professional skill.

Another interesting aspect of the utility model is the fact that a patent application which does not fulfill all the legal conditions can be converted into a utility model, thus acquiring juridical protection.

TOPOGRAPHY OF SEMICONDUCTING CIRCUITS

Topography of semiconducting circuits is protected by their registration with OSIM in accordance with Law no. 16/1995. A semiconducting product is defined as the final or intermediary form of any product that (i) includes of a layer made of a semiconducting material, and (ii) consists of one or more layers of conducting, insulating or semiconducting materials, where the layers are placed according to a preset three-dimensional

configuration, and (iii) is destined to fulfill an electronic function, exclusively or not. Only original topography may be protected, since they are not common to topography creators or to manufacturers of semiconducting products.

Protection of any topography may be requested for and obtained by its author or authors, and by their successors in their rights. If a topography is created by an employee as a task for his/her job or upon order by an individual or a legal entity, then the right to ask for the protection of such topography so created belongs to the employer and to the person who ordered the creation of said topography respectively.

Following the registration of a topography, the petitioner is granted an exclusive right to operate it, and the right to license or forbid the reproduction or operation thereof.

Such rights are extinct within 10 years, running from the first of the following dates: (i) the end of the year when the topography was subjected to a commercial operation for the first time in the world, and (ii) the end of the year when the design or trademark deposit, as applicable.

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Apart from the special norms comprised by the laws regulating the legal regime of each object of intellectual property, general norms were adopted in Romania, aiming to create a legal framework to ensure protection to intellectual property rights. Such norms are included in the Emergency Ordinance no. 100/2005 regarding the insurance of industrial rights property completed by Law no. 214/2008, and Law no. 344/2005 regarding certain measures to ensure that intellectual property rights are respected during customs

operations. Law no. 344/2005 facilitates the enforcement at national level of the Council Regulation no. 1383/2003 concerning customs action against goods suspected of infringing certain intellectual property rights and the measures to be taken against goods found to have infringed such rights.

Emergency Ordinance no. 100/2005

This normative act comprises procedural norms based on which the owner of an industrial property right may (i) raise evidence on the infringement of their right, and on the damage caused by such infringement, or (iii) take protective measures against the people found guilty of infringement their right.

Council Regulation no. 1383/2003 and Law no. 344/2005

These enactments regulate the procedure by which the owners of intellectual property rights may ask the Romanian customs authorities and of the other Member States to intervene in import or export operations for the purpose of preventing their rights to be trespassed. If addressed such petition, customs authorities may suspend the relevant customs operations for not more than 10 days, when the owner of said right may address the relevant authorities asking for a ban upon the import or the export of the products identified in the customs.

In the event that, within the above length of time, the owner of the right fails to produce evidence in front of the customs authorities of having initiated legal proceedings or filed a criminal complaint with regard to the relevant goods, such authorities shall cease the suspension of the aforementioned customs operation.