Inputs from Member States and Regional Patent Offices to the Thirty-Eighth Session of the Standing Committee on the Law of Patents

Respondent Information

First Name:

[redacted]

Last Name:

[redacted]

Country:

Republic of Moldova

IP Office

State Agency on Intellectual Property (AGEPI)

Job title

Head of Patent Department

Email address:

[redacted]

Email address confirmation:

[redacted]

Disclaimer:

The information provided in response to this questionnaire is understood to be submitted on behalf of the Member State or regional organization concerned, through its competent authority and in accordance with its applicable official internal procedures.
It is assumed that the person completing and submitting the questionnaire is duly authorized to do so and that the information reflects the official position or practice of the Member State or organization, to the extent possible.

I confirm that I have read and understood the statement above and that I agree with its contents.

A. Prior Art

1. How is prior art defined under the applicable national or regional law?

Law on the protection of inventions No.50/2008, www.agepi.gov.md/sites/default/files/law/national/l_50_2008-en.pdf, art. 8 and 9

2. Against which date is prior art assessed under the applicable law?

Article 8. Novelty,
(2) The state of the art shall be held to comprise everything made available to the public by means of a written or oral description, by use, or in any other way, before the date of filing of the patent application or of the acknowledged priority.

3. Which types of information may constitute prior art under the applicable law, and how is it determined whether such information is considered to form part of the prior art?

Article 8. Novelty,
(2) The state of the art shall be held to comprise everything made available to the public by means of a written or oral description, by use, or in any other way, before the date of filing of the patent application or of the acknowledged priority.
(3) Additionally, the content of patent applications as filed with the AGEPI, of European patent applications and of international applications designating the Republic of Moldova and having entered the national phase, of which the dates of filing are prior to the date referred to in paragraph (2) and which were published, in accordance with this Law, on or after that date, shall be considered as comprised in the state of the art.
www.agepi.gov.md/sites/default/files/law/national/l_50_2008-en.pdf;
Pct. 263-274, Regulation on the procedure of filing and examination of the patent application and grant of patent, https://www.agepi.gov.md/en/legislatie/inventions

4. Does the applicable law provide for any category of prior art that is taken into account for patentability purposes notwithstanding that it was not publicly available before the relevant filing or priority date (sometimes referred to as "secret prior art")?

No

If yes, please indicate, where applicable, the types of information or documents concerned (for example, earlier-filed patent applications), the relevant date(s) for determining such prior art, as well as any limitations, exclusions, or special rules applicable to such prior art. : Pct. 263-274, Regulation on the procedure of www.agepi.gov.md/sites/default/files/law/national/l_50_2008-en.pdf filing and examination of the patent application and grant of patent, https://www.agepi.gov.md/en/legislatie/inventions

5. Please provide any additional information that may be relevant to the understanding or application of prior art under the applicable law, including where applicable, any guidance (for example, patent office manuals or guidelines) or key judicial decisions in your jurisdiction with general relevance to applicants or interested parties, captured by patent office practice.

Law on the protection of inventions No.50/2008, Art. 8-9, www.agepi.gov.md/sites/default/files/law/national/l_50_2008-en.pdf
Regulation on the procedure of filing and examination of the patent application and grant of patent, https://www.agepi.gov.md/en/legislatie/inventions, pct. 263-274

Please upload any document that may be relevant to the understanding or application of prior art under the applicable law.

PRIOR_AR1.docx

6. Please indicate whether any legal provisions, including those applicable to utility models or any other similar system (where different from those applicable to patents of invention), are relevant to the subject matter of this section and, if so, kindly provide the relevant information and references.

Law on the protection of inventions No.50/2008, Art. 52, 11 -12
www.agepi.gov.md/sites/default/files/law/national/l_50_2008-en.pdf

B. Novelty

1. How is the requirement of novelty defined under the applicable national or regional law?

Law on the protection of inventions No.50/2008, www.agepi.gov.md/sites/default/files/law/national/l_50_2008-en.pdf, Art. 8-9
Regulation on the procedure of filing and examination of the patent application and grant of patent, https://www.agepi.gov.md/en/legislatie/inventions, pct. 263-274

2. For the purposes of assessing novelty under the applicable law, are there any novelty-specific considerations regarding the relevant date or the scope of information taken into account, beyond those addressed in the Prior Art section of this survey?

Article 9. Non-Prejudicial Disclosure (1) For the application of Article 8, a disclosure of the invention shall not be taken into consideration if it occurred no earlier than six months preceding the filing date of the patent application and if it was due to, or in consequence of: a) an evident abuse in relation to the applicant or his legal predecessor; b) the fact that the applicant or his legal predecessor has displayed the invention at an international exhibition. An exhibition shall be considered as international if it is officially organized, if producers of more states participate therein and if the information about such exhibition has correspondingly been made available to public. (2) The provisions of paragraph 1(b) shall apply only if the applicant states, when filing the patent application, that the invention has been so displayed and files a supporting certificate within the time limit and under the conditions laid down in the Regulation on the procedure of filing and examination of a patent application and of grant of a patent, hereinafter referred to as the Regulation, approved by the Government.

3. Does the applicable law apply an absolute novelty requirement, or does it provide for any limitations or qualifications to novelty (for example, relative novelty or other restricted approaches), apart from any grace period mechanisms addressed separately in this survey?

Article 8. Novelty (1) An invention shall be considered to be new if it does not form part of the state of the art. (2) The state of the art shall be held to comprise everything made available to the public by means of a written or oral description, by use, or in any other way, before the date of filing of the patent application or of the acknowledged priority. (3) Additionally, the content of patent applications as filed with the AGEPI, of European patent applications and of international applications designating the Republic of Moldova and having entered the national phase, of which the dates of filing are prior to the date referred to in paragraph (2) and which were published, in accordance with this Law, on or after that date, shall be considered as comprised in the state of the art.

4. Apart from the approach described in question 3, are there any specific rules or contextual factors that affect what is taken into account as prior art for the purposes of assessing novelty under the applicable law?

Article 8. Novelty
(2) The state of the art shall be held to comprise everything made available to the public by means of a written or oral description, by use, or in any other way, before the date of filing of the patent application or of the acknowledged priority.

Please upload any relevant document to question 5.

PRIOR_AR1.docx
Prior_Ar2.docx

6. Please indicate whether any legal provisions, including those applicable to utility models or any other similar system (where different from those applicable to patents of invention), are relevant to the subject matter of this section and, if so, kindly provide the relevant information and references.

Article 52. Examination of Conditions for Grant of a Short-Term Patent (1) For the purpose of granting a short-term patent, AGEPI shall undertake a formal examination and a preliminary examination of the patent application in accordance with Article 47 and Article 48 and shall check whether the claimed invention meets the requirements of Articles 11 and 12. (2) During the examination pursuant to paragraph (1), AGEPI shall conduct a prior art search, comprising patents, patent applications and utility models filed with the AGEPI, European patent applications, European patents designating the Republic of Moldova, international applications designating the Republic of Moldova and having entered the national phase, having a filing date earlier to the filing date of the examined application and which have been published, in accordance with this Law, on or after that date, applications filed with the Eurasian Patent Office before 26 April 2012 under the Eurasian Convention, patents granted on the basis of applications filed before 26 April 2012 under the Eurasian Convention and patent documents relating to author's certificates of the former Union of Soviet Socialist Republics, and the general knowledge included in sources intended for the general public to which it became available before the filing date of the patent application.

C. Inventive Step

1. How is the criterion of inventive step or non-obviousness defined under the applicable national or regional law?

Article 10. Inventive Step (1) An invention shall be considered as involving an inventive step if, having regard to the state of the art, it is not obvious to a person skilled in the art. (2) If the prior art also includes documents referred to in Article 8 paragraph (3), these documents shall not be considered in deciding whether there has been an inventive step. www.agepi.gov.md/sites/default/files/law/national/l_50_2008-en.pdf

2. For the purposes of assessing inventive step or non-obviousness under the applicable law, what is the relevant date and what prior art or information is taken into account?

Regulation on the procedure of filing and examination of the patent application and grant of patent, nr. 528/2009, pct. 275-286, https://www.agepi.gov.md/en/legislatie/inventions

3. What is the standard applied under the applicable law to determine whether an invention involves an inventive step or is non-obvious, in particular as reflected in the concept of the "person skilled in the art", focusing on how the standard is understood or applied, rather than its formal legal definition?

The provisions of Regulation 528/2009 are strictly applied.

4. Are there any specific rules, limitations, or contextual factors that apply to the assessment of inventive step or non-obviousness under the applicable law?

Yes

Please indicate, where relevant, whether such rules or factors include geographic or territorial considerations affecting the relevance of prior art (for example, distinctions between domestic and foreign disclosures, uses, or publications, or territorial conditions applicable to particular categories of prior art) or any other particular considerations relevant to the assessment.

***Responses should be limited to such contextual factors asthey relate to the assessment of inventive step or non-obviousness, without restating general rules on what constitutes prior art.*:** pct. 275-286, Regulation on the procedure of filing and examination of the patent application and grant of patent, nr. 528/2009, pct. 275-286, https://www.agepi.gov.md/en/legislatie/inventions

5. Please provide any additional information relevant to the requirement of inventive step or non-obviousness under the applicable law, to the extent not already addressed in questions 1 to 4, including, where applicable, any guidance (for example, patent office manuals or guidelines) or key judicial decisions in your jurisdiction with general relevance to applicants or interested parties, captured by patent office practice.

For patents
For short-term patents

Please upload any document relevant to the requirement of inventive step or non-obviousness under the applicable law.

INVENT_STEP.docx

6. Please indicate whether any legal provisions, including those applicable to utility models or any other similar system (where different from those applicable to patents of invention), are relevant to the subject matter of this section and, if so, kindly provide the relevant information and references.

The inventive step required for patents differs from the inventive step for short-term patents, where it represents
Article 12. Subject-Matter Protected by a Short-Term Patent for Invention
(1) A short-term patent for invention shall be granted for any invention which is new, involves an inventive step and is susceptible of industrial application.
(2) An invention shall be considered as involving an inventive step within the meaning of paragraph (1) if it does not directly result from the state of the art and gives a technical or practical advantage.

D. Grace Period Mechanisms and Pre-Filing Disclosures

1. Does the applicable law provide for any mechanism under which certain disclosures made before the filing or priority date do not prejudice the patentability of an invention, in particular with respect to novelty and/or the legal effect on prior art?

Yes

If yes, please identify the relevant legal provisions (in primary and/or secondary legislation) and describe their operation.: Article 9. Non-Prejudicial Disclosure (1) For the application of Article 8, a disclosure of the invention shall not be taken into consideration if it occurred no earlier than six months preceding the filing date of the patent application and if it was due to, or in consequence of: a) an evident abuse in relation to the applicant or his legal predecessor; b) the fact that the applicant or his legal predecessor has displayed the invention at an international exhibition. An exhibition shall be considered as international if it is officially organized, if producers of more states participate therein and if the information about such exhibition has correspondingly been made available to public. (2) The provisions of paragraph 1(b) shall apply only if the applicant states, when filing the patent application, that the invention has been so displayed and files a supporting certificate within the time limit and under the conditions laid down in the Regulation on the procedure of filing and examination of a patent application and of grant of a patent, hereinafter referred to as the Regulation, approved by the Government. Law on the protection of inventions No.50/2008, www.agepi.gov.md/sites/default/files/law/national/l_50_2008-en.pdf

2. What is the duration of the mechanism referred to in question 1, during which the covered disclosures do not prejudice the patentability of the invention?

Article 9. Non-Prejudicial Disclosure
(1) For the application of Article 8, a disclosure of the invention shall not be taken into consideration if it occurred no earlier than six months preceding the filing date of the patent application and if it was due to, or in consequence of:
a) an evident abuse in relation to the applicant or his legal predecessor;
b) the fact that the applicant or his legal predecessor has displayed the invention at an international exhibition. An exhibition shall be considered as international if it is officially organized, if producers of more states participate therein and if the information about such exhibition has correspondingly been made available to public.
(2) The provisions of paragraph 1(b) shall apply only if the applicant states, when filing the patent application, that the invention has been so displayed and files a supporting certificate within the time limit and under the conditions laid down in the Regulation on the procedure of filing and examination of a patent application and of grant of a patent, hereinafter referred to as the Regulation, approved by the Government.
Law on the protection of inventions No.50/2008, www.agepi.gov.md/sites/default/files/law/national/l_50_2008-en.pdf

3. Where such a mechanism exists, which categories of disclosures are covered by it?

Article 9. Non-Prejudicial Disclosure
(1) For the application of Article 8, a disclosure of the invention shall not be taken into consideration if it occurred no earlier than six months preceding the filing date of the patent application and if it was due to, or in consequence of:
a) an evident abuse in relation to the applicant or his legal predecessor;
b) the fact that the applicant or his legal predecessor has displayed the invention at an international exhibition. An exhibition shall be considered as international if it is officially organized, if producers of more states participate therein and if the information about such exhibition has correspondingly been made available to public.
(2) The provisions of paragraph 1(b) shall apply only if the applicant states, when filing the patent application, that the invention has been so displayed and files a supporting certificate within the time limit and under the conditions laid down in the Regulation on the procedure of filing and examination of a patent application and of grant of a patent, hereinafter referred to as the Regulation, approved by the Government.
Law on the protection of inventions No.50/2008, www.agepi.gov.md/sites/default/files/law/national/l_50_2008-en.pdf

4. Are there any formalities or procedural requirements that must be fulfilled in order to rely on the mechanism identified in question 1?

Yes

Please describe any such requirements, where applicable, including, for example, the need to file statements, declarations or notices, to submit certificates or other supporting evidence, or to comply with any timing or notification requirements or any information relating to the burden of proof. **:** Statement of Non-Prejudicial Disclosure of Information Relating to an Invention 154. The statement of non-prejudicial disclosure of information relating to an invention shall be made on filing the patent application. The statement shall be justified by a certificate, which must comply with the conditions set out in Points 152 and 153 of this Regulation; 155. For the application of Article 9, paragraph 1, point a), of the Law, an evident abuse in relation to the applicant or his legal predecessor, as well as to the inventor having surrendered his right in the invention, shall be the disclosure by a third party: a) who has derived the invention from any of these persons; or b) to whom the invention has been communicated by one of these persons, provided that he does not disclose the invention to public. Regulation on the procedure of filing and examination of the patent application and grant of patent, https://www.agepi.gov.md/en/legislatie/inventions

5. Does the applicable law provide for prior user rights or other protections for third parties who may be affected by an invention that has benefited from a graced pre-filing disclosure?

No

***If yes, identify the relevant legal provisions (including any provisions in primary and/or secondary legislation), and describe the conditions under which such rights or protections arise (for example, good-faith use of the invention prior to the filing or priority date), as well as how such rights or protections operate.* :**

6. Please provide any additional information that may be relevant, including, where applicable, any guidance (e.g. patent office manual/guidelines) or key judicial decisions in your jurisdiction with general relevance to applicants or interested parties, captured by patent office practice.

Law on the protection of inventions No.50/2008, www.agepi.gov.md/sites/default/files/law/national/l_50_2008-en.pdf
Regulation on the procedure of filing and examination of the patent application and grant of patent, https://www.agepi.gov.md/en/legislatie/inventions

Please upload any document that may be relevant to grace period mechanisms and/or pre-filing disclosures.

Non-Prejudicial_Disclosure.docx

7. Please indicate whether any legal provisions, including those applicable to utility models or any other similar system (where different from those applicable to patents of invention), are relevant to the subject matter of this section and, if so, kindly provide the relevant information and references.

the provisions regarding Non-Prejudicial Disclosure also refer to short-term patents

Submission of information concerning other aspects of national/regional patent law

E. Sufficiency of Disclosure

DISCLOSURE.docx

F. Exclusions from Patentable Subject Matter

EXCLUSION.docx

G. Exceptions and Limitations to Patent rights

LIMITATION.docx

Final review before submission

Confirmation of submission

I am aware that by clicking "Submit" below, my responses will be sent to the SCP Secretariat.