

## Romania

### Administrative procedure

#### Opposition

There is no opposition system in Romania.

#### Appeal

An appeal procedure for the patent applicant is available before publication of the grant or rejection of the patent application. Third parties may not participate in these proceedings, but may request revocation of a patent (see “Revocation” below).

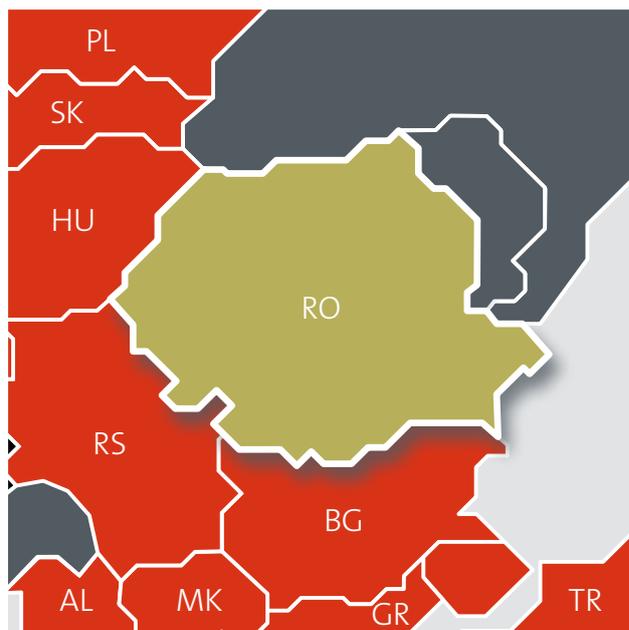
An appeal may be initiated by the patent applicant after a decision taken by the Examination Division during substantive or preliminary examination. Such decision may be rejecting or granting the protection. The appeal must be formulated within three months of communication of the Examination Division’s decision.

- (i) An appeal against a decision taken during substantive examination, filed in writing and with due justification, accompanied by proof of payment, must be settled (released pending) by a Board of Appeal within the Appeal Department of the State Office for Inventions and Trademarks (hereafter the “Patent Office”) within three months of its registration (Art. 50 PA).
- (ii) An appeal against a decision taken during preliminary examination, made in writing and with due justification, accompanied by proof of payment of the legal fees, must be settled (released pending) by a Board of Appeal within the Legal Department of the Patent Office within three months of its registration (Art. 50 PA).

The decision of the Patent Office’s Board of Appeal may be appealed against before the Bucharest Tribunal within 30 days from communication (Art. 54 PA).

An appeal against the Bucharest Tribunal’s decision may be lodged within 30 days from communication, with the Bucharest Court of Appeal (Art. 54 PA and Art. 468 Code of Civil Procedure).

The Bucharest Tribunal has specialised IP judges (judges at



the Bucharest Tribunal are trained in the area of IP, but there is no specialised IP section).

#### Revocation

Any interested third person may apply to the Patent Office in writing, on valid grounds, for revocation of a patent. An action may be brought within six months from publication of the mention of grant of the patent (Art. 49 PA).

Where the grounds for revocation relate to only a part of the patent, the patent may be revoked in part. The revocation request must be settled by the Board of Appeal within three months of its registration.

Patent claim amendment is possible if the disclosure does not extend beyond the content of the application at the date of filing. Such situations do not frequently occur.

The Patent Office may revoke its decisions *ex officio*, for failure to comply with the conditions laid down by the Patent Law, until notification (Art. 28 PA).

## Civil procedure

### Infringement

Infringement actions may be brought by the patent owner and will be considered by the ordinary courts of first instance (Art. 60 PA) where the defendant is domiciled. If the defendant's domicile is Bucharest, the Bucharest Tribunal is the competent court.

Litigation concerning inventorship, patent ownership or other rights arising from the patent is subject to the jurisdiction of the ordinary courts of first instance.

If the patent owner, his successors in title or any other person asserting the industrial property right with the owner's consent provides credible evidence that his patent-protected industrial right is subject to a current or imminent illegal act that is likely to cause him irreparable prejudice, an order for provisional measures may be requested, such as:

- a) prohibition or provisional cessation of the infringement
- b) appropriate measures for preserving evidence

Infringement is also considered a criminal offence and is punishable by a fine or imprisonment. The proceedings are initiated *ex officio* (Art. 56 PA).

Expert opinions are permissible and may be binding on the court as regards the technical aspects of the patent (if experts are appointed by the court).

### Nullity/counterclaim for revocation

An invalidation request can be made during the entire lifetime of a patent. Invalidation of a patent granted by the Patent Office may be requested at the Bucharest Tribunal after the time limit for a revocation request has elapsed (Art.51 PA). Partial annulment is available.

If the nullity action is withdrawn by the claimant, the proceedings will not be continued.

In infringement proceedings the defendant has the right to bring a counterclaim in the court in which the original infringement claim is pending, requesting the invalidation of the patent. The counterclaim may be submitted within the time limits set by common law rules on civil procedure (usually, with 25 days from the date of the receipt of the original request) and it is judged together with the original request.

## Remedies

Damages under civil law, seizure, destruction, criminal sanctions (imprisonment, fine).

### Other actions

None available.

### Appeal

The Bucharest Tribunal decision may be appealed within 30 days to the Bucharest Court of Appeal (Art. 52 PA). Decisions of Bucharest Court of Appeal the may be appealed before the High Court of Cassation and Justice within 30 days from communication.

### Parallel proceedings

Where there are parallel proceedings (e.g. in case of EPO oppositions and/or appeals) between national courts and the EPO, the court will generally stay national proceedings until EPO proceedings are finalised.

### Arbitration/mediation

Mediation is available as a procedure for settling disputes concerning patents and is performed by authorised mediators.

The legal framework for the conduct of such proceedings is provided by Law No. 192/2006 on mediation and the mediator profession, as amended and supplemented.

### Enforcement

All decisions of the courts in infringement cases, e.g. permanent injunctions, are enforceable by law at the date when they become final. In cases where the final court decision is not executed voluntarily, court judgments are executed by a judicial enforcement officer whose office is located in the jurisdiction of the appeal court where the person who failed to comply with court decision has his/her residence/registered office or where the property is located. If that person's residence/registered office is located abroad, any judicial enforcement officer is competent. The judicial enforcement officer may act only at the request of the interested party, which is the person entitled to obtain the enforcement of the court decision.

During court proceedings, the courts have the competence to order provisional measures, such as prohibition or provisional cessation of the infringement or appropriate measures for preserving evidence, under the terms of the Code of Civil Procedure. All provisional measures ordered by the courts by means of a Presidential Ordinance are enforceable by law at the date when they become final. In cases where the Presidential Ordinance is not executed voluntarily, it may be executed by a judicial enforcement officer, at the request of the interested party.

Failure to comply with a court judgment (court order) which is final and enforceable is also punishable as a criminal offence. The Public Ministry (through prosecutors) is the authority responsible for enforcing an order in such cases of criminal offence, on the basis of a criminal complaint submitted by the interested party.

### **Compulsory licence**

According to Art. 43 PA, at the request of any interested person, the Bucharest Tribunal may grant a compulsory licence in the following situations:

- a) where the invention has not been exploited or has been insufficiently exploited in the territory of Romania, and the patent owner cannot justify his inaction, and where no agreement has been reached with him regarding the conditions and commercial methods for applying the invention;
- b) in cases of national emergency;
- c) in other cases of extreme emergency; and
- d) in cases of public use for non-commercial purposes.

### **Relevant national law**

Patent Law No. 64/1991 - as last amended by Law No. 28/2007, republished in 2014 [cited as: PA]

## Competent authorities or courts

