

## THE PATENT LAWS IN ROMANIA: THE BEGINNINGS

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This is a comparative analysis of all the draft bills on patents – as they were found in the 19th century archives. The fact that the 1865 and 1880 draft bills did not pass should be understood in the way that the development of the Romanian industry and trade during those times was not influenced by that ethical rigidity which must characterize the economic relationships; following the practice “inherited from the Ottoman rule, they were considered for a long time as simple and ingenious imitation procedures” and, according to the protection of the intellectual property rights, “it was a matter of quasi offences or even offences.”

The study of the beginnings helps us understand better the present situation in this field as well as the necessity of taking measures to improve the industrial property juridical regulations.

The first half of the 19th century marked, for the Romanian Principalities, the beginning of the modern era. It was a period in which scientific personalities, writers, businessmen and craftsmen made themselves conspicuous. The revolutions of 1821 and 1848 were taking place. The *Règlement Organique* (Article 158) opened up the way for the industrial development in Moldavia and Wallachia by establishing that the “prince shall protect the foundation of factories and manufacturers by bringing from abroad craftsmen and workers who wish to stay here in our country and by giving rewards also to those who would develop any branch of any industry.”

It was the period when modern ideas for organising and developing the agricultural processes (including the generalisation of the usage of the iron coulter plough) were promoted in a middle of an extensive campaign for tracing natural resources, especially “all the metal veins”; now the first manufacturers of vegetable oil, ceramics, the first paper, glass, cloth, bricks and sugar factories were founded.

In April 1831, a decision was taken referring to the regulation and control of the measuring units (cubits, balances, scales) “with a view to their unification in the entire principality”. The first experimental physics and chemistry laboratories were established, the bases of the Romanian technology in the fields of mathematics, physics, chemistry, mineralogy were set up. The first technical schools in the Romanian Principalities were founded and the first Romanian books and text books promoting scientific knowledge were published.

To develop the local manufacturing industry, some measures for liberalization and stimulation of “skilled manufacturers” were adopted. Even since

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1823 Wallachia's *Divan*, with the prince's approval, decided to break up the monopoly of the Mărcuța kerchief factory so that "all the kerchief-makers who have learnt and know this trade should be free to open as many factories as they can and will." In 1826, the Prince of Wallachia granted T. Mamelogioglu – who had learnt in Europe the skill of making new clothes from old ones – the right to open such a factory with the obligation that "ten children from this country should acquire this ability and become apprentices."

The advance of the industrial development was also expressed by the promotion of the world newest scientific and technical knowledge. In 1818, Prince Ioan Gh. Caragea ordered the first experiences in aerial navigation to take place in Bucharest. In the presence of the Prince and of his daughter Ralu, an air balloon of an 8 meter diameter was raised on the Dealu Spirii (the Caragea "Bubble"). If in the Romanian Principalities (1838 in Wallachia and 1841 in Moldavia) the usage of steam engine took some 70 years to be adopted after its invention in 1765 by James Watt, in 1842 the first daguerreotype studio was established in Bucharest, only three years after it had been patented.

In 1840, dr. Zucker built the first Romanian thresher; in 1841 thanks to Ion Ionescu de la Brad, champagne was produced in our country for the first time using the method employed by Dom Pérignon (1638–1715), the monk from the Hautvillers abbey in Champagne (France). In 1857 the Romanian Principalities were mentioned in the international statistics as the first and the only countries in the world having an industrial crude oil production (275 tones) obtained in 18 places situated in the counties of Prahova, Dâmbovița, Buzău, Bacău. That same year, 1857, at Rîfov, near Ploiești, the "Lumina" oil distillery, the first in our country and the third in the world was put into operation. A similar "gas factory" was functioning in 1858 in Moldavia.

The above mentioned facts should not lead us to the conclusion that in the first half of the 19th century the Romanian Principalities were facing an industrial development which would have changed them into highly industrialized European provinces; on the contrary, such aspects were only modest attempts to integrate the Romanian Principalities into number of those European countries which were in full industrial development.

A legislative initiative in Wallachia meant to lead to the accomplishment of the same aim, *i.e.* the development of the local industry, was the proposal made by the Minister of Finance, C. Steriade, dated February 15, 1860. His memorandum to the Council of Ministers stated that, "due to the fact that our local industry keeps on staying, and due to the importance of this fact, I have studied the means and the institutions of various states that are also confronted with such problems, and I have elaborated a draft bill for patents in which I have specified the rights and the duties. I submit this bill to your approval so that I may send it to the legislative bodies."

In the ground exposition to this draft bill, the relationship between the inventor and society was defined as follows: “The legislation for the patents aims to regulate the relationship between the inventor and society, specifying the rights of the former without sacrificing those of the latter; from here there results the necessity of a contract which, while ensuring the inventor’s right to benefit from his industrial invention, blocks up his rights for a certain number of years, after which that invention can be considered as belonging to the public. The advantages of this mutual agreement are useful for both parties; the inventor is protected against counterfeiting; he can make it public, free of any kind of misfortunes; he can benefit from all the results. By this act society acquires knowledge of a project which would otherwise be lost because the inventors would fear and consequently work secretly and take their secret to their grave.”

Even from those times, the patent was “not a privilege but an act confirming a property, not a monopoly, nor a favor or a reward, but a title which makes known the property as belonging to the first inventor of an object which had not existed before. The invention belongs to its author because he gave life to an object not having existed before, gave value to “something” without a price, gave movement to a nonactive object.”

The draft bill proposed by Minister C. Steriade in February 1860 had been elaborated mainly by translating the French patent law passed in 1844. It was not successful at that date, being obstructed by the Council of Ministers. One of the reasons was the absence of a proper administrative structure, capable of pronouncing on some bills meant to regulate new domains, unknown for those times in the United Principalities.

On February 11, 1864, two years after the closing up of the Focșani Central Commission, Prince A.I. Cuza promulgated the bill for establishing the State Council, an extremely important institution for the development and organization of the legislative system of the modern Romanian state, an institution which was meant to prepare the draft bills the government was to submit to the legislative assemblies. In 1863, the Ministry of Agriculture, Trade and Public Works was established, which played an important part in the organization of agriculture and, in 1864, it became the Ministry of Internal affairs, Agriculture and Public Works. On June 14, 1865, General Ioan Emil Florescu, a very good organizer and a novelty promoter, who had studied in Paris, was appointed head of the Ministry. On September 2, 1865, he sent the Note No. 10176 to the State Council where he specified: “Being appointed to this Ministry, I see the necessity of a bill that must regulate the issue of the patents for various inventions. With this purpose in view, and in order to comply with requests when they come up, I am asking you, Mister Vice-President, to prepare this draft bill and to inform the Ministry...”

On September 11, 1865, General Ioan Emil Florescu sent another Note (No. 10449) to the State Council to make known that “this draft bill has been

elaborated and I am asking you to submit it for discussion to the State Council and to send it back to me to submit it for approval by the legislative bodies in proper time.”

The draft bill on patents transmitted to the State Council on September 11, 1865, had been elaborated also based of the 1844 French law but, as compared with the draft bill from February 1860, it was better prepared, with a more accurate style, with new articles, referring especially to the stimulation of the local industry, articles which exceeded the domain of industrial property. In 62 articles, systematized in 7 chapters (the 2nd chapter having 5 sections and the 4th two sections) this draft bill specified what should be considered as “inventions”, what could not be patented, which was the validity period, which were the necessary formalities in order to get a patent, additional certificates, rights for foreigners, nullities and loss of rights, relative nullity and loss of rights, relative nullity and decline actions, punishments; a distinct chapter was dedicated to “special stipulations in the advantage of the unpatented industry in Romania”.

According to the provisions of the 2nd article of the draft bill, were considered inventions or new discoveries “the invention of new industrial products” and “the invention of new means or a new application of the known means in order to obtain a result or an industrial product; Article 3 specified the inventions that could not be patented: “the pharmaceutical products, the finance or credit plans or combinations, any invention which does not produce a material or selling result, the inventions contrary to public order, morals or manners, laws of the country.”

To obtain a patent, it was necessary for the author to submit, in a closed envelope, “to the prefect of the district he lives in or of any districts he wants to live in: application, description, drawings or necessary samples”, as well a list of the deposited pieces. The validity period (5, 10 or 15 years) had also to be mentioned in the application. An official report drawn up at the prefects office had to indicate for each deposit the day and hour when the pieces were deposited. Within 5 days as from the official report, the prefects were compelled to send the registered pieces, without opening the envelope, to the Ministry of Internal Affairs, Agriculture and Public Works, together with a copy of the official report. The patents whose applications were adequate, were issued “without previous examination, on the risk of the applicant and without vouching for the reality, novelty, merit of the invention, the fidelity or precision of the description.” A decision of the Ministry that ascertained the correctness of the application was issued to the applicant and constituted the patent. Notified copies of the description and drawings were enclosed to this decision.

A princely decree, published in the Official Gazette, made all the issued patents known every three months.

The patent holder, or those who had rights thereof, could make changes, improvements or completions, during the entire validity period of the patent, by

filling in the same documents as for the main invention. No one else but the author of the main invention could ask for a completion certificate in the first year of validity. However, anyone who wanted to be issued a patent for a change, improvement or completion to any patented invention had to make an application addressed to the Ministry of Internal Affairs, Agriculture and Public Works; this application would be taken into consideration only one year after the requested completion certificate was issued, the author of the invention having priority for such completion certificates.

A catalogue including all the patents issued during the preceding year was to be published at the beginning of every year. The description and drawings collection as well as the published catalogue were deposited at the secretariat of each district prefect's office for free consultation. When the validity terms expired, the original descriptions and drawings were deposited at the State Archives.

The 1865 draft bill on patents stipulated severe punishments for counterfeiting, such as fines or prison up to five years in case of relapse.

According to the provisions of the discussed bill, import patents could be issued if the object to be patented was unknown or nonexistent in Romania and if that particular object was of great utility or for public benefit. Such a patent was issued only after a preliminary examination of the object mentioned in the application by competent people, "by establishing the utility of this object for the domestic industry and by determining that it did not belong to that class which was not allowed to be introduced or applied in the country." The validity period for such an important patent was five years at the most.

The 1865 draft bill on patents prepared by the Ministry of Internal Affairs, Agriculture and Public Works included special provisions for stimulating the development of the local industry. In Article 56 of this draft, it was stipulated that "whoever native would like and prove competence and capacity to establish in the Romanian Principality any new industrial enterprise or any important enterprise required by any internal need, based on a preliminary inquiry by a government-accepted competent man, and after it was proved that the enterprise was useful to the industry and society, without any prejudice to the interdiction provision mentioned in the present bill, and without having the claim for an exclusive patent on the products of this enterprise, a patent that could help establishing, encouraging and making things easier for his enterprise, that native could receive the following incentives from the government:

- a) exemption of patent taxes for his factory or enterprise;
- b) exemption of payment of rent or taxes for the rights to exploit a certain area of the public domains which was necessary for the building of that enterprise or for exploiting underground matters except salt;
- c) grant of interest-free loans from the public funds, with solvency guarantee from the undertaker, invested in all the legal forms;

d) protection for the products of that industrial enterprise against any customs rights when the products were exported over the boundaries of the Romanian Principality.”

These incentives were to be granted for maximum 10 years and only “after a mature consideration by the government, after its ascertaining and becoming convinced of the utility of the procedure and after being signed by the head of the State.”

The draft bill proposed by the Ministry of Agriculture, Trade and Public Works in September 1865 was discussed in the Administrative Committee of the State Council. Consequently, P.P. Carp – at that time participant in the State Council and member in the committee for the analysis of draft bills – elaborated a new variant for the draft bill on patents; this new variant was different from the initial one in the following respects:

1. In Article 3 defining unpatentable inventions, the following specification was added: “If a patent is granted for an industrial product whose medical property would be discovered only after the patent was granted, this patent will keep its power.”
2. In Article 3 were eliminated the references about the unpatentable inventions which were contrary to the public order, good manners and the laws of the country, the reason being that these references were “simple repetitions of paragraphs 3 and 4 from Article 31, Title IV, Section I, entitled “On nullities and right losses.” It was considered that the maintaining of these references in Article 3 could be interpreted as if in these cases the government had the right to refuse patent granting, which was against the principles of the law which decided that the government had no rights to examine it beforehand.”
3. In Article 4, were eliminated the provisions according to which “the patent holder loses his rights if he misses a payment”, on the ground that “this disposition stands among the cases of nullity in Article 31 and its maintaining here would complicate things because the patent nullity would take place in the absence of the holder, without it being necessary to go to court, which is contrary to the principles admitted by law.”
4. Article 9 was eliminated as it was considered to be “a simple repetition of Articles 28, 29 and 30” referring to foreigners’ rights. In fact, Article 9 stipulated some exclusive rights for foreign entrepreneurs who required to establish factories or product-making units in Romania following an invention patented abroad, while Articles 28, 29 and 30 referred to the method of granting Romanian patents to foreign applicants.
5. In Article 31 (referring to the cases when the patent was considered null) a new paragraph was introduced stipulating that “when the industrial use of a patented object offends somebody’s intellectual property, the patent will be annulled.”

6. In Article 47, Title V, entitled “On counterfeit, pursuits and penalties”, the following phrase was introduced at the end of the initial text: “without the court being able to decide on losing the absolute rights of the patent, this being the competence of a civil court.” In backing up this change, it was argued that “the problem had been discussed in France before courts; a person accused of counterfeiting proved that the object of the patent he had just counterfeited was not a new one and thus he was not punished but the counterfeited and confiscated objects remained confiscated on the reason that a punishing decision could not annul a patent even if it had been granted incorrectly, this being done only by civil courts.”
7. Title VI entitled “Special provisions in the advantage of unpatented industry in Romania” was completely annulled based on the fact that “this title includes only provisions dealing with monopolies and concessions given by the Government, thus not dealing with patents. To ask the Government to monopolize the introduction of new products and/or objects seemed dangerous to the industry and inadequate in a project meant to defend the industry, not to suppress it. Either the introduction of these objects is required by the public, and in this case the person who introduces them is rewarded by selling these products or objects and he does not need the Government’s protection; or this introduction is not required, in which case the Government’s protection becomes harmful.” In fact, by eliminating completely Title VI, Article 56 mentioned above, which stipulated incentive measures for local entrepreneurs, was also eliminated.

On September 30, 1865, the State Council approved the report of the Administrative Committee regarding the draft bill on patents and, on October 4, 1865, the draft bill on patents elaborated by P.P. Carp, consisting of only 51 articles, was sent (Address No. 2084) to Nicolae Crețulescu, president of the Council of Ministers.

The official report drawn up by the Administrative Committee presented the necessity to introduce the modifications in the analyzed bill considering that this draft “although based on the French law, included some changes which contradict even the principles admitted in the draft bill; therefore, the Committee decided to introduce some changes in the draft bill, rejecting, on the one hand, the Ministry’s additional clauses, but introducing, on the other hand, some changes to the French law, changes that were necessary for a better understanding of the law.”

In order to discuss the draft bill on patents approved by the State Council, General Ioan Emil Florescu, Minister of Internal Affairs, Agriculture and Public Works, presented in the Council of Ministers a supporting report in which he stated that “according to my observations, this draft bill is elaborated on the mentioned principles and contains the conditions for granting the patents, the taxes that must be paid to the State, the way the diplomas are given, the penalties for counterfeiting

and the way they are enforced, other conditions to be fulfilled by the person applying for a patent to be approved by the State Council. That is why I ask for your permission to send this draft bill to be discussed and approved by the legislative bodies so that the country should be endowed with such a useful institution.”

The real motivation for the 1865 Law on patents was the ensurance of the protection of foreign industrial property and, consequently, the attraction of new capitals and techniques from abroad. In the mentioned report, general I.E.Florescu said that: “I think we shall not be lacking the assistance of the foreigners who, if wanting to benefit from the valuable raw materials and the obvious facilities our country is offering, will supply us with their capitals and will give an impulse to our nation; thus we shall develop our national industry.”

The Council of Ministers of the Romanian Principality deliberated on January 11, 1866 upon the draft bill on patents; in the official report it was underlined that as the State Council approved the draft bill and, “on considering the need to provide the country with such a useful institution meant to give an impulse to the national spirit with a view to develop the country industry”, the Council of Ministers approved the draft bill on patents in the form presented by the State Council and “will send it to the legislative bodies after His Majesty Al.I. Cuza approves it.”

But, as is known, Al.I. Cuza was forced to abdicate on February 11, 1866 and thus he did not sign the document by which the draft bill would have been sent to the legislative bodies.

The issue of the Law on patents was again discussed in Romania only in 1876, after the ratification of the Trade Agreement between Romania and Austria-Hungary, in Vienna, on June 22, 1875. In the Official Gazette No.177/May 30, 1876, a report of the Romanian Minister of Foreign Affairs was published “concerning the measures which must be taken in order to apply the Agreement.” Tu put into practice such measures, in a letter addressed to the Minister of Foreign Affairs, the Minister of Agriculture, Trade and Domains requested that “the diplomatic agents in Paris, Rome, Berlin and Vienna should transmit copies of the following laws:

1. the Law on trade and factory marks, drawings and models as well as the regulations in force;
2. laws, decrees and ministry decisions concerning the patents.”

As a result of studying the received documents, especially the Italian and French laws, in 1880 a new draft bill on patents was elaborated. But as is known today this draft bill was not approved.

In the second half of the 19th century, the Romanian industry was at the beginnings of its development and was not in possession of a high inventive



potential which could justify the passing of a bill on patents. Those who were against such laws, especially the local industrialists asserted that “the encouraging of any enterprise should last exactly as long as it is indispensable and a granted patent should not constitute later a privilege without any economic utility; that is why it was established that the privileges granted for a fixed time period should be avoided.”

The fact that the 1865 and 1880 draft bills did not pass should be understood in the way that the development of the Romanian industry and trade during those times was not influenced by that ethical rigidity which must characterize economic relationships; following the practice “inherited from the Ottoman rule, they were considered for a long time as being simple and ingenious imitation procedures” and, according to the protection of the intellectual property rights, “it was a matter of quasi-offences or even offences.”

Knowing the work carried out in Romania in order to elaborate draft bills on patents helps us understand the difficulties encountered during the years by the creation of a Romanian thinking on industrial property. The study of the beginnings helps us understand better the present situation in this field, as well as the necessity of taking measures to improve the juridical regulations under whose incidence both specialists and possible inventors should act.

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