

PROTECTION OF DRAWINGS AND PATTERNS IN INTERNATIONAL LAW

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Abstract

Intellectual property occupies a fundamental place in the legal field, namely it represents the creation, development and evolution of society, with implications in all areas of activity. In recent time, highly advanced technology and the evolution of society in all fields, including in terms of designs, needs expeditious protection, considering also the amazing development recorded in this regard. In order to be protected, designs (and others) should benefit from such protection not only in the country of origin; namely, protection must be ensured internationally, otherwise it would not have the desired effect and the aim sought, meaning that the rightful authors would no longer enjoy all the rights they have over their creation.

This paper aims to specify the applicable international intellectual property laws, namely on protection of designs, the main objective of these legal regulations, and some detailing considered emblematic to be mentioned, our country's accession to these international bodies, as appropriate, or their applicability into the national legal framework. Thus, the goal consists in identifying and detailing the protection that the designs enjoy at international level, respectively the international legislation implementation in the domestic legal framework, and our accession to the international organizations, or amending domestic legislation so as to correlate with the international laws, that is to protect intellectual property through this procedure, including the significance of these international regulations on protection of designs, both nationally and internationally.

Keywords: *protection, designs, models, national and international law, legislation implementation.*

Introduction

The field covered by the theme of this study is represented by intellectual property seen at an international level, in the sense of making a brief presentation of significant legislative evolutions, as well as of its implementation at national level. The importance of this study resides in the fact that such work aims at pointing out the effect of international enactments on domestic legislation predominantly concerning the protection of drawings and patterns. Thus, the envisaged objective is to give due consideration to these regulations, and to question their enforcement at domestic level. Drawings and patterns pertain to the field of intellectual property and do not need any special protection, as they are the products of our intelligence, the proof of development and evolution. Creation in general has these traits, and this category integrates and identifies itself with them. Without creation we would be so much poorer, and evolution, both technological and of any other kind, would be greatly affected. This study understands to respond to the undertaken goals by presenting a detailed account of international regulations and correlate domestic norms in relation therewith. The subject matter is well known, as most studies deal with the topics presented herein, or contain references that are made to such matters, and it is also impossible to talk about an international protection of intellectual property without referencing the facts outlined in this study.

1. Necessity of international legal regulations

Just as Yolanda Eminescu emphasized, quoting Marcel Plaisant, “*creators’ rights have an international nature, the spirit of which is a reflection of the collective soul of one nation, and, at the same time, of humanity and of an epoch of civilization*”¹.

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¹ Yolanda Eminescu, *Protecția desenelor și modelelor (The Protection of Drawings and Patterns)*, Lumina Lex, Publishing House, Bucharest, 1997, page 64, apud Marcel Plaisant, *Traité de droit conventionnel international concernant la propriété industrielle*, Sirey, Paris, 1949, pages 5 and 8.

The protection of industrial creation internationally had started to take place after the first half of the XIX-th century based on certain *Bilateral Conventions*² providing for the mutual recognition of rights, but they were not widely encompassing enough, nor did they observe a certain uniform standard. Today, it can be stated that these *Conventions* have managed to partially set forth certain general principles ensuring a minimal equity and equality between the nationals of signatory states. Romania concluded such *Conventions* with Greece, Italy, Great Britain, Yugoslavia, Czechoslovakia, Spain, Hungary, France, Belgium, Switzerland, and so on and so forth.³

Likewise, the *Convention for the Protection of Factory Brands and Trademarks*,⁴ concluded between Romania and France, which, at Art. 1 provided that: “*Romanian subject in France and French people in Romania shall enjoy the same protection as all other nationals as regards factory brands and trademarks, i.e. the various signs which serve for differentiating products of an industry or trade, such as: name under a special form, trade names (denominations), printed texts, stamps, seals, reliefs, vignettes, numbers, covers, and similar*” or *The Arrangement on Repressing Goods’ Fake Indications of Origin*⁵, which, at Art. 1, stipulated that “*Any product bearing a fake indication of origin, in which one of the two contracting States or a locality situated in one of them, might be, directly or indirectly, shown as country or place of origin, shall be confiscated when imported into each of the two States*”.

Moreover, it is worth mentioning the *Convention for the Protection of Industrial Property and Factory Brands*⁶, concluded between Romania and Belgium, which, at Art. 1, provided that: “*Belgian citizens in Romania and Romanian citizens in Belgium shall enjoy, in regards of factory brands and trademarks, the same protection just as nationals*” or the *Trade Convention*⁷ concluded with Switzerland, which, at Art. 5, highlighted that: “*with respect to factory brands or trademarks and the other names assimilated to the factory brands or trademarks by the laws of the country where they had to be registered, the industrialists, producers and traders settled in Romania shall enjoy in Switzerland, and the industrialists, producers and traders settled in Switzerland shall enjoy in Romania, the same protection as the nationals or subjects of the most favored nation. The Romanians from Switzerland and the Swiss from Romania will have to fulfill the formalities prescribed by the laws and regulations governing this matter*”.

This brief description of the first conventions concluded by Romania, which included also clauses regarding the protection of drawings and trademarks, cannot be concluded without mentioning also the *Trade Convention* concluded with Austro-Hungary on 22 June 1875, which contained a provision according to which citizens of the two states would enjoy, while on the other’s territory, the same protection as their nationals “*for everything that was connected with factory brands as well as drawings and patterns of any kind*”, and the *Trade Convention Concluded with*

² Such conventions were concluded by France with England in 1852, 1861 and 1881, with Spain in 1853, and 1880, with Luxembourg in 1856 and 1865, with Italy in 1862, and 1864; Germany concluded conventions with Spain in 1880, with Italy in 1858, with the Netherlands in 1858, with Portugal in 1866 and so on.

³ For more details, see Florian Porescu, Vasile V. Longhin, Paul I. Demetrescu, *Legea mărcilor de fabrică și de comerț, Comentariu și jurisprudență (Law on Factory Brands and Trademarks, Comments and Case Law)*, Eminescu S.A. – Institute for Graphic Arts and Publishing House, Bucharest, 1937, pages 241-249.

⁴ Published in the Official Gazette of 31 March/12 April 1889, apud Florian Porescu, Vasile V. Longhin, Paul I. Demetrescu, *op.cit.*, pages 241-242.

⁵ Published in the Official Gazette of 27 February/11 March 1895, apud Florian Porescu, Vasile V. Longhin, Paul I. Demetrescu, *op.cit.*, pages 243-244.

⁶ Published in the Official Gazette of 24 May 1881, apud Florian Porescu, Vasile V. Longhin, Paul I. Demetrescu, *op.cit.*, page 241.

⁷ Published in the Official Gazette of 19 February/3 March 1893, apud Florian Porescu, Vasile V. Longhin, Paul I. Demetrescu, *op.cit.*, pages 241-241.

Germany in 1877, which was to be applied once the protection of “patterns, drawings and trademarks”⁸ was adopted in Romania.

Therefore, it was necessary to have, at international level, a protection of industrial creations, protection which is currently done by mutual conventions concluded between these countries, which set forth a few general principles ensuring minimal equity and equality between the nationals of signatory states, as well as by Regulations adopted at international and European level whereby attempting to harmonize the legislation regarding intellectual property, being essential for the economy to institute, both at community, and international level, a system aimed at protecting drawings and patterns that could be more accessible and better adjusted to market necessities.

The drawing or pattern of a product is the element which increases its commercial value and makes it sell better. That is why, in the conditions of the economic globalization and international circulation of goods, it was necessary that a drawing or pattern be protected, both at community and international level. The protection given to a drawing or pattern guarded the holders who registered the respective drawing or pattern, as the case may be, and gave them the exclusive right to file an opposition against any kind of copy or unauthorized imitation of the respective drawing or pattern by any third parties. Consequently, the protection contributed to guaranteeing an equitable income from investments and the sale of individualized goods based on drawings or patterns, acknowledged and protected at international level.

The limitation of the protection of drawings or patterns to the territory of the various states may be an obstacle in the way of the free circulation of goods, reason for which it was necessary to create, at international level, a unified system for obtaining the protection of a drawing or a pattern, to ensure international protection.

The protection of drawings and patterns contributed to the development of commercial activities and to encouraging the export of national products, thus boosting economic development.

2. Common legal regulations regarding the protection of drawings and patterns in conventional law

2.1. The Paris Convention of 1883 on the protection of industrial property

Considering that, as already mentioned above, the clauses of the *Conventions* concluded between states regarding the mutual recognition of rights, were not widely scoped enough, nor did they observe a certain uniform standard, this system became insufficient and other more efficient forms of cooperation started being sought after.

Thus, the first discussions regarding the necessity of certain regulations and international Unions in the field of industrial property took place on the occasion of the universal Exhibition in Wien of 1873, the Trocadero Congress of 1878, and the International Paris Congress of 1880⁹.

As mentioned in the Romanian specialized literature¹⁰, “the development of transports and, especially of railway transports, was at the root of the internationalization of trade and its practices”. As a result of the internationalization of trade, with a view to facilitating the receipt of

⁸ Alexei Bădărău, Petru Ciontu, Nicolae Mihăilescu, *Din istoria protecției proprietății industriale în România (From the History of Industrial Property Protection in Romania)*, OSIM Publishing House, Bucharest, 2003, page 258. See also Alexei Bădărău, Nicolae M. Mihăilescu, *Mărcile de fabrică și de comerț în România. Itinerar cronologic (Factory Brands and Trademarks in Romania. Chronological Itinerary)*, OSIM Publishing House, Bucharest, 2008, pages 29-31.

⁹ Viorel Roș, *Dreptul proprietății intelectuale (Intellectual Property Law)*, Global Lex Publishing House, Bucharest, 2001, pages 41-42; Ioan Macovei, *Tratat de drept al proprietății intelectuale (Intellectual Property Law Treatise)*, C.H. Beck Publishing House, Bucharest, 2010, page 13.

¹⁰ Viorel Roș, Octavia Spineanu Matei, Dragoș Bogdan, *Dreptul proprietății intelectuale. Dreptul proprietății industriale. Mărcile și indicațiile geografice (Intellectual Property Law, Industrial Property Law, Trademarks and Geographical Indications)*, All Beck Publishing House, Bucharest, 2003, page 13 (This work will be referred to, herein below, as *Mărcile și indicațiile geografice (Trademarks and Geographical Indications)*).

protection over industrial property rights outside the country of origin, at 20 March 1883, a number of 11 founding states of the Union¹¹ concluded the “*Paris Convention for the Protection of Industrial Property*”. This first convention in the field of industrial property came into force on 7 July 1884.

The Paris Convention was revised several times, as follows: in Brussels on 14 December 1900; in Washington on 2 June 1911, in the Hague on 6 November 1925; in London on 2 June 1934; in Lisbon on 31 October 1958 and, the last time, in Stockholm on 14 July 1967. Subsequently, the Paris Convention was amended in 1979. At each conference organized for revising the convention, various regulations had been introduced and a Revision Act had been adopted and, save for the ones concluded at the Revising Conferences from Brussels in 1900 and Washington in 1911, which are no longer valid, all the other acts still preserve their enforceability, despite the fact that the greatest majority of countries are now signatories of the Stockholm Act of 1967.

Romania adhered to the Paris Convention for the protection of industrial property, revised in Brussels on 14 December 1900 and Washington on 2 June 1911, by means of Law – Decree No. 2641 of 17 June 1921, ratified by the Law of 27 March 1924. Later on, by means of Decree No. 427 of 19 October 1963, Romania adhered to the revised texts from the Hague, London and Lisbon, and by Decree No. 1177 of 28 December 1968¹² it ratified the form revised at Stockholm on 14 July 1967.

As shown at Art.1 para 2), the object of the legal protection that the Convention ensures is represented by industrial property, comprising inventions, utility patterns, **drawings or patterns, factory brands, trademarks and service marks**, names of origin and indications of origin, trade names and the repression of unfair competition.

Further to reviewing the text of the Paris Convention, as also mentioned in the specialized literature¹³, it could be stated that its main provisions may be subdivided into four big categories:

- provisions comprising material law regulations guaranteeing a basic right, known as the *right to national treatment*, in every member country. The principle of national treatment means that every country which has adhered to the Paris Convention must provide, for the citizens of the other member countries, the same protection it provides to its own citizens¹⁴. The principle of national treatment, formulated instead of the principle of mutuality, as specialized legal literature evinces¹⁵, has been “*a truly revolutionary principle for the epoch when it has been adopted*”.

- provisions setting forth a basic right, known as the *Union priority right*. By “*priority right*” it is understood a person (or its successor or successors in rights) which filed a registration application and registered an industrial property right in one of the member countries of the Paris Union, who may request and benefit from protection in all other member states¹⁶. In general, the previous request the priority of which is claimed, must be a registration application submitted in prior¹⁷.

¹¹ The 11 founding states of the Union are the following: Belgium, Brazil, Switzerland, France, Guatemala, Italy, the Netherlands, Portugal, Salvador, Serbia and Spain. On 7 July 1884, when the Convention entered into force, the following countries have adhered also: Great Britain, Tunis and Ecuador.

¹² Published in the Official Bulletin No. 1 of 6 January 1969.

¹³ Ciprian Raul Romișan, *Protecția penală a proprietății intelectuale (Intellectual Property Penal Protection)*, All Beck Publishing House, Bucharest, 2006, page 28.

¹⁴ For more details, see Yolanda Eminescu, *Tratat de proprietate industrială. Creații noi (Industrial Property Treaty. New Creations)*, vol. I, Academiei Publishing House, Bucharest, 1982, pages 138-139; Ion Cameniță, *Protecția invențiilor prin brevete (Protection of Inventions by Patents)*, Academiei Publishing House of RSR, Bucharest, 1977, page 254 *et seq.*

¹⁵ Viorel Roș, Octavia Spineanu Matei, Dragoș Bogdan, *Mărcile și indicațiile geografice (Trademarks and Geographical Indications)*, p.14.

¹⁶ See Art.4 of the Paris Convention.

¹⁷ Ioan Cameniță, *Protecția internațională a proprietății intelectuale (International Protection of Intellectual Protection)*, Litera Publishing House, Bucharest, 1982, page 112.

- provisions defining a certain number of common material law regulations, containing either rules regarding rights and obligations of individuals or legal entities, or regulations claiming or allowing member countries to adopt laws according to such regulations¹⁸;

- provisions referring to the administrative framework and which comprise the final clauses of the Paris Convention¹⁹.

The Paris Convention is considered to have been, until the adoption of the Agreements regarding the aspects of intellectual property rights related to trade (the TRIPS Agreement)²⁰, the most important convention in the field of industrial property²¹.

By the Paris Convention, the International Union for the Protection of Industrial Property (the Paris Union) was created, with its seat in Geneva. According to Art. 12 of the Convention, each of the countries in the Paris Union have the obligation to set up a special industrial property service (in Romania, the special industrial property service is the State Office for Inventions and Trademarks - OSIM²²), as well as a central office for receiving deposits, for relaying to the public, the invention patents, utility patterns, **drawings and patterns**, and **factory brands or trademarks**. This service will also edit a special official periodical publication publishing the names of the holders of the granted patents (with a brief description of the patented inventions), and **the registered trademarks**. In Romania, OSIM edits and publishes the Official Bulletin for Industrial Property (BOPI) in five sections: BOPI – The Invention Patents Section²³; **BOPI – The Trademarks and Geographical Indications Section**²⁴; **BOPI – The Drawings and Patterns Section**²⁵; BOPI – New Species of Plants Section²⁶, and OPI – Applications for European Invention Patents with extended effects, according to the provisions of Law No. 32/1997²⁷.

¹⁸ See Art. 5-12 of the Paris Convention.

¹⁹ See Art. 13-30 of the Paris Convention.

²⁰ This Agreement is part of Appendix 1C to the Agreement for setting up the World Trade Organization, concluded in Marrakech on 15 April 1994, published in the Official Gazette of Romania, Part I, No. 360 bis of 27 December 1994.

²¹ For further details regarding the organizational structure, see Ioan Macovei, *Tratat de drept al proprietății intelectuale (Intellectual Property Law Treatise)*, C.H. Beck Publishing House, Bucharest, 2010, pages.13-16.

²² The State Office for Inventions and Trademarks is a specialized body of the central public administration, a unique authority in Romania ensuring industrial property protection, in compliance with the national legislation in this field, and with the provisions of the international conventions and treaties Romania is a part to, in accordance with the provisions of G.D. No. 573/1998 on the organization and operation of OSIM, as amended, Art. 68 of Law No. 64/1991 on invention patents, as republished, Art. 96 of Law No. 84/1998 on trademarks and geographical indications, as republished, and Art. 48 of Law No. 129/1992 on drawings and patterns, as republished. OSIM's organization, operation and tasks are stipulated in G.D. No. 573/7.09.1998 on the setting up and operation of the State Office for Inventions and Trademarks, amended by GD No.1396/2009.

²³ It has 12 annual issues and comprises the summaries of the patent applications and granted patents, as well as various information on the changes occurred in the legal status of patents, the lists of industrial property advisors attested by OSIM and other useful information. See Gheorghe Bucșă, Tiberiu Popescu, *Dicționar ilustrat de proprietate intelectuală (Illustrated Dictionary of Intellectual Property)*, OSIM Publishing House, Bucharest, pages 48-49.

²⁴ It has 12 annual issues and includes a table with registered trademarks, the list of registered trademarks, the table comprising withdrawal or limitation, upon request, errata, decisions of the examination commission, oppositions etc. For more details, see Gheorghe Bucșă, Tiberiu Popescu, *op.cit.*, pages 50-51.

²⁵ It has 12 annual issues, and comprises the registration requests for drawings and patterns submitted to OSIM, the lists of registered certificates, any amendments in terms of legal status etc. For more details, see Gheorghe Bucșă, Tiberiu Popescu, *op.cit.*, pages 49-50. For further research, see also Ștefan Cocoș, *a,b,c-ul protecției și valorificării proprietății industriale (The ABC of Protection and Capitalization of Industrial Property)*, Rosetti Publishing House, Bucharest, 2004, pages 210-212).

²⁶ It has one quarterly issue and contains the applications for patents related to species, proposed names and accepted names, patents for granted species, in force, or decisions offered by licenses for the exploitation of species, and other specialized information such as, for example, Law 255/1998 on the protection of new species of plants, regulation form, technical norms for the examination of species etc. (<http://www.osim.ro/publicatii/editura/2001-1.htm>).

²⁷ It comprises the applications for European invention patents with extended effects in Romania, according to the provisions of Law No. 32/1997, European invention patents with effects in Romania, and various information regarding the changes occurred in the legal status of patents (<http://www.osim.ro/publicatii/editura/2001-1.htm>).

2.2. The Convention for instituting the World Intellectual Property Organization

The Convention for instituting the World Intellectual Property Organization (OMPI) was signed in Stockholm on 14 July 1967, and is the legal instrument whereby regulating international cooperation in the field of intellectual property. The Convention for the setting up of OMPI entered into force on 26 April 1970.

The World Organization for Intellectual Property is one of the 16 specialized agencies from within the system of organizations of the United Nations (ONU), statute obtained as a result of an Agreement²⁸ concluded between OMPI and ONU, and headquartered in Geneva. OMPI is continuing the activities of the Reunited International Offices for Intellectual Property Protection (BIRPI), which represented the reunited secretariat of the Paris Union, for industrial property, of the Bern Union, for copyrights. Romania ratified the Convention for the institution of OMPI by Decree No. 1175 of 28 December 1968²⁹, and on 26 April 1970, it became a member of this inter-governmental international body³⁰.

Art. 2 of the Convention specifies what is understood by intellectual property, the text making express reference also to drawings and patterns, as well as to factory brands, trademarks and service marks. Thus, according to Art. 2 para. VIII, intellectual property “*designates the rights referring to literary, artistic and scientific works; the performances of artists who interpret pieces of art and the ones of executing artists, phonograms and radio broadcasts; inventions in all human activities; scientific discoveries; drawings and patterns; factory brands, trademarks, and service marks, as well as trade names and trade denominations, protection against unfair competition and all other rights related to intellectual activities in the fields of industry, science, literature and art*”.

According to Art. 3 of the Convention, the World Organization for Intellectual Property has the following main objectives: to promote the protection of intellectual property in the world through the cooperation between states, in collaboration with any other international organizations, specialized agencies and UN bodies, to ensure the administrative cooperation between intellectual property unions. To achieve its objectives, OMPI favors the conclusion of new international treaties, as well as the harmonization of national legislations, provides technical and legal assistance to emerging countries, centralizes and disseminates all information regarding the protection of intellectual property, provides services easing up the international protection of intellectual property, proceeds, if need be, to performing registrations, on such matters, and publishes the information regarding the registrations, facilitating also an ample administrative cooperation between member states. The World Intellectual Property Organization proclaims the universal value of intellectual property, which imprints the world’s evolution, contributes to societal progress and plays an important role in long-term economic, social and cultural development³¹.

²⁸ The Agreement entered into force on 17 December 1974, when it was unanimously approved by the UN General Meeting by Resolution 3346 (XXIX).

²⁹ Published in the Official Bulletin No. 1 of 6 January 1969. When submitting the ratification instruments, Romania declared that: “the provisions of Art. 5 and 14 of the Convention for the instituting of OMPI are not in compliance with the principle of treaties universality according to which all states are entitled to become a party to multilateral treaties regulating issues of general interest”.

³⁰ When submitting the signing instrument, Romania declared that: “The provisions of Art. 5 and 14 of the Convention for the institution of OMPI, signed in Stockholm on 14.07.1967, are not in compliance with the principle of treaties universality according to which all states are entitled to become a party to multilateral treaties regulating issues of general interest” (Gheorghe Bucșă, *Protecția desenelor și modelelor industriale (The Protection of Industrial Drawings and Patterns)*, Tribuna Economică Publishing House, Bucharest, 2000, page 63).

³¹ For further research, see: Dragoș Stoenescu, *Organizația Mondială a Proprietății Intelectuale. Documentar (The World Organization for Intellectual Property. A Documentary)*, Politică Publishing House, Bucharest, 1980, p. 9 et. seq.; Ion Enache, *Apărarea drepturilor de proprietate intelectuală în practica internațională (Defending Intellectual Property Rights in International Practice)*, The National Institute for Information and Documentation, Bucharest, 1991, page 20 et seq.; Mirela Romițan, *40 de ani de la semnarea Convenției de instituire a Organizației Mondiale a Proprietății Intelectuale (40 Years Since the Signing of the Convention Instituting the World Intellectual Property*

2.3. The Agreement on the Setting Up of the World Trade Organization (the TRIPS Agreement)

The TRIPS Agreement is part of Appendix 1 C to the Agreement regarding the setting up of the World Trade Organization, concluded in Marrakech on 15 April 1994, and is destined to regulate the incidence of the intellectual property rights on trade. In the sense of the TRIPS Agreement, the expression “*intellectual property*” designates all categories of intellectual property making the object of sections 1-7 of its IInd part, namely: copyrights and other connected rights; **factory brands or trademarks**; geographical indications; **drawings and patterns**; patents; configuration blueprints (topographies) of integrated circuits; the protection of undisclosed information.

The TRIPS Agreement instituted a set of fundamental principles, such as: ensuring legal protection as minimal norm (Art. 1.1); the principle of national treatment (Art. 3); the principle of the treatment of the most favored nation (Art. 4)³².

According to Art. 1 of the Agreement, members will be able, without this being an obligation, to enforce, in their national legislations, procedures whereby realizing an efficient protection against any act that might prejudice intellectual property rights.

Section 4 (Drawings and patterns), from Part II of the Agreement focuses on certain regulations regarding the requirements that must be met by these objects of industrial property in order to benefit from protection.

Thus, according to Art. 25, “*Members will provide for the protection of drawings and patterns created independently and which are new or original. The members will be able to determine if the drawings and patterns are not new or original if they do not differ significantly from known drawings and patterns or from combinations of elements of certain known drawings and patterns. The members will be able to rule that such a protection does not extend on to the drawings and patterns dictated essentially by technical or functional grounds (para. 1). Each member must act in such a way that the provisions regarding the guaranteeing of the protection of textiles drawings and patterns, especially concerning any cost, examination or publication, do not compromise unreasonably the possibility to request and be granted such protection. The members will be free to fulfill this obligation as regards industrial drawings and patterns or by means of the legislation on matters of copyright*”.

Furthermore, according to art. 26, “*the holder of a protected drawing and pattern has the right to prevent third parties acting without his/her consent from producing, selling or importing items that behave like or contain a drawing and pattern which is, totally or substantially, a copy of such protected drawing and pattern, when the respective acts are done for commercial purposes (para.1). The members will be able to provide for limited exceptions regarding the protection of drawings and patterns, provided that they do not prejudice, in an unjustifiable manner, the normal exploitation of the protected drawings and patterns, nor cause any unjustified prejudices to the legitimate interests of the holder of the protected drawing and pattern, paying heed to the legitimate interests of third parties (para. 2). The duration of the offered protection shall be of at least 10 years*” (para. 3).

Section 2 (Factory brands or trademarks) from Part II of the Agreement focuses on certain regulations regarding the requirements that must be met by factory brands or trademarks in order to benefit from protection.

Organization), in “Revista română de dreptul proprietății intelectuale” (“The Romanian Review for Intellectual Property Rights”) No. 1/2007, pages 7-14; Florea Bujorel, *Dreptul proprietății intelectuale (Intellectual Property Law)*, Universul Juridic Publishing House, Bucharest, 2011, pages 32-34.

³² For a more in-depth analysis of this Agreement, see Cristiana I. Stoica, Răzvan Dincă, *Considerații teoretice și practice referitoare la efectele Acordului TRIPS asupra sistemului de drept românesc (Theoretical and Practical Considerations on the Effects of the TRIPS Agreement on the Romanian Legal System)*, in “Revista de drept comercial” (“The Commercial Law Review”) No. 7-8/2001, pages 168-200.

Thus, according to Art.15 para1) of the Agreement, “Any sign, or any combination of signs, capable of differentiating one product or one service of an enterprise from the ones of other enterprises, may represent a factory brand or trademark. Such signs, especially words, including names of persons, letters, digits, figurative elements, and color combinations, as well as any combination of such signs, shall be susceptible to be registered as factory brands or trademarks. In the cases in which certain signs are not, in themselves, likely to distinguish pertinent products or services, the members will be able to subordinate the registrability of the distinctive character acquired by use. The members may request, as a condition for registration, that the signs should be visually perceptible”.

At the same time, according to Art.16 para 1), “the holder of a registered factory brand or trademark will have the exclusive right to prevent any third parties acting without his/her consent from using, during their commercial operations, identical or similar signs for products or services that are identical or similar to the ones for which the factory brand or trademark is registered, should such use generate a risk of confusion. In case of using an identical sign for identical products or services, the existence of the risk of confusion shall be presumed. The rights described above shall not be detrimental to any previous existing right, and shall not affect the possibility that the members have to subordinate the existence of the rights to usage”.

It is also worth mentioning the provisions of Art.16 para 2) according to which “Art. 6 bis of the Paris Convention (1967) shall be applied, *mutatis mutandis*, to the services³³. So as to determine whether a factory brand or trademark is notoriously known, the members shall consider the notoriety of that brand in the segment of the respective public, including the notoriety of the member in question, achieved as a result of promoting the respective brand”. Moreover, in para 3) of the same article, it is provided that “Art. 6bis of the Paris Convention (1967) shall apply, *mutatis mutandis*, also to the products or services which are not similar to the ones for which the factory brand or trademark are registered, provided that the usage of the respective brand or trademark for these products or services should indicate the connection between these products or services and the holder of the registered trademark, and if such usage would risk damaging the rights of the holder of the registered trademark”.

Every member state will grant to the nationals of the other member states a treatment which shall not be less favorable than the ones granted to its own nationals in terms of the protection of intellectual property, subject to the exceptions already provided for, as the case may be, in the Paris Convention (by the Stockholm Act of 14 July 1967) and the Bern Convention (by the Paris Act of 14 July 1971).

Based on the provisions of Art.41, of Part III – of the Agreement (Section 1 – General Obligations), “the members will grant to the holders of the rights access to the civil legal proceedings aimed at ensuring the observance of intellectual property rights covered hereby. The defendants shall have to be informed in due time by means of a sufficiently precise written notice indicating, among others, the fundamentals of the claims. The parties shall be authorized to be represented by an independent legal advisor, while the procedures shall not impose any excessive requirements in terms of obligatory personal appearance. All the parties in such cause shall be appropriately habilitated to justify their claims and present any pertinent elements as evidence. The procedure will include a method of identifying confidential information, except for the case in which such method is contrary to existing constitutional provisions”.

³³ According to Art.6 „Countries of the Union agree to refuse or invalidate the registration, or prohibit, by complementary measures, the usage, without the authorization of the competent bodies, either as factory brands or trademarks, or as elements of such trademarks, of blazonry, flags and other state emblems for the countries of the Union, of the signs and official seals for control and guarantee adopted by them, as well as the imitation of any heraldry signs”.

Mention should be made of the provisions of Art. 61 of Section 5, titled “*Criminal Procedures*”, According to which “the states will be able to provide for criminal procedures and sanctions that are applicable at least for the deliberate acts of counterfeiting factory brands or trademarks, or of pirating, which breach any copyrights, and which are committed for commercial purposes”.

Romania ratified this Agreement by Law No. 133/1994 for the ratification of the Marrakech Agreement on the setting up of the World Trade Organization, of the International Agreement on Beef, and of the International Agreement on Dairy Products, concluded at Marrakech on 15 April 1994³⁴.

3. Regulations regarding the protection of drawings and patterns in conventional law

3.1. The Bern Convention of 1886 for the protection of literary and artistic work

As shown in the specialized literature, drawings and patterns situate themselves somewhere at the “*crossroads between art and industry*”³⁵, being known, both in our law, and in the one of other countries, under the name of “*applied art*”³⁶ or “*ornamental creations*”³⁷.

Due to their complex nature, *Yolanda Eminescu believed that*, by destination and reproduction manner, they pertain to industrial property rights and, by the nature of the creative effort, to copyrights³⁸.

As to all the above, we deem that it is worthy to also present a few considerations on the necessity and adoption of the Bern Convention of 1886 for the protection of literary and artistic work which, at Art. 2 para 1) provides that applied art work belongs to the category of “*literary and artistic work*”.

At 9 September 1886, a number of 8 states, in capacity of founding members (Belgium, Switzerland, France, Germany, Italy, Great Britain, Spain and Tunis), adopted the “*Bern Convention for the Protection of Literary and Artistic Work*”, the oldest international treaty in the field of copyrights. The Convention entered into force on 5 December 1887, and, on 4 May 1896, it was amended and completed by means of an Addendum and an Interpretative Statement, signed in Paris. The contracting countries are constituted in the “*Union for the Protection of Copyrights on Literary and Artistic Work*”.

The Convention made the object of several successive revisions, as follows: the Berlin Act of 13 November 1908, completed at Bern on 30 March 1914; the Rome Act of 2 June 1928; the Brussels Act of 26 June 1948; the Stockholm Act of 14 July 1967; the Paris Act of 14 July 1971, amended on 28 September 1979.

Romania adhered, with some reservations, to the Convention, in the format revised at Berlin by Law No. 152 of 24 March 1926, with effects as of 1 January 1927. Subsequently, in 1995, Romania waived the reservations formulated at the Bern Convention, which mainly had to do with the duration of the rights and the competence in litigations, having as object the construal and enforcement of the Convention. By Law No. 77/1998 for the adherence of Romania to the Bern

³⁴ Published in the Official Gazette of Romania No. 360 of 27 December 1994.

³⁵ Yolanda Eminescu, *Protecția desenelor și modelelor industriale. Drept român și comparat (The Protection of Industrial Drawings and Patterns. Romanian and Comparative Law)*, Lumina Lex Publishing House, Bucharest, 1997, page 7.

³⁶ For further research, see Viorel Roș, Dragoș Bogdan, Octavia Spineanu Matei, *Dreptul de autor și drepturile conexe. Tratat (Copyrights and Other Related Rights. A Treaty)*, All Beck Publishing House, Bucharest, 2005, pages 140-149.

³⁷ For more details, see Michel Vivant, Jean-Michel Bruguière, *Droit d'auteur*, Dalloz, Paris, 2009, pages 107-108.

³⁸ Yolanda Eminescu, *Protecția desenelor și modelelor industriale. Drept român și comparat (The Protection of Industrial Drawings and Patterns. Romanian and Comparative Law)*, *op.cit.*, page 7.

Convention for the protection of literary and artistic work of 9 September 1886³⁹, Romania adhered to the revised form of the Convention by the Paris Act of 1971, and amended in 1979.

The Bern Convention for the protection of literary and artistic work is grounded on two basic principles, i.e.: *the national treatment principle*, or of assimilating foreign nationals of the Union with nationals, and *the principle of unionist treatment*, or of *minimal protection*, that member states are obliged to provide in this field⁴⁰.

3.2. The Arrangement from the Hague regarding the international deposit of drawings and patterns

The Arrangement from the Hague was adopted on 6 November 1925 and entered into force on 1 June 1928. According to the provisions of this Arrangement, through the agency of a single international deposit registered with the International Office of OMPI, the entitled persons are allowed to **obtain the protection for one or several drawings and patterns in several states**⁴¹.

The international deposit is deemed to have been drafted at the date when the International Office received the application in accordance with all legal requirements, the charges paid at the same time with the application, and the photos or any other graphic representations of the drawing and pattern were received or, if not received simultaneously, at the date when the last of these formalities was fulfilled. The registration bears the same date.

According to art.5, the international deposit consists of an application, one or several photos or any other graphic representations of the drawing and pattern, as well as the proof of paying the charges provided for in the regulation.

The application must contain the following: the list of contracting states whereby the applicant requests that the international deposit should produce effects; the designation of the object or objects into which the drawing or pattern is intended to be incorporated; if the applicant wishes to claim the priority provided for at Art. 9, the specification of the date, state and deposit number giving rise to the ownership right⁴²; any other information provided for by the regulation. The application may also comprise: a brief description of the characteristic features of the drawing and pattern; a statement with the name of the real author of the drawing and pattern; an application for postponing publication as provided for at Art. 6 para 4)⁴³. The application may enclose counterparts or models of the object that the drawing or pattern is incorporated into.

According to Art.11, of the Arrangement from the Hague, the duration of the protection agreed by a contracting state for the drawings and patterns making the object of an international deposit cannot be of less than 10 years starting with the date of the international deposit, if the latter was subjected to a renewal, or 5 years as of the date of the international deposit in the absence of a renewal. Nevertheless, if, by virtue of the provisions of the national legislation of a contracting state examining the novelty, the protection starts from a date from before the one of the international

³⁹ Published in the Official Gazette of Romania No. 156 of 17 April 1998.

⁴⁰ For further research regarding the Bern Convention, see Yolanda Eminescu, *Opera de creație și dreptul. O privire comparativă (The Creative Work and the Law. A Comparative View)*, Academiei Publishing House, Bucharest, 1987, pages 199-208.

⁴¹ For further research regarding the Arrangement from the Hague, see also Silvia Vincenti, *EU accession to the Hague Agreement and its consequences*, in „Gazette”, No. 56/2008, pages 77-87, Yolanda Eminescu, *Protecția desenelor și modelelor industriale. Drept român și comparat (The Protection of Industrial Drawings and Patterns. Romanian and Comparative Law)*, op.cit., pages 69-75.

⁴² According to Art. 9, „If the international deposit of the drawing or pattern is made in a period of 6 months as of the date of the first deposit of the same drawing or pattern in one of the member states of the International Union for the Protection of Industrial Property, and if the priority is claimed for the international deposit, the date of priority is the one of the first deposit”.

⁴³ According to Art. 6 para. 4), at the applicant’s request, the publication may still be postponed for the duration of the period he/she requested, but this period cannot exceed 12 months as of the date of the international deposit. Nevertheless, if a priority is claimed, the starting date of such period is the priority date.

deposit, the minimal durations provided for in the previous paragraph are calculated by paying heed to the starting point of the protection in the respective state. The fact that the international deposit is not renewed but once does not affect in the least the minimal duration of the protection thus defined.

The Arrangement was revised in London on 2 June 1934, in the Hague on 28 November 1960, and was completed by the Addendum of Monaco of 1961, the Complementary Stockholm Act of 1967, and the Geneva Protocol of 1975, as amended in 1979 and 1999.

Romania adhered to the *Arrangement from the Hague* on the international deposit of industrial drawings and models of 6 November 1925, revised by means of the Hague Act of 28 November 1960, completed by the Complementary Stockholm Act of 14 July 1967, as amended on 2 October 1979 by Law No. 44 of 28 April 1992 for the adherence of Romania to the Arrangement from the Hague regarding the international deposit of industrial drawings and patterns, of 06.11.1925, as subsequently amended and completed⁴⁴.

3.3. The Locarno Arrangement on the international classification of drawings and patterns

The Locarno Arrangement was concluded on 8 October 1968 and entered into force on 27 April 1971. This Arrangement **instituted an international classification of drawings and patterns** the purpose of which is, mainly, to facilitate thematic documentary research aimed at determining the world level stage of the creation of drawings and patterns in a certain field. The international classification of drawings and patterns comprises a list of classes and subclasses, as well as an alphabetical list of products in which the drawings and patterns are incorporated, indicating the classes and subclasses in which they are distributed, as well as some explanatory notes.

The list of classes and subclasses is the one attached to this Arrangement, subject to the amendments and completions that the Experts' Committee, set up in accordance with Art. 3, may bring.

Thus, in compliance with the provisions of Art. 3 of the Locarno Arrangement, *“Every country of the special Union is represented in the Experts' Committee, which is organized as per the procedure regulations adopted with a simple majority by the represented countries. The Experts' Committee adopts the alphabetical list and explanatory notes with the simple majority of votes of the countries in the special Union. The proposal to amend or complete the international classification may be done by the office of every country of the special Union or by the International Office. Any proposal made by an office is communicated by it to the International Office. The proposals from the offices and the International Offices are transmitted by the International Office to the members of the Experts' Committee within maximum two months before the session of the Experts' Committee wherein the respective proposals are to be discussed about. The decisions of the Experts' Committee regarding the adoption of the amendments and completions following to be brought to the international classification shall be taken with the simple majority of the votes of the countries in the special Union. However, if the decisions result in the setting up of a new class or the transfer of products from one class to another, unanimity is mandatory. Every expert is entitled to vote by correspondence. In the case in which a member country did not appoint a representative in a certain session of the Experts' Committee, or if the appointed expert did not express his/her vote during the Session or in a period provided for by the procedural rules of the Experts' Committee, it is deemed that the respective country has accepted the decision made by the Experts' Committee”*.

In Romania, the State Office for Inventions and Trademarks classifies the applications according to the 9th edition of the Locarno Classification, which comprises 32 classes⁴⁵.

⁴⁴ Published in the Official Gazette of Romania No. 95 of 15 May 1992, and republished in the Official Gazette of Romania No. 8 of 14 January 1994.

⁴⁵ At the web address: <http://oami.europa.eu/ows/rw/resource/documents/RCD/eurolocarno/eurolocarno>

Romania adhered to the Locarno Arrangement on the international classification of drawings and patterns by Law No. 3/1998 on the adherence of Romania to the Arrangements instituting an international classification in the field of industrial property⁴⁶, despite the fact that it had enforced this classification ever since 1993.

As domestic doctrine also mentions, *“intellectual creation can hardly be constrained by territorial limits, as it naturally has an international vocation. Spiritual products of the human genius defy any barrier set in the way of free circulation, and modern means of information and communication favor such circulation. (...) Spiritual products must be protected outside the borders of the nation of their creator, when they are used in line with their vocation, on the territory of some other states (...)”*⁴⁷.

As regards the notion of drawing and pattern, it is necessary to add that, at international level, in this field, two notions are used, which have the same meaning, nevertheless, *i.e.*: in “common law”, English-speaking countries, the term of “design” is used, while in French-speaking countries, the notion of “drawing and pattern” is in use, the latter case being also applicable to Romanian law.

As shown in the above, drawings and patterns are known both in our law, and in the law of other countries, under the name of “*applied art*” or “*ornamental creations*”. Due to their complexity, in terms of destination and reproduction manner, they pertain to industrial property rights, whereas through the nature of the creative effort, they belong to copyrights⁴⁸.

The historical origin of the right over drawings and patterns explains the ambiguous character of their current status, which, at the same time, pertains to copyrights and intellectual property rights, *“but still, this derivative of the right is today one of the most dynamic of all intellectual properties.”*⁴⁹

Drawings are a bi-dimensional creation, and are distinguished and differ from a pattern, which is a tri-dimensional creation.

This derivative of intellectual property is situated at the border between industrial property right and copyright, fact which has also given rise to the reasoning that: *“the aesthetic aspect of the drawings and patterns brings them closer to copyrights, while the utilitarian and technical side brings them closer to invention patents, while the manner in which they can be used sometimes assimilates them to trademarks”*⁵⁰.

The need to harmonize the protection of intellectual property at the level of the European Union fostered the creation of special regulations; respectively they have laid the basis of a communion between European enactments, including as regards their applicability.

Thus, being based on Directive No. 98/71/CE of the European Parliament and Council of 13 October 1998 regarding the legal protection of industrial drawings and patterns, the Council Regulation (CE) No. 6/2002 of 12 December 2001 on Community drawings or patterns was issued, which is obligatory in all its elements, and is applied directly in all member states, thus ensuring a special legal protection for the creations in the field of industrial aesthetics to encourage individuals creators, favor innovation, the development of new products and investments in producing them, respectively *“a unified system for obtaining a Community drawing and pattern, to benefit from a uniform protection, which could produce uniform effects on the whole territory of the Community”*⁵¹.

With a view to enforcing the provisions of Regulation (CE) No. 6/2002, the Commission Regulation (CE) No. 2245/2002 din 21.10.2002 was adopted.

⁴⁶ Published in the Official Gazette of Romania, Part I No. 10 of 14 January 1998.

⁴⁷ Viorel Roș, Dragoș Bogdan, Octavia Spineanu Matei, *Dreptul de autor și drepturile conexe Tratat (Copyrights and Other Related Rights. A Treatise)*, 2005, Bucharest, All Beck Publishing House, page 24

⁴⁸ Yolanda Eminescu, *Protecția desenelor și modelelor industriale. Drept român și comparat (The Protection of Industrial Drawings and Patterns. Romanian and Comparative Law)*, *cit. supra*, page 7.

⁴⁹ Andre Bertrand, *Marques et brevets dessins et modeles*, Belfond, Paris, 1995, page 20.

⁵⁰ Andre Bertrand, *Marques et brevets dessins et modeles*, Belfond, Paris, 1995, page 20.

⁵¹ Council Regulation (CE) No. 6/2002 of 12 December 2001, Art. 1.

These Regulations contain the necessary provisions for the development of the registration procedure for a Community drawing and pattern, and for the administration of the registered Community drawings and patterns, for the appeal procedure against the decisions of the Office, and for the procedure of cancelling a Community drawing and pattern, respectively a detailed identification of these procedures.

The Directive mentions that the Community drawing or pattern should answer, as much as possible, to the needs of all economic sectors of the Community and that, if the protection of the Community drawings and patterns was limited to the territory of the member states, even if the legislations of these states are similar or not, this would determine a possible segregation of the domestic market for the products which contain a drawing and pattern that makes the object of some internal rights held by various persons. If this happened, free circulation would be obstructed, an undesired fact in the opinion of the member states, and thus the creation of a Community drawing and pattern that was directly applicable in every member state with protection at Union level is absolutely mandatory, this being the only way in which, by presenting a unique application in front of the Office for harmonization within a domestic market, a unique procedure based on a unique legislation – only in this way is it possible to obtain the protection over a drawing and pattern on the territory of the Member States.

In the opinion of the French professor André Marie Lucas⁵², “the main priority in the field of the protection of intellectual property for the member states should be represented by the harmonization of the definitions on such matters, at European level,, since, at the present moment, there is a problem in this respect, in the sense that definitions are not the same in all countries, and, therefore, when applying an international scheme, the product envisaged to be protected cannot find the same applicability, considering this situation. Thus, in order to be able to apply some international legislative norms at a domestic level, it is first needed to modify domestic legislative norms and only then can European legislation be enforced”.

The edifying example given by the reputed French professor pertained precisely to the field of intellectual property, respectively the definition of copyrights. In Romania the author is believed to be the one who creates or realizes a piece of work, while in France, for instance, through the author of a film, for example, they do not understand to refer to the person who made the film, since, in this case, the person who made the film is the producer. Consequently, as Professor André Marie Lucas stated: “*the definition of copyright must be harmonized across the European Union*”.

The protection of drawings and patterns is obtained for products from the most various of economic sectors, some of them with a shorter economic duration, and for which it is advantageous to obtain protection without going through all registration formalities, and for which the duration of such protection is not vital. On the other hand, there are sectors for which the registration is advantageous through the higher degree of legal certainty it offers, such sectors requesting the protection of drawings and patterns for a longer time, in accordance with the predictability of the life duration of the products on the market.

Conclusion

The main directions approached in the present study are: identifying common legal regulations regarding the protection of drawings and patterns in conventional law, identifying regulations regarding the protection of drawings and patterns in conventional law, as well as highlighting the importance of harmonizing national and international regulations in such a way that the same product can be protected in the same manner in any of the countries of the European Union and further away. The contemplated impact to be achieved by this study consists in the acknowledgement of the importance of legal regulations on the protection of drawings and patterns.

⁵² Study presented within the „CKS - Challenges of the Knowledge Society”, the 6-th edition organized by Nicolae Titulescu University in the period 11-12 May 2012.

For future research in the field of intellectual property, it would be recommended to approach a theme concerned with the contents of the right over drawings and patterns, both at domestic and worldwide level, which implies, however, intensive researches of the proposed theme.

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