

Opposition procedures – Denmark

The Consolidate Patents Act provides a post-grant opposition. Granted Danish patents may be opposed by any person within 9 month of the date of the publication of the grant of Danish patent in the Danish Patent Bulletin. If the 9 month deadline is passed any person may have the opportunity to file a request for re-examination of the granted patent.

The notice of opposition must be filed in writing and contain, inter alia, a statement of the extent to which the Danish patent is opposed and of the grounds on which the opposition is based, as well as the facts and evidence in support of the grounds.

As provided by section 21 of the Consolidate Patents Act, the opposition can only be based on the following grounds; the subject matter does not fulfil the patentability criteria (industrial applicability, novelty, inventive step), the invention is not sufficiently disclosed to allow a person skilled in the art to carry it out; and the content of the patent extends beyond the content of the application as filed.

After a hearing phase with the parties of the opposition case the Opposition Division renders a decision. The result can be to reject the opposition, to revoke the patent or maintain the patent in amended form.

A notice of appeal must be filed to the Danish Board of Appeal within two months of notification of the opposition decision, and the fee for appeal must be paid.

Administrative Re-examination procedures – Denmark

Section 53b of the Consolidate Patent Act provides an administrative re-examination system. The Danish re-examination system is essentially offered as a fast and cheap alternative to the court system. Furthermore, the re-examination is a safeguard measure to the opposition system since a ground for requesting re-examination is that the scope of protection was broadened after the grant of patent.

A request for re-examination of a Danish patent (national granted patent or validated European patent) may be filed by any person – including the patent holder – after the expiry of the 9 month opposition period.

If the request for re-examination is filed by a third party the request must be filed in writing and contain, inter alia, a statement of the extent to which the Danish patent is opposed and of the grounds on which the request for re-examination is based, as well as the facts and evidence in support of the grounds.

As provided by section 52 of the Consolidate Patents Act, the re-examination can only be based on the following grounds; the subject matter does not fulfil the patentability criteria (industrial applicability, novelty, inventive step), the invention is not sufficiently disclosed to allow a person skilled in the art to carry it out, the content of the patent extends beyond the content of the application as filed; and scope of protection has been expanded after the grant of the patent.

After a hearing phase with the parties of the re-examination case the Opposition Division renders a decision. The result can be to reject the re-examination, to revoke the patent or maintain the patent in amended form.

If the request for re-examination is filed by the patent holder himself it is only necessary that the request explain the desired limitation of patent (claims). No statement of grounds or evidence is mandatory. In this case the Danish Patent Office will examine whether the requested limitation is allowable.

Re-examination of patent holders own patent is used as voluntary limitation of patent claims in order to avoid a potential infringement of other patent rights or when faced with a potential court case.

A notice of appeal must be filed to the Danish Board of Appeal within two months of notification of the re-examination decision, and the fee for appeal must be paid.

Third party observation system – Denmark

Rule 43 of the Order on Patents and Supplementary Protection Certificates states that any person may provide information or observations of relevance for the examination of a patent application. No particular grounds are to be specified.