

PATENT OPPOSITION SYSTEM IN PAKISTAN ALONG WITH STATISTICAL DATA REGARDING DOCUMENT SCP/14/5

1. Pre Grant Opposition:

i. Under Section 23 of the Patent Ordinance 2000 (amended in 2002), at any time, within four months from the date of advertisement of the acceptance of a complete specification, any person may give notice of opposition to the Controller to the grant of Patent on any of the following grounds, namely

- a) That the applicant for the patent obtained the invention or any part thereof from him or from the person of whom the opponent is the legal representative, assignee, agent or attorney
- b) That the invention is not a patentable invention within the meaning of this Ordinance
- c) That the specification does not disclose the invention in a manner clear and complete enough for it to be carried out by a person skilled in the art
- d) That the claims are not clear or extend beyond the scope of the disclosures in the complete specification as originally filed
- e) That the complete specification describes or claims an invention other than that described in the provisional specification and that such other invention either forms the subject of an application made by the opponent for a patent which if granted would bear a date in the interval between the date of the application and the leaving of the complete specification, or has been made available to the public by publication in any document in that interval.

ii. Upon receiving notice of opposition from interested person, the Controller shall send notice of the opposition to the applicant, and shall, before deciding the case, give to the applicant and the opponent an opportunity of being heard. On conclusion of arguments of both parties the opposition is decided by the Controller of Patents.

iii. Controller of Patents under Section 50 of the Patents Ordinance 2000, exercises powers of Civil Court in opposition proceedings. A remedy of Appeal against the decisions of the Controller of Patents lies with High Court under Section 69 of the Patent Ordinance, 2000 and to be filed within 90 days. If no appeal is filed to the High Court within 90 days the patent is sealed and granted on final determination of the opposition proceedings otherwise decision pending up to the final decision of High Court.

2. **Third Party Observations on Patentability:** Under Section 24 of the Patents Ordinance, 2000 and Rule 19 of the Patent Rules, 2003 at any time after the publication of the accepted specification in Official Gazette any person make observations in writing to the Controller on the novelty of the invention giving evidence in support of his observations and Controller shall consider the observations in the light of the evidence made available to him before the grant of Patent. Moreover, the person shall not become the party to the proceedings.

3. **Revocation/Cancellation of Patent after Grant:**

i. **Revocation of patent by High Court.-** U/S 46 of the Patents Ordinance 2000, a patent may, on the petition of any person interested or of the Federal Government or on a counter claim in a suit for infringement of the patent, be revoked in part or in whole by the High Court on any one or more of the grounds upon which grant of patent may be refused.

ii. Revocation of patent by Controller.-, U/S 47 of the Patents Ordinance 2000, at any time within twelve months after the sealing of a patent, any person interested who did not oppose the grant of the patent may apply to the Controller for an order revoking the patent on any one or more of the grounds upon which the grant of the patent could have been opposed.

iii. Revocation of patent by the Federal Government.-

U/S 48 of the Patents Ordinance 2000, If the Federal Government is of the opinion that –

- (a). a patent or the mode in which it is exercised is mischievous to the State or generally prejudicial to the public; or
- (b). a patent has been obtained through concealment or misrepresentation in the application; or
- (c). where the compulsory license granted to prevent the abuse which might result from the exercise of the exclusive rights conferred by the patent, for example, failure to work or in relation to anticompetitive practices, has not been sufficient, it may, after giving the patentee an opportunity of being heard, make a declaration to that effect in the Official Gazette, and thereupon the patent shall be deemed to have been revoked:

Provided that proceedings upon clause(c) shall not begin before the expiration of two years from the grant of first compulsory license.

Statistical Data on Opposition

S.No	Year	Accepted cases	Opposition received	Area of Technology	Rate of opposition
1	2007	115	33	Pharma	32.63%
2	2008	577	199		
3	2009	501	246		
4	2010	667	129		

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