

Opposition systems

Germany

Under the German Patent Act (Patentgesetz), a notice of opposition against a granted patent can be filed at the German Patent and Trade Mark Office (DPMA). The opposition must be filed at the DPMA within nine months from the publication of the patent grant¹. The time limit is observed only if all admissibility requirements are met within the specified period. Reestablishment of rights is not available if the time limit for filing an opposition has not been observed. Under the Patent Costs Act (Patentkostengesetz), the filing of an opposition is subject to a fee of 200 EUR, to be paid to the DPMA within the opposition period.

Anyone can oppose a patent, except the patent owner himself². In case of usurpation³, only the injured party can file an opposition against the patent. In case of (non-) infringement proceedings regarding a patent, an alleged infringer who is party to such proceedings may under certain circumstances intervene in already pending opposition proceedings even after the expiry of the opposition period against the patent in suit⁴.

The notice of opposition must be filed with the DPMA in writing bearing a handwritten signature or in electronic form pursuant to Section 125a (1) of the Patent Act and comply with further requirements for admissibility. These include, for example, the requirement that the notice of opposition must not leave any doubt as to the opponent's identity. In particular, the notice of opposition must be sufficiently reasoned. In the reasoning, the opponent must specify the facts supposed to lead to the conclusion that the patent has to be revoked in full or in part. The relevant actual facts must be explained in detail in such a way that the DPMA and the patent owner need not further investigate the matter in order to examine whether or not there is a ground for revocation.

Section 21 (1) of the Patent Act sets out the grounds for revocation on which an opposition can be based. According to this provision, a patent will be revoked if:

- No. 1) the subject-matter of the patent is not patentable in accordance with Sections 1 to 5 of the Patent Act;
- No. 2) the patent does not disclose the invention in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art;
- No. 3) the essential content of the patent has been taken from the descriptions, drawings, models, implements or equipment of another person or from a process used by this person, without his consent (usurpation);
- No. 4) the subject-matter of the patent extends beyond the content of the application as filed with the competent authority; the same shall apply if the patent was granted on a divisional application or on a new application filed under section 7 (2)⁵, and the subject-matter of the patent extends beyond the content of the earlier application as filed with the competent authority.

¹ Section 59 (1) of the Patent Act.

² The patent owner, however, can request a revocation or limitation of his patent before the DPMA (Section 64 of the Patent Act).

³ Section 21 (1) no. 3) of the Patent Act states that: "the essential content of the patent has been taken from the descriptions, drawings, models, implements or equipment of another person or from a process used by this person, without his consent (usurpation)".

⁴ Section 59 (2) of the Patent Act.

⁵ Section 7 (2) of the Patent Act states that: "If a patent is revoked on account of opposition filed on the ground of usurpation (section 21 (1) no. 3) or if opposition results in the surrender of the patent, the opponent can himself file an application in respect of the invention within one month of the official communication thereof and claim the priority of the earlier patent."

The opposition proceedings are conducted by the Patent Division of the DPMA, which decides whether a patent shall be revoked or maintained⁶. The decision is taken by a panel of at least three members of the Patent Division, including at least two technically qualified members. If the case involves particular legal difficulties and none of the participants is a legally qualified member, a legally qualified member of the Patent Division joins the panel⁷. If the opposition is withdrawn, the proceedings are continued ex officio without the opponent⁸. An appeal against the decision of the Patent Division can be filed with the DPMA within one month of service of the decision⁹.

⁶ Section 61(1) of the Patent Act.

⁷ Section 27(3) of the Patent Act.

⁸ Section 61(1), third sentence, of the Patent Act.

⁹ Section 73 of the Patent Act.