

Administrative Revocation and Invalidation Mechanisms

Croatia

Declaration of nullity of patents/ utility models

Croatian Patent Act does not provide for an opposition, pursuant to the Section X of the Patent act (Official Gazette, No. 16/20), patent, utility model and supplementary protection certificate may be declared null and void in total or in part at any time, on the proposal of any legal or natural person or a State Attorney or ex officio, if the patent has been granted:

1. for the subject matter which is not considered to be an invention, for inventions excluded from patent protection and for inventions which cannot be considered patentable;
2. for an invention which was not new or did not include an inventive step or for an invention which is not industrially applicable on the filing date or granted priority date of the patent application;
3. for an invention which is not disclosed in a manner sufficiently clear and detailed for it to be carried out by a person skilled in the art;
4. for the subject matter extending beyond the content of the patent application as filed or, if the patent was granted on a divisional application beyond the content of the earlier application as filed; and
5. on behalf of a person not entitled to the patent protection for the invention.

The procedure concerning the declaration of nullity of a patent begins by filing a written proposal with the Office. The applicant pays the administrative fee and procedural charges. The proposal contains the indication requesting a patent to be declared null and void, the data concerning the applicant, the patent holder, the patent number, the power of attorney if the procedure is initiated through a representative, the reasons for the proposal of the declaration of nullity of the patent supported by necessary facts and evidence.

The Office communicates the proposal to the patent holder with the invitation to submit response and to amend, where applicable, the description, claims and drawings.

In the course of the procedure, the Office invites the parties as many times as necessary to submit their comments on the submissions of the other party and all invitations and responses thereto are communicated to all parties in the procedure. The Office examines the reasons stated by the applicant but it may also examine other reasons ex officio not invoked by the applicant if such reasons would put patent maintenance into question.

If the Office establishes that the proposal is unfounded, it shall issue a decision on refusing the proposal for the declaration of nullity of a patent. If the Office establishes that there is at least one reason justified by law, it shall issue a decision on declaring a patent null and void. If the Office establishes that a patent is to be maintained valid but amended, it first notifies all parties in the procedure and invites them to submit their reasoned observations on the content of claims on the basis of which it intends to maintain the patent valid. If the parties disapprove the text, the Office may continue the nullity procedure. If the parties approve the text or if they fail to reply to the invitation, the Office issues a decision on partial declaration of nullity maintaining patent in an amended form, provided that the patent holder within two months from receipt of the decision pays the fees for printing a new patent specification. If the patent holder fails to pay the fees, the Office shall declare the patent null and void.

If the applicant of the proposal for the declaration of nullity withdraws the proposal for the declaration of nullity in the course of the procedure, the Office may continue the procedure ex officio. This provision applies mutatis mutandis where the patent holder has surrendered the patent or the patent has lapsed.

The patent application and the patent granted thereon shall not have ab initio the effects to the extent that the patent has been declared null and void.

Once the decision becomes final the Office shall enter the information on declaring a patent null and void in a register and publish this in the Official gazette. If a patent is maintained as amended, the Office shall publish a new patent specification together with issuing a decision.

If the procedure concerning the proposal is completed by a decision on declaring a patent null and void or on rejecting the proposal for the declaration of nullity of patent, procedural costs shall be borne by the party who received an unfavorable decision.

Provisions of the Patent Act referring to the procedure concerning the proposal for the declaration of nullity of a patent apply mutatis mutandis to the declaration of nullity of a supplementary protection certificates (SPC).

Important notice

Procedures pending on the day of the entry into force of the new Patent Act (February 20th 2020) shall be completed in accordance with the provisions of Section IX of the Patent Act (Official Gazette, No. 173/03, 54/05, 87/05, 76/07, 30/09, 128/10, 49/11, 76/13 and 46/18).