Opposition systems

Eurasian Patent Office

The Eurasian Patent Convention (EAPC) provides a post-grant administrative revocation of the Eurasian patents. A Eurasian patent can be revoked by any person, other than the patent owner, by filing to the EAPO a notice of opposition within three years of the date of publication of information concerning the grant of a Eurasian patent and upon the payment of the prescribed fee.[1] The time limit for filing a notice of opposition may not be extended.[2] The right to file an opposition, lost due to failure to comply with the time limit for filing, may not be restored.[3]

The notice of opposition shall be filed in writing and contain a statement of the extent to which the Eurasian patent is opposed and the grounds on which the opposition is based, as well as facts and evidence in support of these grounds[4].

The notice of opposition can only be filed on the following grounds for revocation of a Eurasian patent:[5]

(i) failure to satisfy the patentability conditions, because the invention:

- is not novel;
- does not involve an inventive step;
- is not industrially applicable;
- is not recognized as an invention *per se;*
- belongs to inventions for which Eurasian patents shall not be granted;

(ii) the claims comprise features that were not contained in the Eurasian application as filed;

(iii) the Eurasian 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.

Each of the above conditions is a separate ground for revocation of a Eurasian patent. However, (i) incorrect indication of the patent owner or inventor in the Eurasian patent; (ii) non-compliance of the specification or drawings with established requirements; and (iii) failure to comply with the requirement of unity of invention are not grounds for the administrative revocation of the Eurasian patent.[6]

If the notice of opposition is filed in compliance with the prescribed requirements,[7] the EAPO accepts the opposition as admissible and communicate the notice of opposition to the patent owner, giving him the opportunity to file his observations and, where appropriate, amendments to claims within a time limit prescribed by the EAPO.[8]

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[1] Rule 53(1), 53(5) of the Patent Regulations under EAPC.
[2] Rule 37(4) of the Patent Regulations under EAPC.
[3] Rule 39(3) of the Patent Regulations under EAPC.
[4] Rule 53(5), 53(6) of the Patent Regulations under EAPC.
[5] Rule 53(2) of the Patent Regulations under EAPC.
[6] Rule 2.8 of the Regulations on Opposition Filing and Examination.
[7] The notice of opposition shall comply with the conditions specified in paragraphs (1), (3), (5) and (6) of Rule 53 of the Patent Regulations; and in Sections 2 and 3 of the Regulations on Opposition Filing and Examination.
[8] Rule 53(7) of the Patent Regulations under EAPC; Section 4 of the Regulations on Opposition Filing and Examination.

The EAPO communicates the response and the amendments submitted by the patent owner to the opponent or, if several notices of opposition were filed, to all opponents. The EAPO can, if it considers this expedient, invite the opponent to present his considerations in respect of the response by the patent owner within a time period specified in the communication.

The examination of the notice of opposition as to substance and a decision on it on behalf of the EAPO is carried out by a board consisting of at least three technically qualified examiners, employees of the EAPO, at least two of whom were not involved in the decision to grant the opposed Eurasian patent. When necessary, a legal expert of the EAPO may be included in the board. The chairman of this board shall be appointed from among those examiners who were not involved in the decision to grant the opposed Eurasian patent.[9]

The board examines the notice of opposition in respect of those grounds for revocation which are invoked and supported in the notice. The board is not obliged, but may examine on its own motion the validity of the granted patent based on grounds not invoked in the notice, if they would prejudice the maintenance of the Eurasian patent.[10]

The examination of the notice of opposition as to substance shall be concluded by rendering a decision without oral hearings, unless any party requests to hold such a meeting or the EAPO considers such a meeting expedient.

The administrative revocation procedure may result in a decision by the EAPO to revoke the Eurasian patent, to reject the opposition, or to maintain the patent in amended form. The Eurasian patent revoked as the result of opposition procedure, either totally or in part, is considered void in all Contracting States as from the date of filing of the Eurasian application.[11]

The decision on the opposition is published in the Gazette of the Eurasian Office. In case the opposition resulted in the amendment of the patent, the EAPO publishes a new specification of the Eurasian patent containing the description as such, claims and drawings as amended.[12]

An appeal against the decision on opposition may be filed by any party adversely affected by such decision within four months of the date of notification of the decision. The notice of appeal is deemed to have been filed upon the payment of the prescribed fee.[13]

The notice of appeal is examined by a new technical board, appointed by the President of the EAPO. The provisions relating to opposition proceedings are applied to appeal proceedings. The decision on opposition, taken as a result of examination of the appeal and approved by the President of the EAPO, is final.

An appeal has suspensive effect - no acts related to the implementation of the decision on opposition, including the entry of records into the Register of Eurasian patents and publication of information on such decision in the Eurasian Office Bulletin, shall be performed until a decision is passed on the appeal.

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[9] Rule 5.2 of the Regulations on Opposition Filing and Examination.
[10] Section 6 of the Regulations on Opposition Filing and Examination.
[11] Rule 53(8) of the Patent Regulations under EAPC.
[12] Rule 53(9) of the Patent Regulations under EAPC.
[13] Rule 53(8) of the Patent Regulations under EAPC.