

Submission of Information by Third Parties

Colombia

In Colombia, the legal regime governing patents is regulated by Decision No. 486 of 2000 of the Commission of the Andean Community (Decision 486), setting forth the Common Industrial Property Regime for Member States.

The procedure for granting patents includes various administrative steps to allow the intervention of third parties during the processing of the application and to allow for the review of decisions taken by the competent authority. Such procedure includes the filing of the patent application, the verification of physical requirements (under art. 39 D of Decision 486), the publication of the application, the filing of oppositions by third parties (under art. 43 of Decision 486 prescribing the time limit of 60 days from publication), applications for patentability examinations (art. 44 D.486) and the final decision¹ on whether to grant or deny patent rights.

Under this procedure, Andean law provides for third parties to submit observations with respect to the patent application once it has been published.² These observations may relate, inter alia, to compliance with the patentability requirements set out in the applicable law, such as novelty, inventive step and industrial applicability. The competent authority shall assess the arguments of the opponent in its administrative decision and may or may not find them to be valid having regard to the technical assessment of the specific case.

The applicant must then apply for the patentability examination within the time limit prescribed by the applicable Law (art. 44 of Decision 486). Failure to lodge the application may trigger administrative effects, such as closure of the file or declaration of abandonment.³ The purpose of the patentability examination is to determine whether the invention fulfills the substantive requirements⁴ for granting the patent. As a result of such examination, the competent authority may grant or refuse the patent application.

During the administrative procedure, the competent authority may make requests to the applicant with a view to clarifying or supplementing the information contained in the application. Failure to comply with such requirements within the prescribed time limits may result in the declaration of administrative abandonment of the application. Abandonment often results from the lack of a request for examination or the failure to comply with formal requirements; refusal is the result of a negative assessment in the substantive examination due to the absence of patentability requirements.⁵

Decisions on patents taken by the administrative authority may be subject to administrative remedies sought in accordance with the applicable law.

Administrative acts issued by the competent authority, may be appealed against pursuant to Decree No. 4886 of 2011 on appeal. Such decisions may be challenged in the jurisdiction responsible for administrative dispute by arguing invalidity.

¹Decision No. 486 of 2000 of the Commission of the Andean Community, Title II (Patent Granting Procedure). See also Court of Justice of the Andean Community, Preliminary Interpretation 111-IP -2013.

²Decision No. 486 of 2000, Article 43. See also Court of Justice of the Andean Community, Preliminary Interpretation 162-IP - 2013.

³Decision No. 486 of 2000, Article 44; see also State Council of Colombia, case law on the obligation to request the examination of patentability.

⁴Decision No. 486 of 2000, Articles 14-18 (patentability requirements). See also Court of Justice of the Andean Community, Preliminary Interpretation 47-IP -1999.

⁵Decision No. 486 of 2000, Article 39; see also Court of Justice of the Andean Community, Preliminary Interpretation 77-IP - 2015.

There is no administrative nullity in Colombia. Once the administrative remedies have been exhausted, the interested party must file an application for invalidity with the competent judicial authority.

Consequently, the Colombian system provides for mechanisms allowing third parties to intervene in the processing of patent applications, as well as administrative and judicial mechanisms for the review of decisions taken by the competent industrial property authority.