Czech Republic – Administrative revocation and invalidation mechanisms

The Czech legal framework, related to the technical solutions, such as patents, utility models and supplementary protection certificates (SPCs), regulates both observations on the patentability and post-grant disputes procedures.

Observations on the patentability of a subject-matter in the published patent application

Pursuant to Section 32 of Act No. 572/1990 Coll. of 27 November 1990, on Inventions and Rationalisation Proposal, as amended (hereinafter referred to as '*the Czech Patent Act*'), any person can file the written observations on the patentability of a subject-matter after the publication of a particular patent application. Persons who have submitted observations do not become a party of the patent application procedure. However, the patent applicant is informed of any observations submitted. The Industrial Property Office of the Czech Republic (hereinafter referred to as '*the Czech IP Office'*) will take submitted observations into consideration when carrying out the substantive examination of the patent application. In case the observations are filed after the patent is granted or before granting but within the period of time when the preparations for granting the patent were concluded, the submitted observations are subject of the request for revocation of the patent.

Revocation of the patent

Pursuant to Section 23 of the Czech Patent Act a patent may be revoked, in total or in part, if subsequently the invention did not meet the requirements of patentability; or if it is not disclosed in a manner sufficiently clear and complete in the patent to be carried out by a person skilled in the art; or the subject-matter of the patent extends beyond the content of the patent application as filed or the subject-matter of the patents granted on the divisional application extend beyond the content of the patent application as filed; or the extent of the protection arising from the patent was extended.

The request for revocation of a patent can be filed by any natural or legal person without proving a legal interest. It can be filed after granting of the patent within its whole period of validity at any time. The request can be also filed after lapse of the patent but with the proof of a legal interest. Revocation of the patent is of the retroactive effect to the date on which the patent became valid and it is published in an Official Bulletin of the Czech IP Office.

The final decisions of the Czech IP Office can be reviewed by the Court.

Cancelation of a Utility Model

According to Sections 17 and 18 of Act No. 478/1992 of 24 September 1992, on Utility Models, as amended (hereinafter referred to as '*the Act on utility models'*), the registration of a utility model can be cancelled, in total or in part, if its technical solution does not qualify for protection under Sections 1 and 3[1]; the subject-matter of a utility model is already protected by a patent with effects on the territory of the Czech Republic or utility model enjoying earlier priority; or the subject-matter extends beyond the content of the application as filed.

The request for cancellation of a utility model can be filed by any natural or legal person without proving a legal interest after registration of a utility model within its entire period of validity at any time. The request can be also filed after lapse of the utility model but with the proof of a legal interest. Cancellation of the utility model is of the effect as if the utility model has not been registered in the Register of utility models. It is published in an Official Bulletin of the Czech IP Office.

[1] *Pursuant to Section 1 of Act No. 478/1992, the criteria for protection of technical solutions as utility models are as follows: the novelty, exceeding of the framework of mere professional skill and industrial applicability. In addition, Section 3 of this Act specifically lists technical solutions which are not protected by utility models, i.e. those contrary to public interest; plant and animal varieties and biological reproductive materials; and production processes or work activities.*

The final decisions of the Czech IP Office can be reviewed by the Court.

Invalidity of supplementary protection certificates (SPCs) for medicinal or plant protection products

Any person can file a request for invalidity of the certificate or a request for revocation of a six-month extension of the duration of a medicinal certificate for paediatric use before the Czech IP Office. Within the EU, the invalidity of SPCs is harmonised by Regulation (EC) No. 469/2009 of the European Parliament and of the Council of 6 May 2009 concerning the supplementary protection certificate for medicinal products (codified vision) and Regulation (EC) No. 1610/96 of the European Parliament and of the Council of 23 July 1996 concerning the creation of a supplementary protection certificate for plant protection products[2].

Pursuant to Article 15 and 16 of Regulation No. 469/2009 and Article 16 of Regulation No. 1610/96, the grounds for invalidity of the certificate are as follows: a) the conditions for obtaining a certificate were not fulfilled[3]; b) the basic patent has lapsed before its lawful term expires; c) the basic patent has been revoked or limited to the extent that the product for which the certificate was granted is no longer protected by the basic patent; it shall apply also in case of the basic patent revocation after its lapse.

The Czech IP Office revokes the extension of the duration of the certificate if it was granted contrary to the provisions of Article 36 of Regulation (EC) No. 1901/2006[4]. The application does not contain: a) an agreed paediatric investigation plan (hereinafter referred to as '*the agreed plan*'); b) the results of all studies conducted in compliance with the agreed plan; c) the market authorisation including the statement of compliance with all the measures contained in the agreed and completed plan; or d) the summary of product characteristics and, if appropriate, the package leaflet of the medicinal product concerned; or it was found out that d) the product was not authorised in all EU Member States; e) the medicinal product was designated as an orphan medicinal product pursuant to Regulation (EC) No. 141/2000[5]; and f) the applicant applied for a one-year extension of the period of marketing protection for the medicinal product concerned.

In both cases the notification on invalidity of the certificates or one on revocation of an extension of the duration are published in an Official Bulletin of the Czech IP Office.

The final decisions of the Czech IP Office can be reviewed by the Court.

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2 *OJ L 153, 16.6.2009, p. 1; OJ L 198, 8.8.1996, p. 30*

3 *Conditions for obtaining a certificate are explicitly mentioned in Articles 3 of Regulations No 469/2006 and No 1610/96, i.e. the product is protected by a basic patent in force; a valid authorisation to place the product on the market as a medicinal product (or as a plant protection product) has been granted in accordance with Directive 2001/83/EC or Directive 2001/82/EC, as appropriate (or in accordance with Article 4 of Regulation No 1107/2009, repealing Directive 91/414/EEC); this authorisation is the first authorisation to place the product on the market; and the product has not already been the subject of a certificate.*

4 *OJ L 378, 27.12.2006, p. 1*

5 *OJ L 18, 22.1.2000, p. 1*

The relevant statistics:

	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
observations to patentability	11	7	11	8	13	6	6	1	4	11
requests filed										
revocation of patents	8	22	18	20	11	17	10	10	11	9
invalidity of SPCs	0	1	0	1	1	8	1	0	0	1
cancellations of utility models	44	20	47	25	33	32	16	20	20	26
settled disputes										
revocation of patents	2	11	20	19	18	10	22	8	4	8
invalidity of SPCs	0	0	1	0	1	2	4	1	3	4
cancellations of utility models	37	34	24	49	27	39	21	25	21	13