



Opposition

The opposition mechanisms in place at the Israel Patent Office (ILPO), under the relevant Sections of the Israel Patents Law – 1967 (hereinafter “Section” or “Sections”), are based on a pre-grant opposition system, in which any person may, under Section 30, oppose the grant of a patent, within three months from the date of publication of the application under Section 26¹, by filing a written notice to the Registrar.

The grounds for opposition to the grant of a patent are stated in Section 31:

- (1) there is a reason, because of which the Registrar could have refused to accept the patent application;
- (2) the invention is not patentable under Section 4(2)²;
- (3) the opponent, and not the applicant, is the owner of the invention.

The Registrar, under Section 32, may accept all or part of the opposition, he may reject it or he may exercise his powers under Sections 18³, 23⁴ and 24⁵ in respect of the application.

If the opposition was submitted for grounds said in Section 31(3), then under Section 33(a), the opponent may request that the patent be granted to him, and the Registrar may – in addition to any other relief – grant the patent to the person who proved that he is the owner of the invention. In these proceedings, the Registrar may, under Section 33(b), join any person whom the Registrar believes to have an interest in the matter.

If the opposition was duly submitted under Section 30 and was subsequently canceled, then the Registrar may, under Section 34, refuse to grant the patent applied for if, in the course of the opposition, he discovered material according to which the application should not have been accepted in the first place.

In respect of the proceedings for the cancellation of a granted patent, the Registrar may, under Section 73B⁶, cancel a patent, based on a request by any person who is not the patent holder, if he found that there are grounds on which it was possible to oppose granting the patent. The Registrar shall not, under Section 74(a), consider a request for cancellation if there are pending Court proceedings for infringement of the same patent without the permission of the Court. If permission is given by the Court, then the Registrar shall, under Section 74(b), decide on the request after he has given all the parties involved in the cancellation proceedings an opportunity to state their arguments before him.



If Court proceedings for infringement of a patent were instituted after a request for its cancellation was submitted to the Registrar, then the Registrar shall, under Section 74(c), continue to consider the request if the Court made no other order on that matter.

A cancellation order shall, under Section 75(a), go into effect at the end of thirty days after the period for submitting appeal against it; however, if an appeal against it was submitted, then the Court may postpone its coming into effect, or it may set conditions for its coming into effect or for the postponement, as it deems proper.

When a patent has been finally cancelled, then the Registrar shall, under Section 75(b), record the cancellation in the Register, and the patent shall be treated as if it had not been granted.

¹ Section 26 of the Patents Law relates to the publication of the acceptance of the application, and states that where an application has been accepted under this Article, the Registrar shall publish the fact of acceptance thereof on the Internet.

² Section 4(2) of the Patents Law relates to the publication of the invention by exploitation or exhibition, and states that an invention is deemed new if it was not published, in Israel or abroad, before the application date by exploitation or exhibition, in a manner that enables a skilled person to make it according to the particulars thus made known.

³ Under Section 18C, the Registrar may do one of more of the following, in case the applicant fails to comply with the requirements of Section 18 of the Patents Law (regarding the submission of relevant prior art): (a) cancel the patent or abstain from granting the patent; (b) give a license to exploit the patent to any person who desires it, as if the Court or the Registrar took the place of the patentee, under terms to be determined by agreement between the parties and – if where such agreement is absent – by the Court or the Registrar, as the case may be; (c) order the term of the patent to be shortened.

⁴ Under Section 23, the Registrar may determine, in case that amendments of substantive nature have been inserted to the specification: (1) where it is possible to distinguish between those amendments and the existing specification – that the date of the amendments is the date they were submitted to the Office; (2) Where it is not possible to distinguish between the amendments and the existing specification – that the date of the entire application shall be the date the amendments were submitted to the Office.

⁵ Under Section 24(b), the Registrar may direct the applicant to divide his application, in case that the application includes more than one invention and as long as the Registrar has not accepted the application.

⁶ The statute of limitations does not apply on a request for cancellation under Section 73B.