

Opposition systems

Israel

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 26,ⁱ 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);ⁱⁱ
- (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 18,ⁱⁱⁱ 23^{iv} and 24^v 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 to the proceedings 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 cancelled, 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.

ⁱ 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.

ⁱⁱ 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.

ⁱⁱⁱ 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.

^{iv} 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.

^v 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.