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Patpol

Patent enforcement proceedings

1 Lawsuits and courts

What legal or administrative proceedings are available for enforcing patent rights against an infringer? Are there specialised courts in which a patent infringement lawsuit can or must be brought?

There are no specialised courts for enforcing patent rights in Poland. Cases concerning patent infringement are handled by common civil courts. District courts are regarded as the courts of first instance for handling civil patent cases. If both parties are commercial entities, the matter will be handled by the commercial court (which is, in fact, the commercial department of the district court). The essential feature of the proceedings before the commercial court is that the rules of those proceedings are stricter than those before a common court.

It is also possible to act before the customs authorities – namely, to file a relevant request to seize the goods infringing a patent. For details regarding action before the customs authorities and requests to seize the goods infringing a patent, see question 22.

2 Trial format and timing

What is the format of a patent infringement trial?

In patent infringement proceedings, the plaintiff submits all the relevant evidentiary materials to prove that the infringement has taken place. As a rule, the court does not consider any evidence ex officio. In a lawsuit between commercial entities, the plaintiff must produce all the relevant evidence along with the statement of claim. If all the relevant evidentiary materials are not attached to the statement of claim, the right to submit additional material when the proceeding is already under way is generally lost. Documents, depositions of witnesses or depositions of the parties can be used as evidentiary materials. Patent infringement cases are decided by judges with no technical training. The court is therefore allowed to appoint independent experts to submit written or oral opinions when specialist knowledge is necessary. The expert may be appointed from among the registered Polish patent attorneys or other highly qualified specialists in the relevant field. The court is also entitled to request an expert from a research or scientific institute. The opinions of private experts instructed by the parties will not be regarded as official documents.

3 Proof requirements

What are the burdens of proof for establishing infringement, invalidity and unenforceability of a patent?

The burden of proof of establishing infringement rests on the plaintiff. As a rule, the plaintiff has to prove his or her rights to the patent and that infringement has taken place, as well as other necessary circumstances, depending on the kind of the enforced claims. Similarly, in invalidation proceedings the party lodging a request for invalidation of the patent carries the burden of proof. The party must prove that the statutory requirements for obtaining a patent have not been met. Only in exceptional cases will the Industrial Property Law reverse the burden of proof from the patent holder to the patent infringer. In cases regarding process patent in relation to new products, or where the patent holder proves that he or she was unable to identify the process of manufacture actually used by another person, the product that may be obtained by means of the patented process shall be deemed to have been obtained by that process.

4 Standing to sue

Who may sue for patent infringement? Under what conditions can an accused infringer bring a lawsuit to obtain a judicial ruling or declaration on the accusation?

The patent holder or an exclusive licensee recorded in the patent register is lawfully entitled to sue for patent infringement proceedings, unless it is stipulated otherwise in the licence agreement.

5 Inducement, and contributory and multiple party infringement

To what extent can someone be liable for inducing or contributing to patent infringement? Can multiple parties be jointly liable for infringement if each practises only some of the elements of a patent claim, but together they practise all the elements?

There is no legal definition of contributory or indirect patent infringement in Polish law. According to general legal knowledge, an indirect infringement involves actions that could enable another person to infringe someone else's exclusive rights. Producing or selling devices for the carrying out of a patented process is regarded as a typical example of an indirect patent infringement. The Polish Industrial Property Law does not provide any particular regulations regarding the joint liability of multiple parties in this regard. However, the liability of multiple parties for infringement, if each practises only some of the elements of a patent claim and together they practise all the elements, seems to be possible on the basis of the general provisions of the Polish Civil Law.

6 Infringement by foreign activities

To what extent can activities that take place outside the jurisdiction support a charge of patent infringement?

As a rule, only acts performed in the territory of Poland will be regarded as significant in infringement proceedings. The patent holder may prevent any third party from exploiting the patent holder's invention for profit or for professional purposes by making, using, offering or putting on the market a product that is the subject matter of the invention, or importing the product for such purposes, or employing a process that is the subject matter of the invention, as well as using, offering, putting on the market or importing for such purposes the product directly obtained by that process without the patent holder's consent.

According to the rule of European exhaustion of patent rights, a patent shall not be considered infringed by an act of importation into the territory of Poland or acts of offering for sale or further putting on the market concerning a product that has been previously put on the market in the territory of the European Economic Area by the patent holder or with his or her consent. Therefore, the importation of products produced in another country and covered by the valid patent in Poland may infringe the patent if the importer acts without the consent of the patent holder.

7 Infringement by equivalents

To what extent are 'equivalents' of the claimed subject matter liable for infringement?

According to Polish patent law, particular emphasis should be placed on clear and unequivocal wording of patent claims. Such strict interpretation of patent claims is not compatible with the concept of interpretation of patent exclusivity set out in the Protocol on interpretation of article 69 of the European Patent Convention (EPC). Bearing in mind that the EPC is binding on Poland, it should be expected that the practice of the Polish Patent Office and courts will be consistent with the EPC.

8 Discovery of evidence

What mechanisms are available for obtaining evidence from an opponent, from third parties or from outside the country for proving infringement, damages or invalidity?

Pursuant to the Code of Civil Proceedings, there are a number of special mechanisms for obtaining evidence, in particular:
- the court may order any person (an adverse party or third party) to submit any document relevant to the proceedings that are in that person's possession, unless the document contains state secrets;
- if any party refers to trade books, the court may require them to be surrendered to the court; and
- security of evidence is possible if there is a risk that producing the evidence may become impossible or may be impeded, or to establish the relevant facts for any other reasons.

The adaptation of Polish law to Directive No. 2004/48/EC of 29 April 2004 on the enforcement of intellectual property rights brought some new discovery devices for IP matters. Since June 2007, on the request of the patent owner, the court may impose, in separate proceedings on the defendant or a third party, an obligation of delivering information that is necessary to enforce his or her claims. The patent owner may require the following information to be revealed:
- the origin of and distribution network of the patent-infringing goods;
- names and addresses of manufacturers and suppliers; and
- the amount of goods that were manufactured, sold and put on the market and prices thereof.

With regard to collecting evidence from parties outside Poland, the Hague Convention of 18 March 1970 on the taking of evidence abroad in civil and commercial matters will apply. In relation to EU member states, Council Regulation (EC) No. 1206/2001 of 28 May 2001 on cooperation between the courts of the member states in the taking of evidence in civil or commercial matters will apply.

9 Litigation timetable

What is the typical timetable for a patent infringement lawsuit in the trial and appellate courts?

Court proceedings last between two and three years (including proceedings before the Court of Appeal), depending on the complexity of the matter, the strategy taken by the parties and the number of pending cases at the court. There is no general rule, however, and in some cases it can take longer to complete the proceedings.

10 Litigation costs

What is the typical range of costs of a patent infringement lawsuit before trial, during trial and for an appeal?

It is difficult to predict the range of costs associated with infringement proceedings. The potential costs depend on the complexity of the matter and the value of the object of the litigation. The costs of representation, or the costs connected with entering and handling the court proceedings, as well as the costs of preparing and filing the relevant documents, also have to be taken into account. As a rule, the losing party bears the costs of the court proceeding.

11 Court appeals

What avenues of appeal are available following an adverse decision in a patent infringement lawsuit?

A decision of the court of first instance issued in a patent infringement matter is subject to appeal before the court of second instance. The appeal should be filed with the court of first instance that issued the appealed decision within two weeks of the date of delivery of that decision together with the reason in writing to the interested party. From there it will be passed on to the court of second instance. The court of appeal judges the case within the limits of appeal. Only nullity of the appealed decision is considered ex officio. In some circumstances explicitly set out by the law, a decision of the court of second instance may be subject to further appeal (cassation) at the Supreme Court. The cassation should be filed within two months of the date of delivery of the decision of the second instance court to the interested party together with the reasons in writing.

12 Competition considerations

To what extent can enforcement of a patent expose the patent owner to liability for a competition violation, unfair competition or a business-related tort?

Antitrust regulations would be taken into consideration if the patent holder abuses the scope of monopoly granted to him or her by the patent. There are some clauses that are not allowed under antitrust regulations, and putting them in the licence agreement may be found to be unlawful. In particular, licence agreements including clauses that are intended to strengthen the position of the patent holder may breach the law.

If the Patent Office recognises activities of the patent holder as an abuse of the patent, a proceeding for granting a compulsory licence may be initiated. Also, the Office for Protection of Competition and Consumers is entitled to undertake legal remedies if the patent holder breaks antitrust regulations.

13 Alternative dispute resolution

To what extent are alternative dispute resolution techniques available to resolve patent disputes?

Alternative means for the resolution of patent disputes are available (arbitration and mediation), but they are not commonly used in Poland. The informal character of these proceedings enables the parties to avoid time-consuming court proceedings and helps them to reach a satisfactory amicable settlement.

Scope and ownership of patents

14 Types of protectable inventions
Can a patent be obtained to cover any type of invention, including software, business methods and medical procedures?

Pursuant to Polish law, a patent shall be granted – without discrimination as to the field of technology – for an invention that is new, involves an inventive step and is susceptible of industrial application. The following are not regarded by law as inventions:
- discoveries, scientific theories and mathematical methods;
- aesthetic creations, schemes, rules and methods for performing mental acts;
- doing business or playing games;
- creations, whose incapability of exploitation can be proved under the generally accepted and recognised principles of science;
- computer programs; and
- presentation of information.

Inventions of which exploitation would be contrary to public order or morality, and plant or animal varieties or essentially biological processes for the production of plants or animals, are excluded from patentability. This rule does not apply to microbiological processes or the products thereof. Furthermore, patents shall not be granted to methods of treatment of the human or animal body by surgery or therapeutic or diagnostic methods used on human or animal bodies. This rule does not apply to products or, in particular, to substances or compositions applied in diagnostics or treatments.

15 Patent ownership
Who owns the patent on an invention made by a company employee, an independent contractor or multiple inventors? How is patent ownership officially recorded and transferred?

Generally, the right to obtain a patent for an invention belongs to the inventor. Where an invention has been made jointly by a number of persons, the right to obtain a patent shall belong to them jointly.

Where an invention has been made by an inventor in the course of employment duties or in the execution of any other contract, the right to obtain a patent for this invention will belong to the employer or the individual who orders it, unless otherwise agreed by the parties concerned.

Furthermore, agreements concluded between entrepreneurs may designate the entity to which the rights to obtain a patent shall belong, if an invention has been made in connection with the execution of such an agreement. Where an invention has been made by an inventor with the assistance of an entrepreneur, the latter may enjoy the right to exploit the invention in its own field of activity. In the agreement on giving assistance, the parties may stipulate that the right to obtain a patent belongs in whole or in part to the entrepreneur.

The ownership of a patent is officially registered in the patent register. The register entry is of a declaratory nature; however, the transfer of a patent becomes effective in relation to third parties upon the date of registration of the said transfer.

Defences

16 Patent invalidity
How and on what grounds can the validity of a patent be challenged? Is there a special court or administrative tribunal in which to do this?

A patent may be declared invalid in whole or in part, when the statutory requirements for granting a patent (ie, novelty, inventive step, industrial applicability, sufficient disclosure) have not been met. There is neither a special court nor administrative tribunal for patent invalidation.

The party demanding invalidation of a patent is obliged to prove its legal interest as well as the claimed non-patentability of the invention in question. A decision of the Patent Office declaring the patent invalid is retroactive (ex tunc). Polish law does not provide for any time limits for nullity actions, which means that a nullity action may be brought at any time of the duration of the patent or even after the patent has lapsed. The invalidation proceeding is conducted before the Patent Office in the form of litigation proceedings. The decision of the Patent Office declaring the patent invalid may be subject to a complaint to the district administrative court.

Also, opposition proceedings may result in the invalidation of a patent. Unlike the nullity action, legal interest of the opponent is not required. For details regarding opposition proceedings, see question 34.

17 Absolute novelty requirement
Is there an 'absolute novelty' requirement for patentability, and if so, are there any exceptions?

According to Polish law, absolute novelty is required. An invention shall be considered to be new if it does not form part of the state of the art. The state of the art shall be held to comprise everything made available to the public by means of a written or oral description or by use, displaying or disclosing in any other way, before the date according to which priority to obtain a patent is determined. The content of any patent applications or utility model applications that enjoy the earlier priority, not made available to the public, shall also be considered as comprised in state of the art, provided that they were published in the manner as specified by this law. The above-mentioned provisions, however, shall not prevent a patent from being granted for an invention concerning a new use of a substance comprised in the state of the art or the use of such a substance for the purpose of obtaining a product for a new use.

18 Obviousness or inventiveness test
What is the legal standard for determining whether a patent is 'obvious' or 'inventive' in view of the prior art?

According to Polish law, an invention shall be considered as involving an inventive step if, having regard to the state of the art, it is not obvious to a person skilled in the art.

According to the Guidelines for Examination of Patentability of Inventions and Utility Models (a Patent Office publication) an invention shall be regarded obvious if a person skilled in the art, having considered the closest prior art solution, would solve the problem caused by the invention by combining two or more features of the state-of-the-art solution. A combination of two or more state-of-the-art solutions may be taken into account if they contain information implying the way of solving the problem of the invention.

19 Patent unenforceability
Are there any grounds on which an otherwise valid patent can be deemed unenforceable owing to misconduct by the inventors or the patent owner, or for some other reason?

Where a patent application has been filed or a patent obtained by persons not entitled thereto, the entitled persons may demand that the patent granting proceeding be discontinued or the patent granted be revoked. They may also demand that a patent be granted in their favour or that the patent already granted be transferred to them against reimbursement of the incurred costs of the patent proceedings. An entitled person may also demand that the ineligible person who applied for or who was granted the patent surrender the unlawfully obtained profits and compensate in damages.

Remedies

20 Monetary remedies for infringement

What monetary remedies are available against a patent infringer? When do damages start to accrue? Do damage awards tend to be nominal, provide fair compensation or be punitive in nature?

The patent holder (or any other person entitled by law) whose patent has been infringed may demand from the infringer:
- cessation of the infringement;
- surrender of the unlawfully obtained profits; and
- if the infringement was deliberate, compensation for damages:
  - in accordance with the general principles of the Civil Code; or
  - by payment of a lump sum equivalent to a licence fee, or any other remuneration, which would have been due to the patent holder at the date of the demand if the infringer had been authorised by the patent holder to use the invention.

On the request of the patent holder, the court may decide on the infringing products or other means and materials that were used for manufacturing the infringing products. In particular, the court may decide on withdrawing them from the market.

When judging on the infringement of a patent the court may also, at the holder's request, decide on publishing the judgment in full or in part, or the mention of the judgment, in a manner and at the scope as specified by the court.

At the request of the infringer and in case of non-deliberate infringement, and provided that cessation of the infringement and a sentence regarding the unlawfully obtained products or the means used in their production would be unsuitably and excessively painful to the infringer, or both, the court may sentence the infringer to pay a duly suitable amount of money on behalf of the patent holder.

Generally, the damages start to accrue from the date of informing the infringer about the infringement.

The monetary remedies are of a compensatory rather than punitive character.

21 Injunctions against infringement

To what extent is it possible to obtain a temporary injunction or a final injunction against future infringement? Is an injunction effective against the infringer's suppliers or customers?

A request for a preliminary injunction may be filed before the commencement of infringement proceedings, at the moment of filing the statement of claim or once the court proceedings have begun. If the request for a preliminary injunction is filed before the start of the proceedings the court, upon issuing a decision to grant the preliminary injunction, will set a two-week deadline for the filing of the statement of claim. If the plaintiff misses the deadline, the court will reverse the preliminary injunction. To obtain a preliminary injunction it is necessary to prove the legal interest in requesting such injunction, justify the grounds for filing the request for an injunction and indicate the way in which the injunction should take place (seizure of goods in the infringer's warehouse, ban on further sale, etc).

An important consequence resulting from claiming a preliminary injunction is that if the plaintiff loses the lawsuit or decides to withdraw the court action before the judgment, the alleged infringer is entitled to demand compensation for the damages arising from the preliminary injunction order. Since 20 June 2007, on the request of the patent holder, the court may impose on an infringer or a third party (eg, suppliers) an obligation of delivering information about the origin and distribution network of the infringing goods, and in particular names and addresses of manufacturers and other suppliers, the amount of goods that were manufactured, sold and put on the market and prices thereof.

22 Banning importation of infringing products

To what extent is it possible to block the importation of infringing products into the country? Is there a specific tribunal or proceeding available to accomplish this?

As a member of the EU, Poland is bound by the Council Regulation (WE) No. 1383, dated 22 July 2003, determining the actions of customs authorities against the goods deemed to be infringing some IP rights, as well as measures to be taken by customs authorities in respect of such goods.

Under the above Regulation, a patent holder can file with the Main Customs Chamber in Warsaw a request for granting customs protection, resulting in the prohibition of entry into the territory of Poland and export from Poland of goods infringing the patent.

A positive decision about the customs protection on a given patent is granted for one year, with a possibility of renewal. If upon filing the relevant request the Main Customs Chamber in Warsaw gives protection to a patent, the customs authorities in all the outposts located in different parts of Poland are granted the right to seize and stop any suspect goods that may infringe the patent for 10 working days (which can be extended by 10 more days if justified properly). Granting the customs protection entitles the patent holder to officially contact the customs office that has seized the goods and ask for detailed information about the entity or person by whom the goods were declared for customs clearance (the full name of the person or firm, its address, the commercial register number, data concerning the recipient and sender of the goods, the amount seized, samples of the goods, etc).

In the event of seizure and infringement of patent, the patent holder is obliged to provide the customs authorities within 20 working days (10 working days, which can be extended by 10 more days if justified properly), as from the date of the notification the holder of patent (or his appointed representative) on customs seizure, with:
- a confirmation of the institution of a civil proceeding (the trial) before the civil court due to infringement of patent; or
- a consent from the importer of the seized goods for their destruction under customs supervision.

Otherwise, the goods are released by the customs authorities.

23 Attorneys' fees

Under what conditions can a successful litigant recover costs and attorneys' fees?

As a rule, the losing party is burdened with the costs of the court proceedings, which include the whole court fee and the attorneys' fees of the winning party, to the extent provided by the law.

24 Wilful infringement

Are additional remedies available against a deliberate or wilful infringer? If so, what is the test or standard to determine whether the infringement is deliberate?

In cases of deliberate infringement, the patent holder may additionally claim compensation for damages in accordance with the general principles of the Civil Code or by payment of a lump sum equivalent to a licence fee, or any other renumeration, which would have been due to the patent holder at the date of the demand if the infringer had been authorised by the patent holder to use the invention. Generally, in order to determine whether the infringement is deliberate it is necessary to prove that the alleged infringer was aware that its activities infringed a patent (eg, the alleged infringer received a cease-and-desist letter from the patent holder) or to prove that it ought to have been aware if it had acted with due diligence.

25 Time limits for lawsuits

What is the time limit for seeking a remedy for patent infringement?

Claims for patent infringement shall be enforceable after the grant of the patent. Where the infringing person has acted in good faith, claims for the infringement of a patent may be enforced in respect of the period beginning on the day following the day on which the Patent Office published the information on filing the patent application or, if the alleged infringer is notified earlier by the holder on the pending patent application, from the date of notice.

The period of prescription for patent infringement claims is three years. The period concerned shall run, separately in respect of each individual infringement, from the date the patent holder learned about the infringement of his or her patent and about the infringing person. In any case, the claims shall become barred by prescription five years after the date on which the infringement occurred. The period of prescription will be suspended for the time between the filing of the patent application with the Patent Office and the grant of the patent.

26 Patent marking

Must a patent holder mark its patented products? If so, how must the marking be made? What are the consequences of failure to mark? What are the consequences of false patent marking?

There is no legal requirement to mark a product or to mention in any other way that the product is subject to the protection of a patent. According to Polish law, the patent holder is allowed to indicate, in particular by marking a product, that his or her invention enjoys the patent protection. Marking mainly has an informative effect. In practice, the following signs are applied for marking products: an abbreviation of the Patent Office along with the number of the patent and the code of the country in which the product is protected by the patent or the full sentence describing the patent protection (ie, 'this product is protected by the patent No. PL xxxxx').

Anyone who marks products not covered by a patent with a statement or a sign intended to give the impression that the goods enjoy patent protection for the purpose of putting them on the market shall be liable to a fine or imprisonment. Moreover, anyone who puts on the market, or prepares or stocks for that purpose products not covered by a patent, or provides by announcements, communications or otherwise, information intended to give the impression that the goods enjoy patent protection, while they do not, shall be liable to the same penalties.

Licensing

27 Voluntary licensing

Are there any restrictions on the contractual terms by which a patent owner may license a patent?

According to the general rule of contract freedom, terms and conditions of licence agreements are stipulated freely by the contracting parties. The terms of the contract must not breach law and must comply with the antitrust regulations. The licence agreement must be in writing to prevent invalidity. In such an agreement, restricted exploitation of the invention may be provided for (restricted licence). Unless the licence contract provides for the restricted exploitation of the invention, the licensee has the right to exploit the invention to the same extent as the licensor (full licence). The grant of a licence to one party does not prevent other parties from being granted a licence. Further, it does not prevent the patent holder from exploiting the invention (non-exclusive licence), unless the exclusive exploitation of the invention is explicitly reserved in the licence agreement.

A licensee may only grant a further licence (sublicence) with the patent holder's consent. Granting yet a further sublicence is not permitted. The licence agreement shall be recorded in the patent register at the request of the party. The exclusive licensee recorded in the patent register may, to the same extent as the patent holder, enforce claims in the event of patent infringement, unless the licence contract stipulates otherwise.

28 Compulsory licences

Are any mechanisms available to obtain a compulsory licence to a patent? How are the terms of such a licence determined?

A compulsory licence may be granted in Poland in three cases: abuse of law by the patent holder; dependence of patents; and when it is necessary to apply an invention because of a threat to state security. When the Patent Office finds that the patent is being abused, it may initiate proceedings resulting in the granting of a compulsory licence. A compulsory licence may be granted when the interested party proves that he or she has made previous attempts in good faith to obtain a voluntary licence from the patent holder. It is not necessary to meet that condition when the compulsory licence is granted to prevent or eliminate a national emergency, or when competing for the compulsory licence.

A compulsory licence is a non-exclusive licence. The Patent Office defines the scope of this licence, the period of its duration and detailed conditions of its exploitation, as well as the amount of the licence fee to be paid to the patent holder. A compulsory licence may be entered into the patent register upon a party's request.

Patent office proceedings

29 Patenting timetable and costs

How long does it typically take, and how much does it typically cost, to obtain a patent?

The procedure for obtaining a patent before the Polish Patent Office usually takes from four to six years, depending on the character of the invention and the quantity of the prior art. Official fees for obtaining the patent cover the application and examination fees (paid at the filing date) and are calculated on the basis of the number of pages and the number of the categories of claims within the application. The annuities increase from about 480 zloty for the first period of protection (one to three years of protection) up to approximately 1,550 zloty for the twentieth year of protection.

Annuities are paid only after grant of the patent.

30 Patent application contents

What must be disclosed or described about the invention in a patent application? Are there any particular guidelines that should be followed or pitfalls to avoid in deciding what to include in the application?

A patent application should contain:

- a request to grant a patent containing at least the designation of the applicant and of the subject of the application;
- a description of the invention disclosing its gist; and
- at least one patent claim.

The filing date and number shall be allotted if the above elements are contained in the application irrespective of their contents.

However, it should be noted that the scope of the disclosure may not be extended after the filing date, and the scope of the protection claimed may not be extended after the application has been published by the Polish Patent Office.

31 Prior art disclosure obligations

Must an inventor disclose prior art to the patent office examiner?

When drafting a patent application, the applicant is required to indicate in the description the closest prior art of which the applicant is aware and which is useful for understanding the invention. It is recommended that bibliographic details relating to the prior art are

included in the patent description. Illustration of the prior art with drawings is admissible.

32 Pursuit of additional claims

May a patent applicant file one or more later applications to pursue additional claims to an invention disclosed in its earlier filed application? If so, what are the applicable requirements or limitations?

Yes. Any time while the application is pending a divisional application may be filed. The limitations are that the contents of the divisional application may not go beyond the original disclosure in the description, claims and drawings as filed at the filing date and patent claims may be changed in a way widening the scope of protection originally claimed only before the publication of the application. It means in practice that after the publication new claims may be added or filed as a divisional application but only provided that the original scope of protection claimed is not widened.

33 Patent office appeals

Is it possible to appeal an adverse decision by the patent office in a court of law?

Any decision of the Patent Office shall be subject to a request for re-examination. Requests for re-examination of the case shall be assessed by an examiner appointed by the Patent Office. The time limit for filing a request for re-examination is two months from the day on which the decision was delivered to the party. If the decision of the Patent Office issued in the re-examination proceeding is unsatisfactory, the party has the right to file a complaint with the district administrative court (DAC) within 30 days from the date on which the Patent Office's decision was served on the party. A DAC judgment may be subject to an appeal to the Supreme Administrative Court within 30 days of the day on which the judgment, together with its reasoning, was served on the party.

34 Oppositions or protests to patents

Does the patent office provide any mechanism for opposing the grant of a patent?

The Industrial Property Law provides for a possibility of filing opposition against the grant of a patent. Within six months of the Patent Office publishing information on the grant of the patent, any person may oppose the decision on the grant. The opposition has to be reasoned and may be filed on the same grounds on which the patent may be declared invalid – that is, the legal requirements provided by the law for obtaining the patent have not been met. The Patent Office shall communicate the opposition to the patent holder who is allowed to file his or her comments within a fixed period. If the patent holder claims that the opposition is unfounded, the proceeding is remitted for litigation proceeding and the Patent Office shall decide whether the patent should be declared invalid. If, however, the patent holder agrees with the arguments of opposition, the Patent Office will issue a decision reversing the patent grant. For details regarding nullity procedures, see question 16.

35 Priority of invention

Does the patent office provide any mechanism for resolving priority disputes between different applicants for the same invention? What factors determine who has priority?

If different inventors have developed the same invention, each of them may file a patent application for it. The patent will be granted to the person who filed the patent application first. The priority to obtain a patent shall be determined according to the date on which a patent application was filed with the Patent Office. An application shall be deemed to have been filed on the date it was received. Apart from this, an applicant who has duly filed a patent application may claim the priority rights in conditions laid down in relevant international agreements (eg, entire priority, exhibition priority). When a patent application has been filed independently by at least two persons on the same date, the right to obtain a patent shall belong to each of these persons separately.

36 Modification and re-examination of patents

Does the patent office provide procedures for modifying, re-examining or revoking a patent? May a court amend the patent claims during a lawsuit?

Until the final decision has been issued, the applicant is allowed to make additions and corrections to his or her application, provided that such additions or corrections do not go beyond the content of the application as filed. Any alteration of the patent claims resulting in a widening of the scope of protection may only be made prior to the publication of the application.

Re-examination of a granted patent is not possible.

A granted patent may be restricted during opposition or nullity proceedings that take place before the Patent Office in the litigation proceedings.

A patent owner may request the patent granting decision to be changed (eg, in order to restrict the scope of protection or revoke the patent) in administrative proceedings before the Polish Patent Office provided that invalidation proceedings have not been started and are not pending in the case of the patent in question.

A court may not amend patent claims during a lawsuit.

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37 Patent duration

How is the duration of patent protection determined?

The duration of the patent is 20 years from the filing date of the patent application.

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