

World Intellectual Property Organization  
SCP Secretariat  
34, chemin des Colombettes  
1211 Geneva 20  
Switzerland

Oslo, 2023.05.09

## **WIPO Circular C. 9141**

With reference to WIPO Circular C.9141 dated December 7, 2022 please find our updated information on the requested topics below:

**(i):** No updates.

**(ii):**

### **Opposition systems:**

According to Section 24 of the Norwegian Patent Act, Norway provides for a post-grant opposition system, under which any person can oppose a patent within nine months from the publication of the grant. If the opposition is based on the argument that the granting of the patent should have been refused on the basis that commercial exploitation of the invention would be contrary to ordre public or morality, the opposition period is three years. Any person may file such an opposition to the Norwegian Industrial Property Office (NIPO).

The Patent Office shall notify the patent holder of the opposition and give him an opportunity to file observations on them. The patent will be revoked if, (i) the patentability criteria in Section 1 and 2 of the Norwegian Patents Act are not fulfilled, (ii) the invention is not sufficiently disclosed, cf. The Norwegian Patents Act Section 8, and/or (iii) the subject matter extends beyond the content of the application as filed, cf. the Norwegian Patents Act Section 13. The patent holder is given the possibility to amend the patent in order to maintain the patent (if possible).

It is also possible to lodge an opposition on the grounds that the opponent is entitled to the invention/patent, and the opponent may request the patent transferred to him.

A decision from NIPO regarding an opposition can be appealed to the Board of Appeals. A further appeal to courts is available.

### **Administrative revocation and invalidation systems:**

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Pursuant to the Norwegian Patents Act Section 56 litra b, anyone may file a request with NIPO that a patent shall be declared invalid in full or in part by a decision made by the NIPO. This is called an administrative review.

A request for an administrative review may only be filed on the following grounds:

- i) That the patent has been granted in contravention of the requirements of the Norwegian Patents Act Sections 1, 1A and 1B (lack of industrial applicability and inventions that are regarded as non-patentable, for example varieties of animals or inventions where commercial exploitation would be contrary to ordre public or morality.)
- ii) That the patent has been granted in contravention of the requirements of the Norwegian Patents Act Section 2 (lack of novelty and inventive step)
- iii) That the patent has been granted in contravention of the requirements of the Norwegian Patents Act Section 8, second paragraph, third to fifth sentence (the description of the patent does not disclose the invention clearly enough for it to be performed by a skilled person.)

The proceedings are quite similar to the opposition proceedings, and the decision is rendered by a committee of three selected persons working at NIPO. The proceedings are namely written, but NIPO can decide to hold an oral hearing if deemed necessary. An administrative review cannot be filed before the end of the opposition period, or if there are any ongoing oppositions, patent limitation proceedings or court proceedings, cf. the Norwegian Patents Act section 52 litra c. The fee for filing the administrative review is 4000 NOK.<sup>1</sup>

NIPO shall notify the patent holder of the administrative review and give him an opportunity to file observations. The patent will be revoked if the committee finds in favour of the claimant, but the patent holder is given the opportunity to amend the patent (if possible).

In cases concerning an administrative review, the party in whose favour it is fully or substantially found can be awarded the necessary costs of the case from the opposing party, cf. the Industrial Property Office Act Section 9.

The decision can be appealed to the board of appeals. A decision that finds in favour of the patent holder cannot be appealed to the courts, cf. The Norwegian Patents Act section 52 litra e.

**(iii):** No updates.

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<sup>1</sup> As of 9th of May 2023.

**(iv):**

**Compilation of law and practices regarding the scope of client attorney privilege and its applicability to patent advisors:**

Authorized lawyers have the right to keep the communications with their client confidential according to the Dispute Act, Article 22-5, the Criminal Procedure Act, Article 119 and the Criminal Code Article 211.

Patent advisors have the same right to keep communications with their client confidential according to the dispute act, Article 22-5 and the Criminal Procedure Act article 119. However, this right only applies to Patent advisors whose names appear on the list maintained by the European Patent Office in accordance with the European Patent convention Article 134.

There is currently no caselaw concerning the scope of client attorney privilege as it concerns patent advisors.

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Please let us know if you have any questions.

Sincerely,

Ingrid Mauritzen  
Head of Legal Section