

Administrative Revocation and Invalidation Mechanisms

Serbia

In the Republic of Serbia there is no opposition system prescribed in Patent Law, but it is possible for anyone to request revocation of a patent according Article 128 of The Patent Law. Upon written proposal of any person, IPO RS may revoke a patent for an invention on any of the following grounds:

- 1) the subject matter of protection is not an invention within the terms of Articles 7 and 8 of The Patent Law;
- 2) the invention falls under the category of inventions excluded from protection as defined in Article 9 of The Patent Law;
- 3) the invention was not new within the meaning of Articles 10 and 11 on the date of the filing of the patent application or on the date of priority, or did not involve an inventive step pursuant to Article 12 or was not industrially applicable in accordance with Article 13 of The Patent Law;
- 4) the invention is not disclosed in a manner sufficiently clear and complete as defined in Article 82 of The Patent Law;
- 5) the scope of rights granted exceeds the scope that could be supported by the description of the invention as disclosed on the filing date or priority date of the application, or if protection was granted on a divisional application, the subject matter of which extends beyond the basic application as filed.

The quasi-judicial inter parties proceeding is very similar to post-grant opposition proceedings, but without any time limit for commencement. The applicant has to pay an administrative fee. The applicant has to make a written statement that contains reasons for the proposal and to deliver proof. The patentee is given the possibility to file a counterstatement. According to Article 130(7) of the Patent Act, IPO RS shall conduct an oral hearing only if it assesses it to be necessary for the establishment of facts relevant for the taking of a decision on the request. IPO RS shall notify a decision of revocation or partial revocation in the Official Journal.

Both parties can appeal the decision made on the revocation proposal. The appeal shall be filed with the IPO RS, which shall forward it, together with the patent file, to the competent administrative body of the Government whose decision could be subject to the lawsuit brought to the Administrative court.