

Opposition systems

The Republic of Peru

With regard to opposition procedures in particular, Peru has an *ex ante* opposition system regulated by the following articles of Decision 486 of the Andean Community Commission:

“Article 42. - Within 60 days following the publication date, any person with a legitimate interest may file one reasoned opposition contesting the patentability of the invention.

At the request of a party, the competent national office shall grant, only once, an additional period of 60 days for substantiation of the opposition.

Vexatious oppositions shall be punishable, if national legislation so provides.

Article 43. - The competent national office shall notify the applicant of any opposition filed so that he/she may, within 60 days, present arguments, submit documents or rewrite the claims or description of the invention, if he/she sees fit.

At the request of a party, the competent national office shall grant, only once, an additional period of 60 days for the response.

Article 44. - Within six months following the publication of the application, regardless of whether or not oppositions have been filed, the applicant shall request that the invention be examined for patentability. Member countries may charge a fee for the conduct of that examination. If by the end of that period the applicant has not requested the substantive examination, the application shall lapse.”

In addition, Legislative Decree N^o 1075, as amended by Legislative Decree N^o 1309, stipulates as follows:

“Article 54. -Opposition

The following requirements must be met when filing an opposition:

- a) correct identification of the file;
- b) name and address of the person filing the opposition;
- c) power of attorney to make the representation in question;
- d) grounds for opposition;
- e) evidence adduced for consideration;
- f) the date and number of the receipt attesting to payment of the required fee;
- g) where the opposition is based on graphic or mixed signs, an exact and clear reproduction thereof shall be attached as registered or filed; and
- h) for Andean oppositions, a copy of the certificate of the current registered trademark or of the pending application for registration in the member country of the Andean Community, which is being opposed.

In no case shall the power of attorney be demanded because it may be obtained by the Directorate of Distinctive Signs itself, in accordance with the law.”

Article 55. - Meeting opposition requirements.

55.1 The opposing party shall have a non-renewable period of sixty (60) working days in which to submit the power of attorney if opposition has been filed without this document. The period shall begin on the day following the date of receipt of the notice of opposition.

Once this period has expired, the opposition shall be deemed not to have been filed. Failure initially to submit a power of attorney shall not halt proceedings. In the event of non-compliance with the provisions of article 54 d) and f), the competent directorate shall require the opposing party to remedy that omission within two (2) working days from the day following notification of the requirement, failing which the opposition shall be deemed not to have been filed.

In no case may the power of attorney be demanded because it must by law be obtained by the Directorate of Distinctive Signs itself.

55.2 In the event of non-compliance with the provisions of paragraph h) of article 54, the competent directorate shall require the opposing party to remedy that omission within two (2) working days from the day following the notification of the requirement, failing which the argument shall not be considered to be grounds for opposition and, if applicable, the Andean opposition shall be deemed not to have been filed.

55.3 Vexatious oppositions shall be punishable by a fine of up to fifty Peruvian taxation units (UIT).”