

Opposition systems

Zimbabwe

Section 17 of the Zimbabwe Patents Act (Chapter 26:03) provides a pre-grant opposition system:

(1) Any person interested, including the State, may within three months from the date of the advertisement of the acceptance of a complete specification which has not been cancelled in terms of subsection (5) of section sixteen or within such further period as the Registrar, on application made to him within the said period of three months, may allow, or, with the consent of the applicant, at any time before the sealing of the patent, oppose the grant of a patent in accordance with this section by giving written notice to the registrar of the Tribunal of opposition to such grant on any of the following grounds and no others—

- (a) that the applicant is not a person entitled under section six to make the application;
- (b) that the application is in fraud of the rights of the person giving such notice or of any persons under or through whom he claims;
- (c) that the invention does not relate to an art, whether producing a physical effect or not, process, machine, manufacture or composition of matter which is capable of being applied in trade or industry;
- (d) subject to section twenty-six, that the invention is obvious in that it involves no inventive step having regard to what was common knowledge in the art at the effective date of the application;
- (e) that the invention, in so far as is claimed in any claim of the complete specification, is not useful;
- (f) that the complete specification does not fully describe and ascertain the invention and the manner in which it is to be performed;
- (g) that the claims of the complete specification do not sufficiently and clearly define the subject-matter for which protection is claimed;
- (h) that the complete specification does not disclose the best method of performing the invention known to the applicant at the time when the specification was lodged at the Patent Office;
- (i) that the application form or any other document filed in pursuance of the application contains a material misrepresentation;
- (j) that the matter described or claimed in the complete specification is not the same as that described in the provisional specification, and—
 - (i) in so far as it is not described in the provisional specification, was not new at the date when the complete specification was lodged at the Patent Office; or
 - (ii) forms the subject of a pending application made in Zimbabwe for a patent the effective date of which is prior to the date on which the complete specification was lodged at the Patent Office;
- (k) in the case of a Convention application, that the specification describes or claims matter other than that for which protection has been applied for in the Convention country and that such other matter either—
 - (i) forms the subject of an application for a patent in Zimbabwe which, if granted, would bear a date in the interval between the lodging of the application in the Convention country and the effective date of the application in Zimbabwe; or
 - (ii) is not an invention as defined in this Act;

(l) that the invention was not new at the effective date of the application;
(m) that the specification includes claims which, in terms of subsection (1) of section thirteen, should have been refused.

(2) Any notice of opposition given under subsection (1) shall—

(a) state the grounds on which the objector intends to oppose the grant of the patent; and

(b) be accompanied by a statement setting out particulars of the facts alleged in support of the said grounds; and proof of service on the applicant concerned of a copy of such notice and of such statement shall be furnished to the registrar of the Tribunal.

(3) A copy of any notice given under subsection (1) and of any statement which in terms of subsection (2) accompanies such notice shall be served by the objector on the applicant for the patent.

(4) If the applicant wishes to contest the opposition, he shall, within such time as is prescribed or such further time as the registrar of the Tribunal may allow, lodge with him a counter-statement setting out particulars of the grounds upon which the opposition is to be contested.

(5) A copy of any counter-statement in terms of subsection (4) lodged with the registrar of the Tribunal shall be served by the applicant on the objector concerned.

(6) Particulars delivered in terms of this section may from time to time, with the leave of the registrar of the Tribunal, be amended.

(7) No evidence shall be admitted in proof of any ground on which particulars have not been delivered in terms of this section, except by leave of the Tribunal.

(8) After receiving a notice of opposition under subsection (1) and compliance with any other provisions of this section which are applicable the registrar of the Tribunal shall arrange for the matter to be heard by the Tribunal in the manner prescribed and the Tribunal may make such order therein as it considers just: Provided that if before the Tribunal hears the matter a request is made in terms of section thirty-seven for the amendment of the specification concerned, proceedings in connection with the notice of opposition shall be suspended until such time as the request for such amendment has been heard and determined after which the proceedings in connection with the notice of opposition may be—

(a) continued, in which case such notice and any statement in connection therewith may be amended and

the periods specified in this section extended to such extent as the registrar of the Tribunal may permit;

or

(b) withdrawn, in which case the objector may apply to the Tribunal for an award in respect of the costs incurred by him in connection with the objection.

(9) Upon being notified of the order of the Tribunal by the registrar thereof, the Registrar shall take such further action therein as may be necessary.

(10) The registrar of the Tribunal shall inform the Registrar of any notice of opposition or counter-statement which is lodged with him in terms of this section and of any amendment of particulars which is permitted in terms of subsection (6).