

Re-examination systems

Denmark

Section 53b of the Consolidated Patents Act¹ provides an administrative re-examination system. A request for re-examination of a Danish patent (nationally granted patent or validated European patent) may be filed by any person, including the patent holder, after the expiry of the nine months opposition period.

If the request for re-examination is filed by a third party, the request must be filed in writing and contain, *inter alia*, the grounds on which the request for re-examination is based, as well as the facts and evidence in support of the grounds.²

According to Section 52 of the Consolidated Patents Act, the re-examination can only be based on the following grounds:

- i. The subject matter does not fulfil the patentability criteria (industrial applicability, novelty, inventive step),
- ii. It relates to an invention which is not disclosed in a manner sufficiently clear to enable a person skilled in the art to carry out the invention on the basis of the description,
- iii. Its subject-matter extends beyond the contents of the application as filed, or
- iv. The scope of the protection conferred by the patent has been extended after the Patent Authority has notified the applicant under section 19(1) that a patent may be granted.

After a hearing phase of the re-examination procedure, the Re-examination Division renders a decision. The result can be to reject the re-examination, to revoke the patent or to maintain the patent in amended form.

If the request for re-examination is filed by the patent holder, it is only necessary that the request explain the desired limitation of patent claims. No statement of grounds or evidence is mandatory. In this case, the Re-examination Division will examine whether the requested limitation is allowable.

A notice of appeal must be filed to the Danish Board of Appeal within two months of notification of the re-examination decision, and the fee for appeal must be paid.

¹ The Consolidate Patents Act No. 90 of 29 January 2019.

² Rule 55 of the Order on Patents and Supplementary Protection Certificates No. 25 of 18 January 2013.