

Opposition systems

Switzerland

When an external individual or institution claims that a patent grant procedure has not been properly conducted or has not taken due consideration of relevant facts, this is called an opposition. Opposition involves requesting the granting office to reconsider the grant of a patent in its current form. Under the Swiss Patents Act (PatA) and its Ordinance (PatO), opposition to a Swiss patent (i.e. a patent granted by the IPI under Swiss procedure) must be submitted to the IPI together with a written justification in one of the official languages of Switzerland¹.

The opposition, which is subject to an administrative proceeding, must be filed with the IPI within nine months of the publication of the entry in the Patent Register². The filing of an opposition is subject to a fee of CHF 800, to be paid to the IPI within the opposition period³. If the opposition is upheld in whole or in part, the fee is in principle refunded in full or proportionately⁴. However, the IPI may refuse to grant restitution, in particular if the opponent has voluntarily prolonged the proceedings or made them significantly more difficult. The procedure does not provide for the reimbursement of costs (e.g. lawyers' fees)⁵; each party shall bear its own costs.

When the request does not meet the requirements of the formal examination (set out in Art. 73 PatO), the IPI sets a deadline for the applicant to improve it, for example by drafting a new claim.

Any private person or legal entity may file an opposition against the patent owner. In the case of a transfer of a patent, opposition may be filed against the initial owner of the patent until the transfer has been recorded in the Patent Register⁶.

The grounds for opposition that can be presented against a Swiss patent are more limited than those that can be presented to the EPO for European patents. The only acceptable grounds for opposition to a Swiss patent are that the related invention is not patentable:

- The human body as such, at all stages of its formation and development, including the embryo, is not patentable (Art. 1a PatA).
- A naturally occurring sequence or partial sequence of a gene is not patentable as such (Art. 1b PatA).
- Inventions whose exploitation is contrary to human dignity or that disregard the integrity of living organisms or that are in any other way contrary to public policy or morality are not patentable (Art. 2 PatA).

The opponent must rely on one of the above-mentioned grounds, which are essentially of ethical nature.

If the IPI decides to enter into the matter, it sends the opposition to the patent holder and invites them to reply and to submit amended documents, if necessary. The IPI sets a reasonable period of time for this purpose⁷.

¹ Art. 4 para. 1 PatO.

² Art. 59c PatA.

³ Annexe III IPI Fee Ordinance (GebV-IGE) and Art. 73 para. 2 PatO.

⁴ Art. 86 PatO.

⁵ Art. 86 para. 2 PatO.

⁶ Art. 76 para.2 PatO.

⁷ Art. 80 PatO.

The IPI may also invite the parties to an oral hearing on its own initiative or at the motivated request of one of the parties. The proceedings are not public, unless of major public interest, and the deliberations are held in a confidential session⁸.

The opposition may be accepted in whole or in part by the IPI, which may revoke the patent (in its entirety) or maintain it in an amended form (Art. 59c para. 3 PatA). The IPI's decision on the opposition can be appealed within 30 days to the Federal Administrative Court, whose decision can be appealed to the Federal Supreme Court within 30 days (Art. 59c para. 3 PatA and Art. 72 para. 2 let. b no. 2 Federal Supreme Court Act).

⁸ Art. 84 PatO.