

ALBANIA

Administrative procedure

Opposition

Post-grant opposition is available. Any person may file notice of opposition with the Board of Appeal of the Albanian General Directorate of Industrial Property (hereinafter GDIP) within nine months from the date of publication of the grant of a patent (Art. 33(1) PA). A copy of the opposition is sent to the patent owner, who may submit written observations within three months from the date of receipt of the notification (Art. 33(3) PA).

Both parties have the right to participate in the opposition proceedings, to submit essential materials and to provide oral explanations in support of the notice of opposition (Art. 33(4) PA). The appeal board decides whether to revoke the patent in whole or in part or reject the opposition (Art. 33(5) PA).

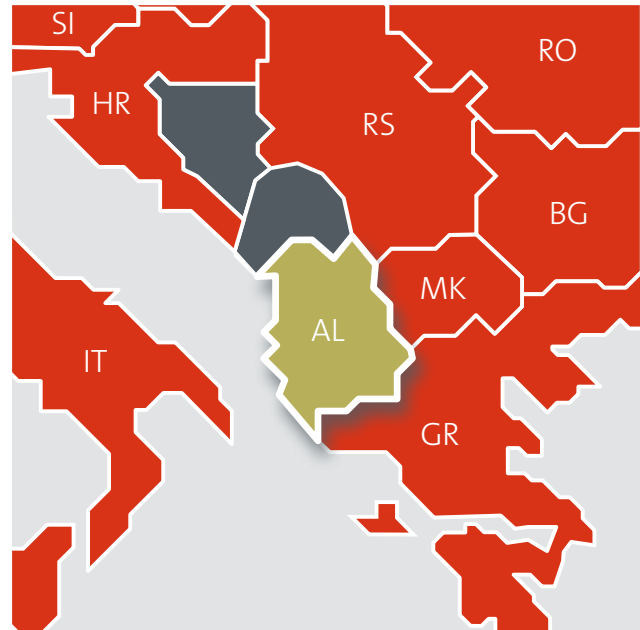
Appeal

A decision of the GDIP rejecting a patent may be appealed to the Board of Appeal of the GDIP, within three months from the date of receipt of notification, subject to payment of a fee (Art. 28(3) PA).

The Board of Appeal consists of five members, of whom three are GDIP employees and two are external members from the IP field, who meet the requirements for IP experts. Authorised representatives and members of the Chamber for Cancellation/invalidation may not be members of the Board of Appeal. The Chairman of the Board of Appeal is the General Director of the GDIP. The members of the Board of Appeal are appointed and released by the Supervisory Council on proposal of the General Director of the GDIP for a one-year period, with the possibility of re-appointment. The General Director of the GDIP appoints an employee of the GDIP to the role of Technical Secretary of the Board of Appeal (Art. 193/b(1,2,3,4) PA).

The parties may appeal a decision revoking a patent or rejecting an opposition to the Tirana District Court within 30 days from the date of receipt of the decision (Art. 33(6) PA).

Formal changes and corrections to the application can be made at the initiative of the applicant or at the request of the GDIP until the date of grant of the patent, which occurs only after payment of a fee (Art. 25(1) PA).



The patent owner may request the GDIP to make changes to a patent for the correction of formal errors or unintentional inaccuracies (Art. 70(1) PA).

Civil procedure

Infringement

The Tirana District Court has jurisdiction over disputes relating to the infringement of a patent or a patent application (Art. 94(a) PA).

The patent owner or applicant shall have the right to bring a lawsuit in court against any person who has infringed, is infringing or threatens to infringe the rights on this patent. However, the court may not make any decisions based on the merits of the case until the granted patent is published.

An exclusive licensee also has the right to initiate court proceedings if the patent owner or applicant, upon official notification from the licensee, does not initiate infringement proceedings within a reasonable period of time.

Where a licence for a patent is non-exclusive, the licensee may only initiate infringement proceedings if the patent owner or applicant consents.

The patent owner or applicant may take part in the infringement proceedings initiated by the licensee. Where infringement proceedings are initiated by the patent owner,

the licensee may take part as a third party (Art. 184/a(2,3) PA).

The measures may also be taken against a mediator whose services are used by a third party to infringe an industrial property right.

A lawsuit for infringement of rights may be filed in the court within three years from the date when the claimant becomes aware of the infringement and the identity of the infringer.

Nullity/counterclaim for revocation

The court has jurisdiction over disputes relating to the revocation or counterclaim for revocation of a patent (Art. 94(b) PA). To reach a decision, the court may require the patent owner to submit for examination publications and other documents showing prior art referred to in the patent application or taken into account by other examining offices (Art. 73(3) PA).

Each patent claim or part of a claim that is invalidated shall be considered non-existent and invalid from the outset (Art. 74(1) PA).

If the grounds for revocation only partially affect the patent, revocation shall be considered as a limitation of the patent. Limitation may also be in the form of an amendment to the claims (Art. 74(2) PA).

If the court orders revocation of a patent, wholly or partially, it shall notify the GDIP, which shall enter the decision in the patent register and publish it in the GDIP Gazette (Art. 74(3) PA).

According to national law, patent claim amendment is possible during the post-grant procedure for a patent (Art. 25(1) PA), but it never happens in practice.

A defendant in patent infringement proceedings may file a counterclaim for revocation of the patent as part of his defence (Art. 188/a(3) PA).

Remedies

A patent owner and exclusive licensee have the right to sue any person who violates their rights and may request:

- a) prohibition of further actions that violate their rights;
- b) removal of objects that constitute a violation of their rights from civil circulation, or destruction of those objects;

- c) removal of the means used exclusively or almost exclusively for the creation of the infringing products, or their destruction;
- d) publication of the final court decision in the public media at the expenses of the infringer in the manner defined by the court.

Other actions

Declaration of non-infringement of patent rights

Any interested person may file proceedings against the patent owner to prove that a particular act does not constitute a patent infringement. The exclusive licensee shall be summoned to court as a defendant together with the patent owner (Art. 188/a(1) PA).

A request for declaration of non-infringement may also be submitted together with the request for the revocation of the patent (Art. 188/a PA).

The patent owner shall notify the licensee of the ruling. The licensee has the right to take part in the court proceedings as a third party, unless otherwise provided by the licensing agreement.

Appeal

The deadline for appealing to the Court of Appeal against final decisions of the first instance is 15 days (Art. 443 CCP)

Parallel proceedings

The stay of national infringement proceedings is not foreseen in the Albanian legislation where there are pending EPO proceedings.

Arbitration/mediation

Arbitration and mediation are not provided for in the national legislation.

Enforcement

The Court is responsible for issuing an order for execution of the final decision after termination of the procedure (Art. 184/b PA).

Compulsory licence

Upon request, the court may grant a compulsory licence to any person who proves that he has the ability to exploit an invention which is the subject of a patent granted in the Republic of Albania and meets all the requirements stipulated in the relevant regulations issued pursuant to the law, provided that:

- four years have passed from the filing of the patent application or three years from the grant of the patent;
- the patent owner has not exploited the patent for a long period; and
- every effort has been made to obtain authorisation from the patent owner on reasonable terms and conditions and these efforts have not been successful (Art. 50(1)(a)(b)(c) PA).

A compulsory licence is valid until the expiration of the time period appointed by the court (Art. 50(6) PA).

Compulsory licences are recorded in the Patent Register (Art. 50(7) PA).

The patent owner has the right to receive appropriate compensation for any compulsory licence (Art. 50(8) PA).

The holder of a compulsory licence may dispose of it at any time (Art. 50(9) PA).

The court has the right to grant compulsory licences for patents and supplementary protection certificates for the production and sale of pharmaceutical products if such products are intended to be exported to importing countries (Art. 50(3) PA).

Relevant national law

Law No. 9947 of 7 July 2008 on Industrial Property, as amended: No.10/2013 of 14.02.2013, No.55/2014 of 29.05.2014, No.17/2017 of 16.02.2017 [cited as: PA];

Law No. 8116 of 29 March 1996 on Code of Civil Procedure, as amended;

Law No. 8485 of 12 May 1999 on Code of Civil Procedure, as amended.

Competent authorities or courts

