

Bulgaria

Administrative procedure

Opposition

No formal pre- or post-grant opposition procedure is available. Within three months following publication of mention of the application, any persons other than parties to the application proceedings may file written substantiated objections as to the patentability of the subject-matter of the application. The persons filing objections may not be participants in the application proceedings (Art. 46(d) PA).

Appeal

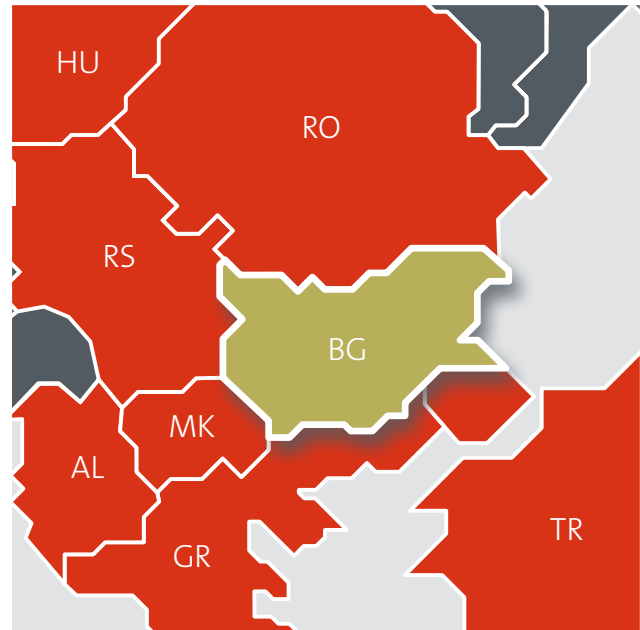
A decision of the Examination Department to refuse to grant a patent and to close the patent application procedure may be appealed, within three months from the date of receiving the decision, before a specialised (three-member) board of the Disputes Department appointed *ad hoc* by the President of the Patent Office of the Republic of Bulgaria (hereinafter the “Patent Office”) (Art. 55(1), 57(2) PA).

The Disputes Department begins proceedings within one month of receipt of the appeal (Art. 58 PA). The application may be referred for renewed consideration (Art. 58(3) PA) – the re-examined decision may be subject to further appeal to the Disputes Department (Art. 58(4) PA). The final decisions of the Disputes Department must be confirmed by the President (Art. 58(6) PA).

Any party adversely affected by a decision of the Disputes Department may, within three months following receipt of the decision, bring an appeal before the Sofia Administrative Court (Art. 59 PA). Further appeal is possible to the Supreme Administrative Court within fourteen days after the date of receipt of the lower court’s decision.

Revocation

The Disputes Department also considers requests for invalidation of a granted patent, these being heard by a specialised (five-member) board appointed *ad hoc* by the President of the Patent Office (Art. 26(3), 55(2), 57 PA). The Disputes Department begins proceedings within one month of receipt of the request for invalidation. Anyone can file a request for invalidation of a granted patent: there is no time limit for this. Any interested parties may participate in the proceedings. Written and oral evidence is admissible. The



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Disputes Department sends a copy of the request to the patent owner or to the parties concerned and gives them a three-month time limit to respond (Art. 58(2) PA). The decisions of the Disputes Department must be confirmed by the President. Partial invalidation is possible (Art. 26(5) PA). Invalidation has retroactive effect (Art. 26(6) PA). If the action is withdrawn, proceedings do not continue.

Pursuant to Art. 42(1) PA an application or a patent may be amended during the proceedings for the application until such time as a decision is taken or during patent invalidation proceedings. The amendments may not extend beyond the content of the application as filed. During invalidation proceedings, no amendments may be made to the patent claims which would extend the scope of protection (Art 42(3) PA).

It does not happen frequently, but in the event of a declaration of partial invalidation of the granted patent, the granted patent is replaced by a new one (Art. 58(8) PA).

Civil procedure

Infringement

The patent owner and the holder of an exclusive licence may institute patent infringement proceedings at the Sofia City Court, as may the holder of a compulsory licence if the patent owner does not exercise his own right to institute infringement proceedings within six months of receipt of a written invitation to do so from the licensee. Any licensee may join

patent infringement proceedings instituted by the patent owner, and the same applies to the patent owner when proceedings have been instituted by the licensee (Art. 27 PA).

Expert opinions are possible, but they are not binding on the court.

Administrative penal provisions are available with regard to a person who publishes the essential features of a secret patent application under Art. 24 PA or files an application abroad contrary to the patent secrecy provisions of Art. 25 PA, and also with regard to a person who marks a product as protected by a patent without identifying the patent upon request as referred to in Art. 28a(5) PA.

Nullity/counterclaim for revocation

Where the defendant in an infringement action has filed a request for nullity of the patent with the Patent Office, the court suspends proceedings until a final decision is taken on the request (by the Patent Office or, if appealed, by the courts) (Art. 64(2) PA).

Where the action is instituted by the applicant prior to the grant of a patent, the proceedings are suspended until a decision is taken by the Patent Office (Art. 64(3) PA).

In the latter case the Patent Office is required to reach a decision within one year following the date of notification of the suspension of court proceedings (Art. 64(4) PA).

Remedies

Preliminary injunction, damages, destruction of infringing products, declaration that an act has infringing character (Art. 28 PA).

Other actions

Not available.

Appeal

An appeal may be lodged before the Sofia Court of Appeal.

Parallel proceedings

Where there are parallel EPO opposition proceedings and proceedings at the national patent office, e.g. for an

invalidation claim filed against a European patent validated in Bulgaria, the proceedings before the national patent office are suspended until a final decision on the opposition has been delivered. EPO decisions in proceedings for invalidation of a European patent designating Bulgaria are valid in the territory of the Republic of Bulgaria (Art. 72h PA).

See also "Nullity/counterclaim for revocation" above.

Arbitration/mediation

According to the Civil Procedure Code, in court proceedings the parties to a property dispute may agree that it may be resolved by a court of arbitration. The Mediation Centre within the Bulgarian Chamber of Commerce and Industry is also available.

The law stipulates that mediation is an alternative form of settlement for legal and non-legal disputes. Mediation will not be an option if law or other legislative acts stipulate a different means of settlement.

Enforcement

During and after the judicial procedure the responsible authority is the bailiff.

Compulsory licence

A compulsory licence may be granted by the Patent Office in cases of non-working, dependent patents and public interest (Art. 32, 55(2) No.3 PA). Disputes concerning the amount of remuneration for the grant of a compulsory licence are settled by the Sofia City Court (Art. 66 PA).

Relevant national law

Law on Patents and Utility Model Registration (title amended, State Gazette No. 64/2006; in force as from 9 November 2006 – as amended; promulgated in State Gazette No. 27/2 April 1993; supplemented, No. 83/1 October 1996; amended, No.11/29 January 1998; amended, No. 81/14 September 1999; amended, No. 45/30 April 2002; amended, No.66/9 July 2002; supplemented, No. 17/21 February 2003; amended, No. 30/11 April 2006; amended, No.64/8 August 2006; amended, No. 31/13 April 2007; amended No. 59/20 July 2007); amended, No. 36/4 April 2008; amended, No.19/9 March 2010; amended, No. 38/18 May 2012 [cited as: PA].

Competent authorities or courts

