

## Czech Republic

### Administrative procedure

#### Opposition

No formal pre-grant opposition procedure is available.

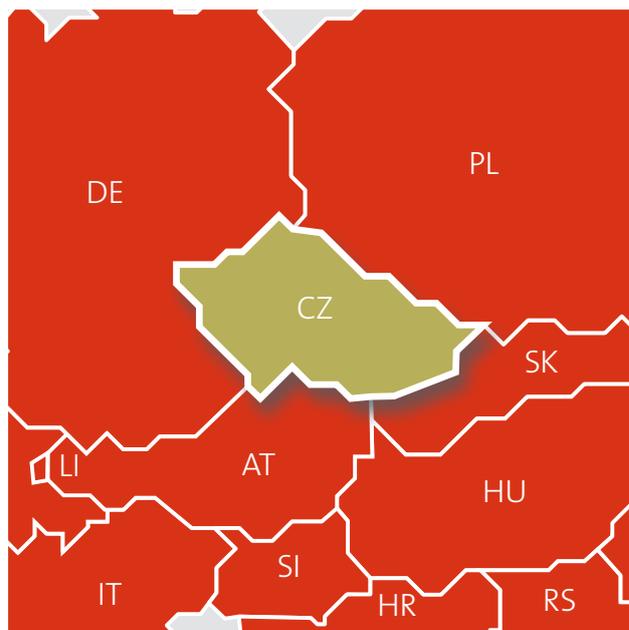
Any person may submit observations concerning the patentability of the invention after the application is published (Section 32(1) PA). The Industrial Property Office (hereinafter the “Patent Office”) takes such observations into consideration when carrying out the full examination of the application. Those who submit observations do not become party to the proceedings for the application. However, the applicant is informed of any observations submitted (Section 32(2) PA).

Furthermore, the applicant or another person may, within 36 months as from the filing date of the application for an invention, request substantive examination of a patent application (Section 33(2), (3) PA).

#### Appeal

Patent Office decisions may be appealed to the President of the Patent Office within one month of their notification (Section 68 PA). The President decides on the appeal on the basis of the proposals of the expert commission that he establishes. The appeal has suspensive effect. The President’s decisions are generally final, but:

- a) They may be reviewed by the Municipal Court in Prague, in proceedings initiated by the filing of a claim. The claim has to be filed within two months of notification of the challenged decision. The claim does not have suspensive effect. The court may revoke the contested decision, return the matter to the Patent Office for further proceedings, or dismiss the claim. In case of a complaint of inaction against the Patent Office, the court may oblige the Patent Office to issue a decision within a prescribed time limit.
- b) No ordinary appeal is available against the decision of the court. The decision may be contested only through an annulment (“cassation”) complaint filed with the Supreme Administrative Court in Brno.



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#### Revocation

Any person may file a request for revocation of a patent with the Patent Office (Section 23 PA). Revocation has retroactive effect (Section 23(3) PA).

The request may be filed even after lapse of the patent, but proof of legal interest is necessary (Section 23(4) PA).

Partial revocation is available (Section 23(2) PA – it will be carried out as an amendment of the claims).

A patent may be amended to limit the scope of protection by the Patent Office, the Municipal Court in Prague or the Supreme Administrative Court in Brno. This occasionally happens in practice.

### Civil procedure

#### Infringement

Claims resulting from imminent or existing infringement of industrial property rights acquired to the prejudice of their beneficiary fall within the exclusive competence of the Municipal Court in Prague (Section 6, Act No. 221/2006).

Proceedings are initiated at the request of either the patent owner or another person entitled to use the rights (Section 75 PA).

Representation by a lawyer is not obligatory.

### Nullity/counterclaim for revocation

Invalidity of a patent cannot be used as a defence.

The Court may itself decide or alternatively may suspend the proceedings until the Patent Office decides (see “Declaratory proceedings” below). However, the Court is not bound to follow a final decision of the Patent Office. The Court usually takes its decision on the basis of an authorised expert’s opinion or reports made by independent experts.

### Remedies

Right to information, preliminary injunction, recall of products from the market, permanent removal, destruction (products and tools), pecuniary compensation, damages (Sections 3, 4, 5, Act No. 221/2006 Coll., Section 75 PA).

### Other actions

Declaratory proceedings: any person proving legal interest may file a request with the Patent Office to determine whether the production process, the given products, their exploitation or their presence on the market fall within the scope of the patent (Section 67 PA). The Patent Office does not decide on infringement as such.

### Appeal

An appeal may be made to the High Court in Prague. For further appeal, recourse to the Supreme Court in Brno is available as an extraordinary legal remedy.

### Parallel proceedings

The Patent Office suspends the revocation procedure for the European patent if opposition proceedings on the same matter are pending before the EPO. If the European patent is not revoked in the opposition proceedings, the Patent Office will upon request continue with the revocation procedure.

### Arbitration/mediation

Both arbitration and mediation are possible in patent litigation proceedings.

Arbitration is governed by Act No. 216/1994 Coll. on Arbitration Proceedings and Enforcement of Arbitral Awards. Arbitration may be conducted by one or more arbitrators appointed by the disputing parties for the particular dispute (*ad hoc* arbitration) or as proceedings before an institutionalised arbitration court established by an act (institutional arbitration).

Mediation is governed by Act No. 202/2012 Coll. on Mediation and Amendments to Certain Legislation (“Mediation Act”), which relates to mediation activities carried out by mediators registered in the list of mediators maintained by the Czech Ministry of Justice.

The association of mediators and arbitrators in intellectual property matters (*Asociace prostředníků a rozhodců ve věcech duševního vlastnictví*) is a voluntary association of professionals who are prepared to participate in resolving disputes in the field of intellectual property and unfair competition as:

- mediators (brokers, intermediaries)
- arbitrators in the broad sense of the word
- *ad hoc* arbitrators pursuant to Law No. 216/1994 Coll.

### Enforcement

#### During the procedure

As regards enforcement of intellectual property (including patents), the Customs Administration authorities have the competence to

- (a) implement measures in co-operation with parties authorised to enforce intellectual property rights;
- (b) supervise compliance with obligations and prohibitions in connection with the enforcement of intellectual property rights.

Pursuant to Act No. 634/1992 Coll. on Consumer Protection (Consumer Protection Act), it is prohibited to offer for the purposes of sale, to sell and to store products that breach certain intellectual property rights. Compliance with these duties is monitored by the Czech Trade Inspection Authority. Supervision in the area of agricultural products, foods and tobacco products is performed by the State Agricultural and Food Inspection Authority and in the area of pharmaceuticals by the State Institute for Drug Control.

Pursuant to the Civil Procedure Code (Act No. 99/1963 Coll.), in matters relating to intellectual property rights, the court acting on a motion of the person who witnessed the infringement of intellectual property rights may secure the evidence prior to the trial. Competence to secure evidence is exercised by the court which has jurisdiction over the place where the evidence is physically located.

Prior to the trial, the court may also issue a preliminary injunction if the situation of the parties must be temporarily adjusted or if it fears that execution of the judicial decision could be endangered. The court that is competent to hear the case is also competent to issue a preliminary injunction.

**After termination or final court decision**

If the obliged person does not voluntarily comply with that which is imposed upon him by an enforceable decision, the entitled person may file a petition for judicial enforcement or a petition for enforcement under a special law (Act No. 120/2001 Coll. on Court Executors and Execution, Enforcement Procedure). In this case, it is an executor who independently carries out enforcement activities.

**Compulsory licence**

Compulsory licences may be granted by the Patent Office in cases of non-working and serious public interest (Section 20 PA).

**Relevant national law**

Act No. 527/1990 Coll. on Inventions and Rationalisation Proposals, as follows from amendments implemented by Act No. 519/1991 Coll., Act No. 116/2000 Coll. Act No. 207/2000 Coll. and 3/2001 Coll. [cited as: PA];

Act No. 221/2006 Coll. of 25 April 2006 on Enforcement of Industrial Property Rights and on the Amendment of Industrial Property Protection Acts;

Act. No. 500/2004 Coll. Administrative Procedure Code, as subsequently amended.

**Competent authorities or courts**

