

Estonia

Administrative procedure

Opposition

No formal pre-grant opposition procedure is available. Post-grant opposition is available at the Board of Appeal.

Any person may file an application for revocation with the Board of Appeal and request the revocation of a patent in part or in full within nine months of the publication date of the notice of issue of the patent (Section 50 Patents Act (hereinafter PA)). The person who filed the revocation application or the patent proprietor may contest the decision of the Board of Appeal at the Harju County Court within two months (Section 50(6) PA). An unsuccessful party may file an action within two months after publication of the decision of the Board of Appeal (Section 64 (1) of Principles of Legal Regulation of Industrial Property Act (hereinafter Industrial Property Act))

Appeal

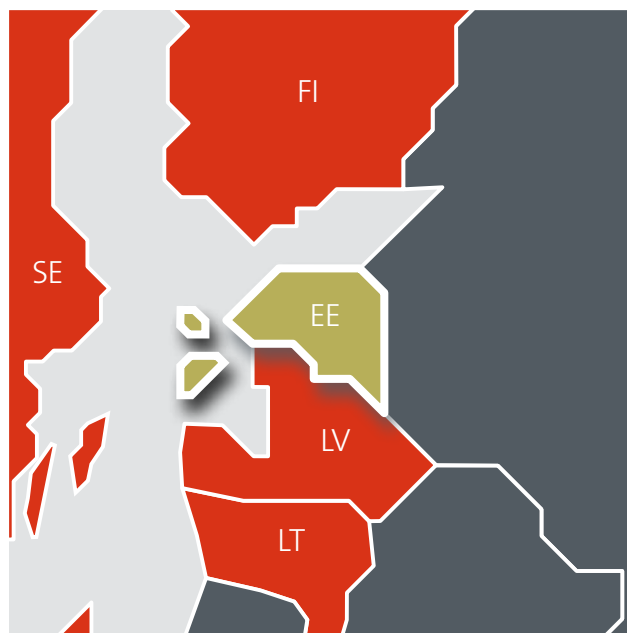
An applicant may file an appeal against a decision of the Estonian Patent Office (hereinafter the "Patent Office") with the Board of Appeal (Section 30 PA).

Any applicant may file an appeal within two months of the date on which the decision is made (Section 30(2) PA).

The Board of Appeal shall dismiss an appeal or request or grant an appeal or request in full or in part (Section 61(1) Industrial Property Act).

The Harju County Court (civil court) is responsible for all matters of patent law and for appeals against the decisions of the Board of Appeal (the Harju County Court is located in Tallinn, seat of the Patent Office.)

Proceedings concerning an appeal, petition or action filed with a court pursuant to the Patents Act before 1 April 2019 shall be conducted by a county court other than Harju County Court although the latter has exclusive jurisdiction over adjudication of the respective appeal, petition or action starting from said date (Section 61-1(2) PA).



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Civil procedure

Infringement

The Harju County Court has exclusive jurisdiction (according to the general rules of civil procedure) to adjudicate patent infringement disputes.

The patent owner may lodge an action (Section 53 PA).

Criminal sanctions are available, but separate criminal proceedings must be initiated (Sections 219, 226 Penal Code).

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

Nullity/counterclaim for revocation

Nullity of a patent may be used as a counterclaim (Section 54(6) PA). The court must suspend infringement proceedings until a final decision on revocation is reached. If the patent is revoked, the action for alleged infringement will be discontinued.

Revocation of a patent may be requested without limitation in time on the grounds that the invention protected by the patent does not comply with the provisions of Section 8 PA. Revocation of a patent in full can be requested on said grounds also after the expiry of the term of the patent (Section 50 (2-1) PA).

If the action is withdrawn, the court will end the proceedings. No *ex officio* actions are provided for by Estonian law.

Remedies

Compensation, termination of unlawful use (Section 53 PA).

Other actions

May be requested by any person at the Harju County Court. An action must be filed at the court against the patentee (Section 54(5) PA).

Any person who finds that the right to a patent belongs him or her may, after the publication of a patent application, file a request with the Board of Appeal for recognition of his or her rights against the applicant or proprietor of the patent. If the request is granted in the case of a patent application, the person has the right to continue applying for the patent in his or her name, revoke the patent application and file a new patent application with the same filing date concerning the same invention, or revoke the patent application. In the case of a patent, the person has the right to register the patent unamended or subject to amendments in the person's name, or revoke the patent (Section 49(1) PA).

The proprietor of a patent may restrict the scope of patent protection by amending patent claims and correcting any bibliographical data and obvious spelling or calculation errors in the patent specification during the entire term of validity of the patent (Section 39(1) PA). During proceedings related to the contestation of a patent before the Board of Appeal or at court, the proprietor of the patent cannot file a request to amend the patent with the Patent Office (Section 39(5) PA). There is little practice in relation to post-grant procedures for patents.

Appeals and actions related to the legal protection of inventions, validity of patents and unlawful use of inventions protected by patent, petitions for the securing of an action and petitions for provisional legal protection, as well as other appeals, petitions and actions specified in this Act shall be heard by Harju County Court (Section 55 (2) PA).

Appeal

An ordinary appeal may be filed at the Court of Appeal.

Parallel proceedings

If, simultaneously with national court proceedings on a matter relating to the validity of a European patent or to the protection of the rights of the proprietor of a patent, the European Patent Office has commenced opposition proceedings relating to the same patent, national court proceedings shall be suspended until publication of the notice concerning the revocation or amendment of the European patent in its Official Gazette (Section 14(1) Implementation of Convention on Grant of European Patents Act).

Arbitration/mediation

Conciliation proceedings are available under the Conciliation Act (Section 1(1)) but do not constitute a mandatory pre-trial procedure. The competent authority for dealing with conciliations is a conciliator.

A conciliator for the purposes of the Conciliation Act may be:

- a natural person to whom the parties have entrusted the task of carrying out the activity;
- a sworn advocate (with restrictions);
- a notary (with restrictions); and
- in cases provided for by law, a conciliation body of the government or local authority (e.g. the Estonian Association of Mediators) (Section 2 Conciliation Act).

Enforcement

A bailiff is responsible for enforcing an order both during the procedure and after termination or final decision of the court.

Compulsory licence

May be granted by the Harju County Court in cases of non-working, economic importance for Estonia, and public interest (Section 47 PA). Government use of a patent without the authorisation of its owner in situations of national emergency or other circumstances of extreme urgency is possible (Section 47 PA).

Relevant national law

Patent Act – passed on 16 March 1994 (RT I 1994, 25, 406);
date of revisions entry into force: 01.04.2019 [cited as: PA];

Penal Code – passed on 6 June 2001 (RT I 2001, 61, 364)
(Chapter 14 deals with offences against intellectual
property), date of revisions entry into force: 15.03.2019;

Principles of Legal Regulation of Industrial Property Act –
passed on 28 January 2003 (RT I 2003, 18, 98), date of
revisions entry into force: 01.04.2019 [cited as: Industrial
Property Act];

Conciliation Act – passed on 18 November 2009 (RT I 2009,
59, 385); date of revisions entry into force: 01.01.2010;

Code of Civil Procedure – passed 20 April 2005 (RT I 2005, 26,
197); date of revisions entry into force: 01.04.2019.

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Competent authorities or courts

