

Croatia

Administrative procedure

Opposition

No formal pre- or post-grant opposition procedure is available for patents. However in the case of consensual patents (patents which are granted without substantive examination – Arts. 41, 42 PA), any person may, within six months, file notice of opposition to the grant of a consensual patent (Art. 43 PA). The applicant for a consensual patent may, within six months from receipt of notification of the opposition, file a request for the grant of a patent on the basis of the substantive examination procedure. If the applicant for a consensual patent does not file a request, the State Intellectual Property Office (hereinafter the “Patent Office”) shall reject the patent application (Art. 44, 45 PA).

Appeal

An administrative dispute may be instituted before the Administrative Court in Zagreb against the decision issued by the Patent Office within 30 days from the date of communication of the decision.

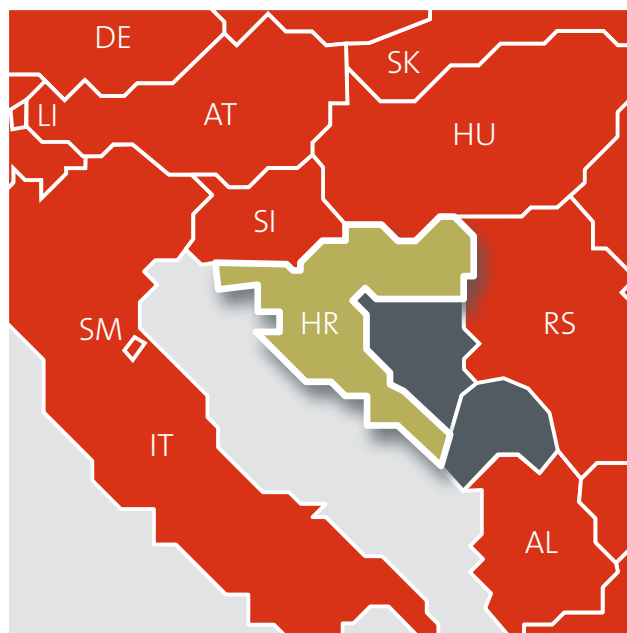
On appeal, the High Administrative Court of the Republic of Croatia (court of second instance) will examine the legality of the Administrative Court’s first-instance judgment.

Revocation

A patent may be revoked prior to expiry of the term of a patent for deficiencies in the deposited viable biological material (Art. 85-86 PA).

A patent may be declared null and void if it is established that the conditions for granting a patent stipulated by the law are not met. The proposal for nullification shall be submitted to the Patent Office by any natural or legal person or a State Attorney at any time throughout the life of the patent (Art. 79-83 PA).

The proceedings may proceed even if the proposal for nullification is withdrawn by the person who filed it (Art. 82 PA).



In the procedure concerning the proposal for the declaration of nullity of a patent (Art. 79-83 PA), the claims may be amended, provided that the subject-matter of the protection does not extend beyond the content of the patent as granted. Patent claim amendment after grant must always involve a restriction of the originally requested scope of protection and must always have support in the original specification. Patent claim amendments in such cases have *ex tunc, erga omnes* effect.

Civil procedure

Infringement

The patent owner or an exclusive licensee is entitled to bring a civil action before the competent civil court (commercial courts in Zagreb, Rijeka, Osijek and Split) against any person who infringes the patent by performing any of the infringing activities outlined in the PA (Art. 95 PA).

The burden of proof rests with the defendant if the subject-matter of the infringement is a patent-protected process (Art. 95.h PA).

Nullity may be used as a defence.

An action for damages for infringement of a patent may be initiated within three years from the day of learning of the

infringement and the infringer, but not after expiry of five years from the day on which the infringement was committed (Art. 95.e PA). An action for infringement of a patent may be initiated within five years from the day on which the infringement was committed.

Nullity/counterclaim for revocation

Within infringement proceedings, a counterclaim for revocation of a patent cannot be brought before the court deciding on the infringement.

If a defendant decides to use a counterclaim for revocation as a classical means of defence, it must submit the proposal for nullification to the Patent Office. The Patent Office will subject this request to expeditious proceedings.

The judge may stay proceedings pending final decision on nullity, but he is not obliged to do so (Art. 95.m PA). The judge has no competence to decide on revocation of a patent within this procedure.

Remedies

Provisional measures (Art. 95.j PA), prohibition of certain acts (Art. 95.c and 95.f PA), damages (Art. 95.e and 95.f PA), seizure (Art. 95.j and 95.k PA) and destruction (Art. 95.d PA).

Other actions

A patent has no effect against a person who had, prior to the filing date of the application or prior to the date of granted priority, in good faith and as part of his economic activities, exploited or manufactured the product which is the subject-matter of the invention or had made real and serious preparations for such exploitation of the invention in the Republic of Croatia (Art. 64 PA).

Appeal

An ordinary appeal may be brought to the High Commercial Court of the Republic of Croatia.

Parallel proceedings

Although Croatian courts retain exclusive jurisdiction over validity and infringement after a European patent has been

granted, in practice the outcome of the proceedings will be taken into consideration. Firstly, because these are decisions of the expert legal instances (the EPO's Boards of Appeal and Enlarged Board of Appeal), and secondly, because EPO case law on the interpretation of the EPC is considered relevant for the interpretation of the EPC by national courts.

Arbitration/mediation

According to the Arbitration Act, all claims that the parties may freely dispose of can be submitted to arbitration. The Permanent Arbitration Court at the Croatian Chamber of Economy provides arbitration services for domestic and foreign entrepreneurs.

The Mediation Act regulates mediation in civil, commercial and other disputes relating to rights which the parties may freely dispose of. Mediation may be conducted in all regular and specialised first and second instance courts (municipal, county, commercial and the High Commercial Court) in all stages of the proceedings.

Enforcement

Involuntary collection of claims (enforcement proceedings) are conducted by courts on the basis of enforcement title documents (enforceable court decisions and settlements, decisions of an arbitration court, decisions issued in an administrative proceeding if it involves fulfilment of a pecuniary obligation etc.).

Compulsory licence

Compulsory licences may be granted by the Commercial Court in Zagreb in cases of insufficient exploitation of a patent, national emergencies, the need for protection from unfair market competition, exploitation of another patent or protected plant variety, cross-licensing, and for the manufacture of pharmaceutical products intended for export to countries having public health problems (Art. 67.a-69.a PA).

Relevant national law

Patent Act - as amended (OG No. 173/2003 of 31 October 2003, OG No. 87/2005 of 18 July 2005, OG No. 76/2007 of 23 July 2007, OG No. 30/2009 of 9 March 2009, OG No. 128/2010 of 17 November 2010, OG No. 49/2011 of

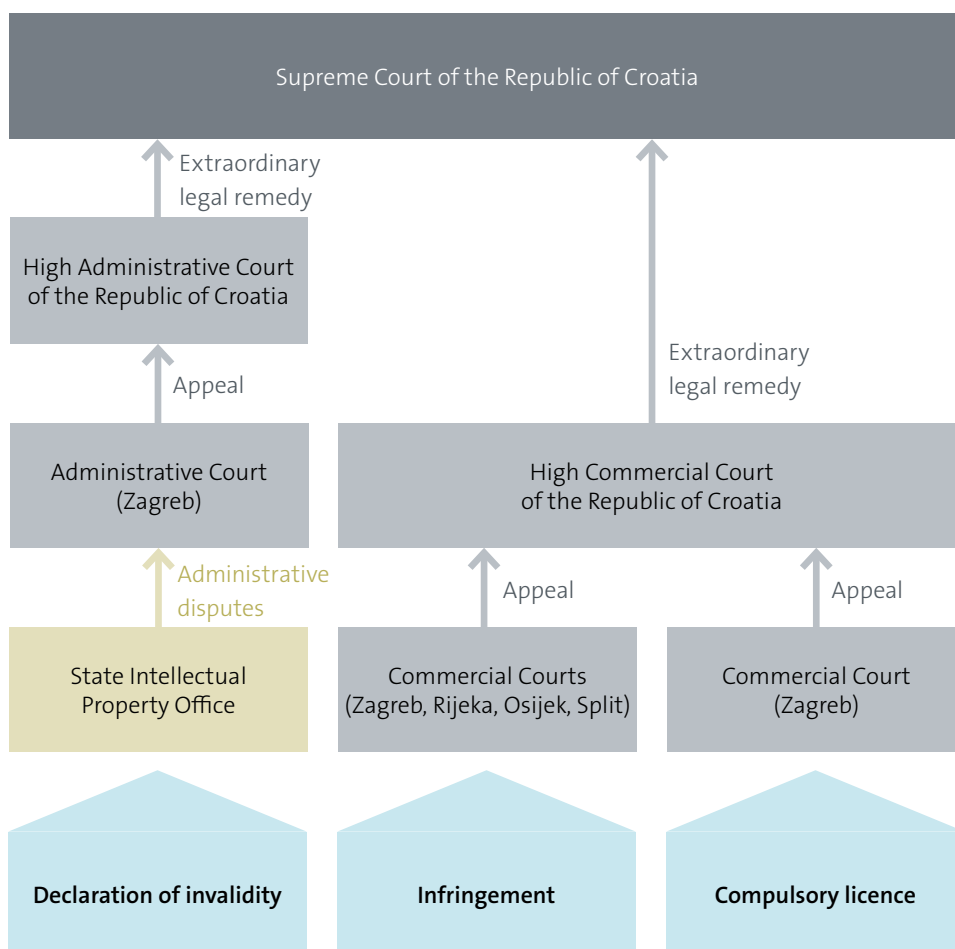
29 April 2011, OG No. 76/2013 of 21 June 2013, OG No. 46/2018 of 18 May 2018) [cited as: PA];

Administrative Disputes Act as amended (OG No. 20/2010 of 12 February 2010, OG No. 143/2012 of 20 December 2012, OG No. 152/2014 of 22 December 2014, OG No. 94/2016 of October 19, 2016, OG No. 29/2017 of March 31, 2017);

Arbitration Act (OG No. 88/2001 of 11 October 2001);

Mediation Act (OG No. 18/2011 of 9 February 2011).

Competent authorities or courts



HR

