

Hungary

Administrative procedure

Opposition

There is no pre- or post-grant opposition procedure in Hungary. During the patent grant procedure any person may file observations with the Hungarian Intellectual Property Office (HIPO; hereinafter the “Patent Office”) on the patentability of the application. Such observations will be considered by the examiner. The person making observations is not a party to the proceedings and has no right to request a review of the Patent Office’s decision; however, he is notified of the outcome of the observations (Art. 71 PA).

Appeal

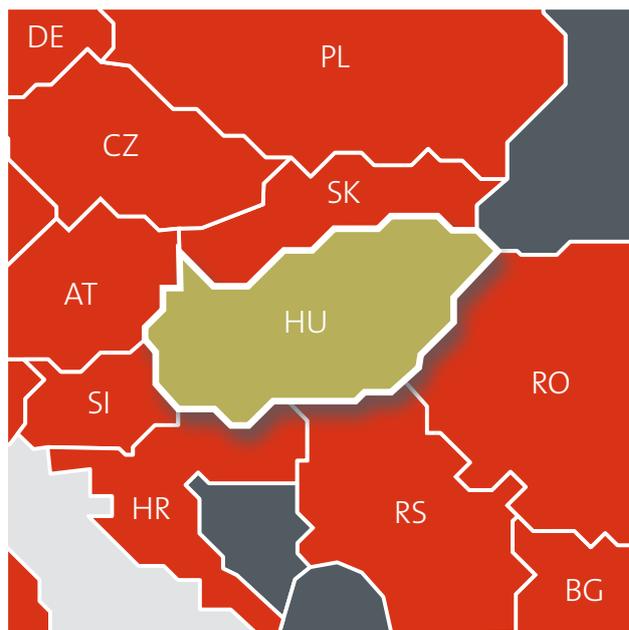
Only the Budapest-Capital Regional Court is competent to hear requests for the review of Patent Office decisions in accordance with the rules of non-contentious civil procedure (Art. 88, 86, 85 PA). The Patent Office is not a party to the court proceedings; however, it may submit its opinion in writing if the request asserts a fundamental legal issue. The request has to be made within 30 days of the date of communication of the decision of the Patent Office, which forwards it to the Budapest-Capital Regional Court within 15 days (Art. 85(6), (9) PA).

A request may be made by any party to the procedures before the Patent Office; by any person excluded from, or limited in the inspection of files; or by any person whose legal status as a party to the proceedings has been denied (Art. 85(4) PA). The public prosecutor may request the review of decisions of grant or revocation. Any other party to proceedings before the Patent Office may submit an independent request for review of the decision or a provision of the decision relating to him (Art. 85(5) PA).

Any person having a legal interest may intervene in the proceedings, until the court’s decision becomes final (Art. 93(1) PA).

Legal representation is mandatory in the court proceedings. (Art. 84/A PA)

The Budapest-Capital Regional Court sits in a chamber consisting of three professional judges, one legal and two



technical, the latter having a technical university degree or equivalent (Art. 87 PA).

If the court amends the Patent Office decisions, the judgment replaces the Patent Office’s decision (Art. 100(1) PA).

The court repeals a decision and orders the Patent Office to start new proceedings if:

- a) the decision was taken with the participation of a person who could be objected to on the grounds of incompatibility/exclusion;
- b) substantive rules of procedure which cannot be remedied by the court were infringed during the proceedings before the Patent Office (Art. 100(2) PA).

If a party requests a court decision on a matter which was not the subject of the proceedings before the Patent Office, the court will refer the request to the Patent Office. If the request is referred the court will, if necessary, repeal the Patent Office’s decision (Art. 100(3) PA).

The review of a decision taken in *ex parte* proceedings before the Patent Office will be handled in *ex parte* proceedings before the court; in the case of *inter partes* proceedings before the Patent Office, the same parties take part in the court proceedings, as plaintiff and defendant.

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Revocation

Any person (except the patentee) may make a request for revocation to the Patent Office (Art. 80 and 42 PA).

If a patent has been granted to a person not entitled to it, only a person who is thus entitled may make a request (Art. 80(2) PA).

A decision is taken by a panel of three Patent Office employees (two technically qualified employees from the Patent Department, one lawyer – Art. 46(2) PA). The patent can be revoked (*ex tunc*) or limited, or the request can be refused. If the request is withdrawn, the proceedings can be continued *ex officio* (Art. 81(3) PA). If the request for revocation is rejected by a final decision, no new procedure on the same grounds may be instituted by any person (Art. 42 PA).

In revocation proceedings and in actions for a decision on non-infringement, the Patent Office examines the facts within the framework of the request, on the basis of the allegations or statements of the parties and of data substantiated by them (Art. 47(2) PA). In both procedures, the parties may request accelerated proceedings if patent infringement proceedings are initiated or a request for provisional measures is filed and the fact is proven (Art. 81/A, 83(4) PA).

There are no other post-grant procedures. The applicant is entitled to amend the description, claims and drawings as laid down in the PA only until the day on which the decision on the grant of the patent is delivered.

Civil procedure

Infringement

An infringement action must be brought before the Budapest-Capital Regional Court (Art. 104 PA). Claims are subject to private law. Criminal sanctions are available in separate proceedings. The action may also be filed before the grant of a patent; however, the proceedings will be stayed until the final decision on grant is reached (Art. 36 PA).

Nullity/counterclaim for revocation

The court usually suspends its proceedings if the validity of the patent is questioned (revocation proceedings pending at the Patent Office); however, there is no legal obligation to do so.

Remedies

Denunciatory measures, injunction, surrender of enrichment, seizure, destruction, damages (Art. 35, 35/A PA), provisional and precautionary measures (Art. 104 PA).

Other actions

Any person who believes that infringement proceedings may be initiated against him may apply for a decision ruling that the product or process exploited or to be exploited by him does not infringe a particular patent. The decision is taken by the Patent Office. The request may be filed only prior to any infringement proceedings being instituted.

Infringement proceedings may not be instituted in respect of a product where the declaration has been issued (Art. 37 PA).

For further information on the procedural rules of non-infringement proceedings, see also corresponding text under “Revocation” above. The rules therein apply *mutatis mutandis*.

Appeal

Decisions of the Budapest-Capital Regional Court may be appealed to the Budapest-Capital Regional Court of Appeal. Further appeal to the Curia of Hungary is possible only on important points of law; this is not an ordinary remedy available against all decisions. IP matters are decided by the civil division.

Parallel proceedings

If an opposition has been filed against a European patent, or if limitation or revocation of the same European patent has been requested in accordance with the EPC, the procedure before the Patent Office for revocation of the European patent is suspended in justified cases until the final termination of the opposition, limitation or revocation procedure before the EPO. The suspended revocation procedure will be continued at the request of any party after termination of the limitation procedure or if termination of the opposition or revocation procedure before the EPO does not result in revocation of the European patent (Art. 84/M (2)-(3) PA).

See also “Revocation” above.

Arbitration/mediation

Mediation is available in patent litigation proceedings. The Minister of Justice maintains a register of mediators.

Enforcement

The bailiff is responsible for enforcing an order for provisional measures and also for enforcing the final decision in patent infringement matters. Enforcement is based on a judicial enforcement order issued by the competent court.

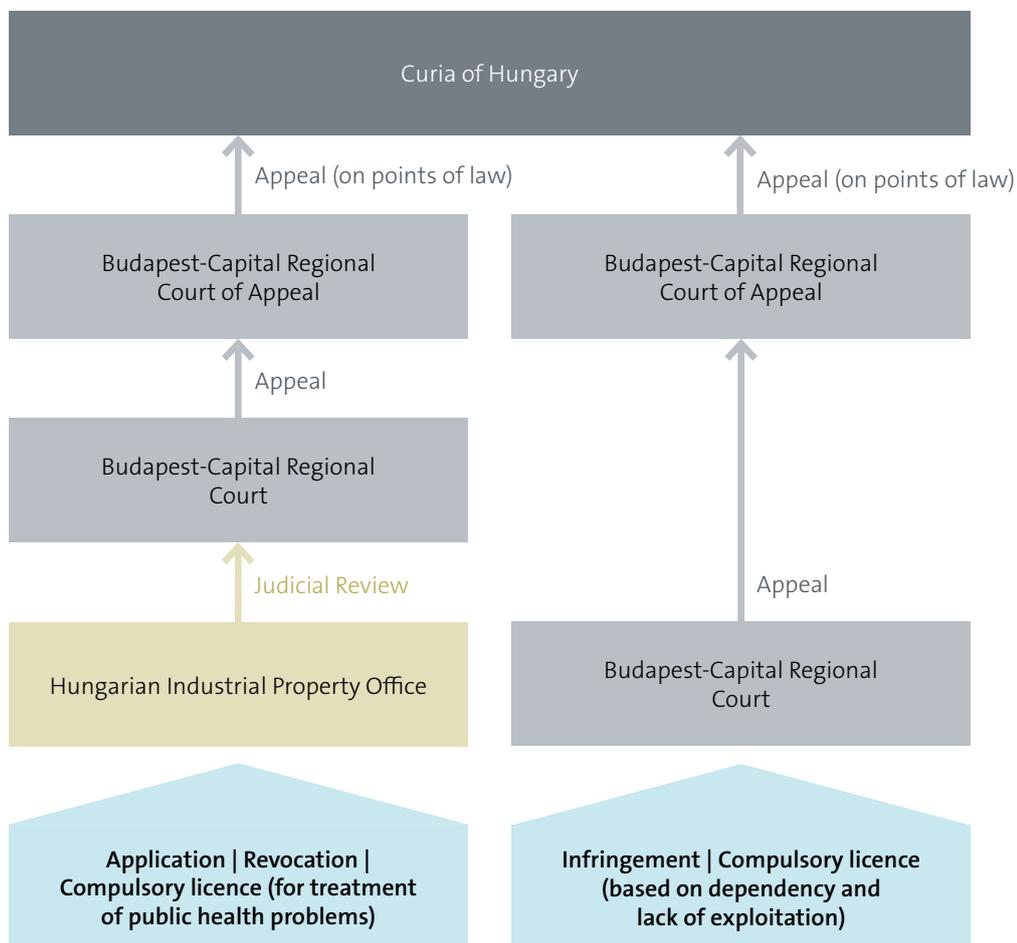
Compulsory licence

A compulsory licence may be granted by the Budapest-Capital Regional Court in cases of lack of exploitation or a dependent patent (Art. 31-33 PA). Additionally, the Patent Office grants compulsory licences under the Doha system (Art. 33/A PA).

Relevant national law

ACT XXXIII of 1995 on the Protection of Inventions by Patents – consolidated text of 12 May 2019 [cited as: PA]

Competent authorities or courts



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