

Norway

Administrative procedure

Patents granted by the Norwegian Industrial Property Office (hereinafter the “NIPO”) cover Norway, Svalbard and Jan Mayen.

Opposition

No pre-grant opposition procedure is available. A third party may file pre-grant observations on the patentability of the application. NIPO will consider such observations, but the observing party does not become a party to the proceedings. (Section 35 PR).

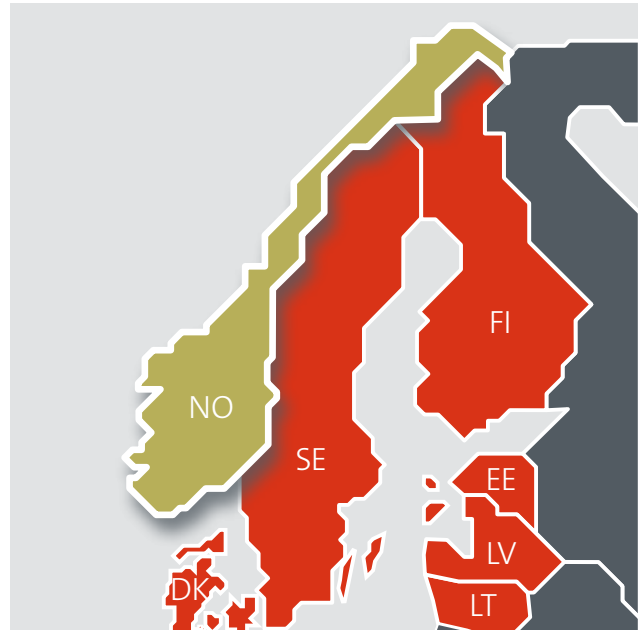
Post-grant opposition: Any person (including the holder) may file an opposition to a granted patent. A notice of opposition shall be filed in writing, state the grounds for opposition and reach NIPO within nine months from the date of grant of the patent. Under special circumstances, NIPO may grant a short additional time limit for the filing of arguments (Section 24 PA). There is no opposition fee.

Opposition founded on the claim that the patent has been granted to someone other than the person entitled to it may only be filed by the person claiming entitlement.

The patent holder will be notified of the opposition and may file his observations within the set period (normally three months).

Even if the opposition is withdrawn, processing of the opposition may be continued, provided that there are special reasons for doing so.

If the opposition is based on a possible breach of Section 1b PA (public order), the time limit for filing opposition is three years (Section 24(2) PA). Opposition filed after expiry of the nine-month general opposition period is subject to an opposition fee (of NOK 5 500).



NO

Administrative review

Anyone may file a request with NIPO that a patent shall be declared invalid in full or in part by a decision made by NIPO. (Section 52 b PA). There is no time limit for submitting a request for administrative review. A request for administrative review may be filed only after the time limit for opposition has passed (nine months after the date on which the patent was granted) and any opposition cases have been finally settled. On receiving the request, the NIPO will issue an invoice which must be paid for the case to be processed. The fee is NOK 8 800.

Appeal

An appeal against decisions of the NIPO shall be filed with the Norwegian Board of Appeal for Industrial Property Rights (hereinafter KFIR). Appeals to KFIR can be filed by the person or persons a decision at the NIPO has wholly or partially gone against. An appeal can be filed through a third party (professional representative or legal representative) (Section 26 PA).

The time limit for submitting an appeal to KFIR is counted from the day when the decision was sent from the NIPO, and is generally two months. The time limit for filing is in principle absolute, and the appeal must be received at the NIPO not later than the time limit for appeals. A late-filed appeal will not be considered. (Section 27 PA) The appeal fee (NOK 5 700) shall be paid on demand.

Appeals against decisions made by the KFIR can only be brought before the courts by an applicant, a holder of a patent or an opponent against whom a decision has been made.

A third party must file a claim for invalidity in a civil procedure.

Civil procedure

The following actions shall be brought before the Oslo District Court (Section 63 PA):

- a) right to an invention for which a patent application has been filed;
- b) a review of a decision in which the KFIR has refused an application for a patent, has revoked a patent or confirmed a first-instance decision to revoke a patent;
- c) request for patent limitation;
- d) invalidation or transfer of a patent;
- e) compulsory licences;
- f) request for amendment of administrative review;
- g) civil action on infringement of a patent right.

Infringement

The patent owner or the licensee may bring a civil action to the Oslo District Court.

A decision of non-infringement may not be based on the invalidity of a patent or the conditions for transfer being fulfilled without a prior judgment stating the invalidity or transfer of the patent. A dismissal may, however, be based on the patent having been revoked or transferred (Section 61 PA).

If a nullity action is pending, the proceedings in the

infringement case are stayed. There is also the possibility of joining the cases, based on the merits of the cases.

Nullity/counterclaim for revocation

The nullity action shall be brought to the Oslo District Court on the grounds listed in Section 52 PA.

Anyone may bring an action. Legal proceedings on the grounds that the patent has been granted to someone other than the party entitled to it may only be brought by the party claiming entitlement (such proceedings must be brought within one year from the date on which the entitled party obtained knowledge of the grant of the patent and of the other facts on which the proceedings are based).

Validity actions may be brought during the entire lifetime of the patent (subject to exceptions).

Patent claims can be amended either in limitation proceedings before NIPO (Sections 39a to 39e PA) or in administrative re-evaluation proceedings (Sections 52a to 52e PA) and also before the court (Section 52, first paragraph, last sentence, PA).

Remedies

Destruction, confiscation or alteration of products, damages, compensation, fine, and imprisonment (Sections 57-62 PA).

Other actions

Any claimant able to show a genuine need to have a claim for declaration of non-infringement determined against the defendant may bring the claim before the Oslo District Court.

Anyone who, at the time when the patent application was filed, was exploiting the invention commercially in Norway may, notwithstanding the patent, continue the exploitation, whilst retaining its general character, provided that the exploitation does not constitute an evident abuse in relation to the applicant or his predecessor in title. Such right of exploitation may also, on similar conditions, be enjoyed by anyone who had made substantial preparations for commercial exploitation of the invention in Norway (Section 4 PA).

This right may only be transferred to others in conjunction with the enterprise in which it arose or in which exploitation was intended.

Appeal

An appeal from a judgment of the Oslo District Court shall be filed within one month with the Borgarting High Court. As a rule, an appeal against a judgment in an asset claim shall not be referred for hearing without leave of the Court of Appeal if the value of the subject matter of the appeal is less than NOK 125 000. (Section 29-13 Dispute Act)

Further appeal to the Supreme Court shall be filed within one month. Leave may only be granted if the case gives rise to particularly important issues of principle upon which it is important to promptly ascertain the view of the Supreme Court (Section 30-2 (1) Dispute Act).

Parallel proceedings

The court may, on application from a party, stay the proceedings in a case if the outcome of the case is wholly or in part dependent on a legal issue that will be decided with final and enforceable effect in another case. Further, the court may stay the proceedings for other compelling reasons. The court shall take into account the need for swift, proper and cost-effective proceedings (The Dispute Act Section 16-18).

Arbitration/mediation

Mediation is used during proceedings before the Norwegian Board of Appeal for Industrial Property Rights and before the courts in order to arrive at a mutually agreed solution. Arbitration may be used by parties in *inter partes* cases when agreed upon between the parties.

Enforcement

The enforcement officer (bailiff) (*Namsmannen*) is responsible for enforcing orders both during the proceedings and after final decisions of the courts.

Compulsory licence

May be granted by the Competition Authority and the Oslo District Court in cases of non-working, dependent patents and public interest (Sections 45-50a PA). In addition, compulsory licences may be granted in accordance with the decision of the WTO Council in respect of certain pharmaceuticals, as implemented in the Patent Regulations, Sections 97, 98 and 99.

Relevant national law

Norwegian Patents Act - Act No. 9 of 15 December 1967, as last amended by Act 2019-06-21-49, in force on 01.07.2019 [cited as: PA];

Norwegian Patent Regulations, as last amended by FOR-2019-06-21-800 and in force on 01.07.2019;

Act relating to mediation and procedure in civil disputes (The Dispute Act) Section 16-18.

Competent authorities or courts

NO

