

Portugal

Administrative procedure

Opposition

In Portugal, there is a pre-grant opposition system. Opposition may be filed within two months of the date of publication of the patent application in the Industrial Property Bulletin. The applicant will be notified by letter that opposition has been filed, and from that moment will have two months to reply. Only then will the Portuguese Institute of Industrial Property (hereinafter the “Patent Office”) take a decision on the opposition.

Appeal

After publication of the final decision, any interested party may appeal to the Intellectual Property Court in Lisbon (with jurisdiction for all territory and in operation since 30 March 2012) within two months from publication. The judge may uphold or revoke the initial decision.

The administrative decision may also be appealed to the Arbitration Court (ARBITRARE) as an alternative to judicial appeal.

Further ordinary appeal to the Court of Appeal in Lisbon is possible within 30 days from the date of the decision.

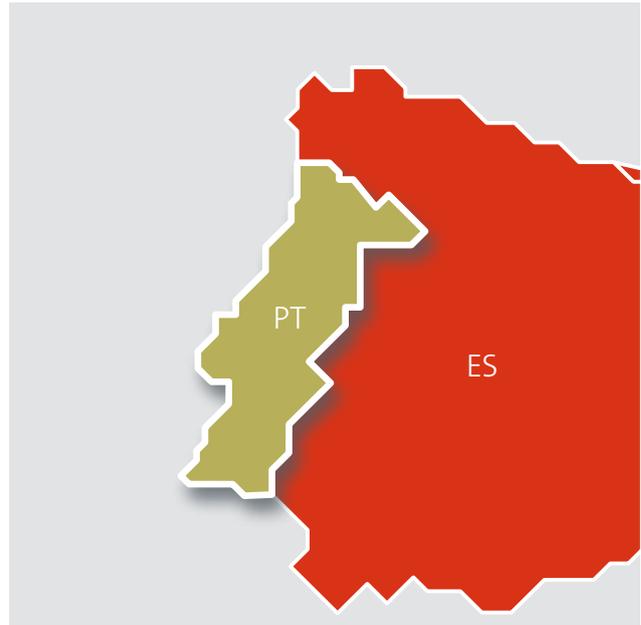
Revocation

Invalidation proceedings may be initiated by any interested party or by the Public Prosecutor Services during the entire lifetime of a patent. The decision of the Court has retroactive effect (*ex tunc*).

Partial nullification is possible.

Patent claim amendment is allowable under Art. 12(8) of the IPC:

“After a decision has been issued, during the time limit for appeals or, if an appeal has been lodged, until the ruling has been confirmed, applicants may transfer the rights pertaining to an application, limit its object or add documents or statements to the case file”;



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or under Art. 102(8) IPC:

“A patentee may ask the Patent Office, on payment of a fee, to limit the scope of protection of the invention by altering the claims”; and under Art. 115(2) IPC: “In court proceedings, a patentee may limit the scope of protection of an invention by altering the claims.”

In practice, requests for limitation do not frequently occur.

Civil procedure

Infringement

Criminal infringement proceedings may be conducted in any criminal court of first instance (criminal action according to jurisdiction of the court where the infringement takes place). Civil infringement proceedings can be conducted in the Intellectual Property Court (with jurisdiction for all territory and in operation since 30 March 2012).

An action may be brought by the patent holder, his licensee or any person who considers himself adversely affected.

Expert opinions are allowable. The Intellectual Property Court of Lisbon may ask the Patent Office to indicate an expert or ask other institutions (e.g. universities). The court usually follows the opinion of the expert, but the opinion of an expert or any other expertise is not legally binding on the court.

In cases of criminal infringement any criminal court of first instance is competent and may make the same request the Patent Office.

No judicial decision based on provisional protection may be issued before a final decision to grant or refuse the patent, which is taken by the Patent Office.

Nullity/counterclaim for revocation

Invalidity of a patent may be used as a defence. The court will wait for the final decision on nullity if a previous action has to deal with a request for nullity or, at the request of one of the parties, the case may be sent to the court where the first action was lodged (jurisdiction for cases lodged since 30 March 2012 lies exclusively with the Intellectual Property Court). If there is no previous action the court will simultaneously decide on validity, infringement and also the award of damages if requested for any of the parties.

At first instance, exclusive jurisdiction rests with the Intellectual Property Court in Lisbon.

Remedies

Damages, seizure of infringing articles, fine and imprisonment (for criminal infringement).

Other actions

Interested parties may request a declaration of non-infringement, and the same procedure applies as under “Nullity/counterclaim for revocation”.

Appeal

Appeals may be lodged to the Lisbon Court of Appeal within 30 days, or 45 days if the facts declared proven are also disputed, in both cases from the date of the decision.

Further appeal on points of law may be made to the Supreme Court, within 30 days from the date of the decision. Appeal to the Supreme Court depends on the value of the lawsuit and is admissible in some cases. However, because damages are also dealt with together with validity and infringement, the cases generally go to the Supreme Court.

If the first-instance decision is upheld without a dissenting vote in the Lisbon Appeal Court and with full acceptance of all the arguments of the Intellectual Property Court, there

will be no appeal to the Supreme Court. However, appeal to the Supreme Court is always possible in order to clarify important points of law or contradictions in case law. In these cases, an appeal to the Supreme Court is mandatory for the Public Prosecutor Services even if the parties do not appeal.

The Arbitration Court (ARBITRARE) is also available as an alternative to judicial courts, with appeal to the Lisbon Court of Appeal when parties agree to that in the arbitration agreement.

Parallel proceedings

The court stays national proceedings if the Patent Office considers that parallel proceedings are a prejudicial cause likely to affect the decision.

Arbitration/mediation

Arbitration is available in patent litigation proceedings.

ARBITRARE, the Arbitration Centre for Industrial Property, Domain names, Trade names and Corporate names, and *ad hoc* courts are the competent authorities.

Decree-Law No. 110/2018, 10 December (entry into force on 9 January 2019) amended Law No. 62/2011 dealing with disputes involving patent-based medication and generics. The amendments stipulate that such disputes may be subject to voluntary arbitration.

Enforcement

In principle, the abovementioned will be enforced by an agent external to the IP Court, the “*agente de execução*”, who is chosen by the plaintiff or nominated by the relevant corporation, the “*Ordem dos Solicitadores e Agentes de Execução*” (upon request of the Court).

A bailiff intervenes in exceptional cases, such as when the interested party is the State or when there is no available agent (cf. Art. 722 of the Portuguese Civil Procedure Code).

Compulsory licence

Compulsory licences may be granted by the Patent Office in cases of non-working patents. In cases of public interest a compulsory licence will be granted by the Government.

Relevant national law

Industrial Property Code 2018, Decree-law no 110/2018, 10 December [cited as: IPC];

Voluntary Arbitration Law, Law no 63/2011, 14 de December;

Arbitration Law, Law no 62/2011, 12 December;

Arbitrare Regulations can be found (in Portuguese) under www.arbitrare.pt

Competent authorities or courts

