Inputs from Member States and Regional Patent Offices to the Thirty-Eighth Session of the Standing Committee on the Law of Patents

Respondent Information

First Name:

[redacted]

Last Name:

[redacted]

Country:

Czech Republic

IP Office

Industrial Property Office

Job title

Head of International Affairs

Email address:

[redacted]

Email address confirmation:

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Disclaimer:

The information provided in response to this questionnaire is understood to be submitted on behalf of the Member State or regional organization concerned, through its competent authority and in accordance with its applicable official internal procedures.
It is assumed that the person completing and submitting the questionnaire is duly authorized to do so and that the information reflects the official position or practice of the Member State or organization, to the extent possible.

I confirm that I have read and understood the statement above and that I agree with its contents.

i) Study on the determination of inventorship and conditions of foreign filing, with a view to identifying potential challenges for innovators in the cross-border collaborative environment

1. Which of the following does the applicable legal framework in your jurisdiction require before a patent application can be filed in another country or at a regional patent organization?

Security clearance

2. Please list the statutes or guidance documents that patent applicants in your country can consult to inform themselves of the foreign filing requirements and the procedure to follow.

Security interests of the Czech Republic - In case of a decision made by the National Security Authority regarding the classification of the subject-matter of the invention.

3. Please list the most important case law on foreign filing conditionality requirements, if any, with a brief summary of the main findings.

N/A

4. What specific criteria will trigger the Foreign Filing Conditionality?

Impact on the country's national security or national defense;

Please provide any further details on the scope of the specific criteria applicable in your jurisdiction.

Security interests of the Czech Republic - In case of a decision made by the National Security Authority regarding the classification of the subject-matter of the invention.

5. Does your law allow for a deemed license or automatic approval, if the Office does not act or respond within a specific time period?

No

6. Does your jurisdiction's patent law provide for the imposition of a "Secrecy Order" (or other similar national security restrictions) that prohibits or restricts an applicant from filing for patent protection in other jurisdictions?

Yes

What is the nature/impact of this restriction regarding foreign filing?

The only restriction is in the case of a decision made by the National Security Authority regarding the classification of the subject-matter of the invention.

Act No. 527/1990 Coll. on Inventions and Rationalisation Proposals, as amended (the Czech Patent Act)

Section 71
Except for publication thereof, this Act shall apply also to the procedures on inventions which are kept secret in terms of the special regulations1 or under international agreement by which the Czech Republic is bound.

1 Act No. 412/2005 Coll., on the Protection of Classified Information and on Security Eligibility

For proceedings concerning inventions that are designated as classified by the National Security Authority (the Authority) pursuant to Section 70 of Act No. 412/2005 Coll., on the Protection of Classified Information and on Security Eligibility, or concerning inventions classified under an international treaty binding on the Czech Republic, the rules of the Patent Act apply, with the exception of the procedures related to the publication of the patent application.

According to this legal provision (Section 70 of Act No. 412/2005 Coll.), every applicant who files an application for an invention, utility model, or semiconductor topography with the Industrial Property Office (the IPO-CZ) is required to indicate on the application a proposed level of classification if he/she believes that the subject matter of the application contains classified information.

The IPO-CZ submits the application to the National Security Authority so that, within 60 days from the date of receipt, the Authority may confirm, amend, or, if the subject matter of the application does not contain classified information, reject the proposed level of classification. Until the Authority issues its decision, the application is handled as though it contains classified information.

The IPO-CZ marks the classification level on the application and promptly notifies the applicant, who must then mark the subject matter of the application with this classification level in the prescribed manner. If the applicant is a non entrepreneurial natural person, the IPO-CZ assumes the role of the inventor.

Applications determined by the Authority to contain classified information are administered by the IPO-CZ Security Director.

After the classification level is determined and the permitted bibliographic data have been recorded in the public register, the proceedings on the application are conducted by a person in the Patent Department who has access to classified information, and they take place under a special classified regime. Applications containing classified information are not published. Pursuant to Section 5(3) of the Patent Act, a legal presumption applies that such "secret" applications are deemed to have been published 18 months from the priority date.

An example of an international treaty under Section 71 of the Patent Act is the NATO Agreement on the mutual safeguarding of secrecy of inventions relating to defence and for which applications for patents have been made, signed on 21 September 1960. This treaty has been in force for the Czech Republic since 10 November 2000.

7. Please cite, if available, any official studies, policy documents, or reports which highlight the working of the foreign filing requirements in your jurisdiction.

Council Regulation (EU) 2024/1745 of 24 June 2024 amending Regulation (EU) No 833/2014 concerning reactive measures in view of Russia´s actions destabilising the situation in Ukraine – See Article 5s

A link to the Regulation:
https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L_202401745

Final review before submission

Confirmation of submission

I am aware that by clicking "Submit" below, my responses will be sent to the SCP Secretariat.