Administrative Revocation and Invalidation Mechanisms

Hungary

Under Hungarian law, a post-grant review of the validity of patents is available in the form of administrative revocation procedure. According to the relevant substantive provisions, patents shall be revoked *ex tunc* if:

(a) the subject matter of the patent does not satisfy the requirements of patentability laid down in Article 6(1)(a) of the Patents Act (PA) (admissible subject matter, not subject to any exclusions; novelty; inventive activity; industrial applicability);
(b) the description does not disclose the invention in a manner sufficiently clear and detailed for it to be carried out by a person skilled in the art on the basis of the description and the drawings;
(c) the subject matter of the patent extends beyond the content of the application, as filed at the accorded filing date or – in the case of division – beyond the content of the divisional application;
(d) the patent has been granted to a person who is not entitled to it under the

PA.[1] Procedural rules

Any person may institute proceedings for the revocation of a patent against the patentee, except if the patent has been granted to a person who is not entitled to it; in such cases revocation of the patent may be requested by the person who is lawfully entitled to it. The request shall state the grounds on which it is based and documentary evidence shall be annexed.[2] In revocation procedures, the Hungarian Intellectual Property Office (HIPO) shall examine the facts of the case within the contents of the request only, i.e. on the basis of the allegations and statements of the parties and data substantiated by them.[3] In the case of a patent granted for a service invention, the HIPO shall notify the inventor who may become party to the revocation proceedings if a statement to this effect is submitted within thirty days from receipt of the notification.[4]

The HIPO shall invite the patentee and – in the case of a patent granted for a service invention – the inventor to submit comments on the request for revocation. Following written preparatory work, it shall decide at a hearing on the revocation or limitation of the patent or on the refusal of the request.[5] If the request for revocation is withdrawn, the procedure may be continued *ex officio*. In such a case the HIPO shall also proceed within the contents of the request, taking into consideration the statements and allegations made by the parties earlier.[6]

The losing party shall be required to bear the costs of the revocation procedure. If the patentee has not provided any grounds for the revocation procedure, and he surrenders the patent protection – at least with respect to the part of the claims concerned – with retroactive effect to the date of filing, the costs of procedure shall be borne by the party requesting revocation.[7]

Upon request, the court may review decisions of the HIPO on revocation.[8] The request for review must be filed or posted by registered mail within thirty days from the date of communication of the decision to the party concerned or to any other party to the procedure.[9] The request for review shall be filed with the HIPO, which shall forward it, together with the

[1] Article 42 of the Patents Act.
[2] Article 80 of the Patents Act.
[3] Article 47(2) of the Patents Act.
[4] Article 80/A of the Patents Act.
[5] Article 81(1) of the Patents Act.
[6] Article 81(3) of the Patents Act.
[7] Article 81(7) of the Patents Act.
[8] Articles 85 and 53/A (2)-(3) the Patents Act.
[9] Article 85(6) Patents Act.

documents of the patent file, to the court within fifteen days.[10]

A party may request the acceleration of patent revocation proceedings where patent infringement proceedings have been initiated or a request for provisional measures has been filed and substantiated. The request is subject to payment of the prescribed fee and compliance with statutory requirements, failing which it may be rejected or deemed withdrawn. Once established by the Hungarian Intellectual Property Office, the accelerated procedure is subject to shorter deadlines, limited extensions of time, and oral hearings only where necessary or timely requested.[11]

[10] Article 85(9) of the Patents Act.
[11] Article 81/A of the Patents Act.