

Patent Alert: Post grant patent opposition introduced in France

April 1st, 2020

For all patents granted as from April, 1st 2020 any third party has now the possibility to file before the French patent office, an opposition against a granted French patent, within a time period of 9 months after grant.



The main features of the opposition

1. The grounds for opposition include:
 - The disclosure of the claimed invention is insufficient
 - The scope of the patent extends over the initial disclosure
 - The invention is not patentable (no technical effect, not novel or obvious for a skilled person)
2. The owner of the patent is not allowed to file an opposition against his patent (no self opposition).
3. The examiner of the French patent office who was in charge of the granting procedure is not allowed to actively participate to the opposition procedure but may be heard during said procedure. (this is notably different from the EPO opposition procedure against European patents).
4. The opposition procedure is suspended:
 - If a nullity action against the patent is engaged before a Court
 - If the French patent office requires further information
 - If both parties so require (for a duration up to 12 months)
5. The French patent office may decide to:
 - Revoke the patent either completely or partially
 - Maintain the patent in an amended form
 - Reject the opposition
6. The decision of the French Patent Office may only be challenged before the Paris Court of Appeal with a possible further appeal to the Supreme Court (Cour de cassation). Nothing equivalent to the EPO Boards of appeal is created within the French patent office

The opposition procedure

The procedure includes four stages:

1. An information stage, during which the parties file their written arguments and evidence (including possible amended claims filed by the patentee).

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2. An instruction stage during which the French patent office issues an instruction advice (within three months after the end of the time period allowed to the patentee for answering to the opposition brief). After receipt of this instruction advice which contains a preliminary opinion of the patent office, the parties are allowed to present their written observations, including possible amended patent claims.
3. A written stage during which the parties are again allowed to present written observations, including possible further amended patent claims (each party has therefore three opportunities to present its arguments).
4. An optional oral stage which can be initiated upon request of one of the parties or ex officio by the French patent office and during which each party may present its case orally.

The French Patent Office issues a decision within four months after the end of the oral stage, either revoking the patent or maintaining the patent in an amended form, or dismissing the opposition.



Contact us:

For any question you may have, please do not hesitate to contact our team.



Olivier Delprat

Paris Office
Partner
French & European Patent Attorney



Caroline Casalonga

Paris Office
Partner
Attorney at Law



Francis Zapalowicz

Paris Office
Partner
French & European Patent Attorney



Julien Thon

Grenoble Office
Partner
French & European Patent Attorney



Gwennaëlle Le Roy

Paris Office
Partner
French & European Patent Attorney



Virginie Martin-Charbonneau

Paris Office
Partner
French & European Patent Attorney



Jean-Baptiste Lecoer

Paris Office
Partner
French & European Patent Attorney



Jürgen Neugebauer

Munich Office
Partner
European Patent Attorney

PARIS : 31 rue de Fleurus, 75006 Paris, France

Tel: +33 (0)1 45 61 94 64 - Fax: +33 (0)1 45 63 94 21 - E-Mail: paris@casalonga.com

MUNICH : Bayerstrasse 71/73, 80335 MUNICH, Germany

Tel: +49 (0)89 22 30 05 - Fax: +49 (0)89 22 47 53 - E-Mail: munich@casalonga.de